



Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008 taking into account amendments up to Act No. 145 of 2008

Volume 1 includes: Table of Contents
 Sections 1 – 78A

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

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

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 Sections 79A – 121L

Volume 3 includes: Table of Contents
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An Act to consolidate and amend the law relating to the imposition assessment and collection of a tax upon incomes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Income Tax Assessment Act 1936*.

6 Interpretation

(1AA) So far as a provision of the *Income Tax Assessment Act 1936* gives an expression a particular meaning, the provision does *not* also have effect for the purposes of the *Income Tax Assessment Act 1997* (the **1997 Act**), or for the purposes of Schedule 1 to the *Taxation Administration Act 1953*, except as provided in the 1997 Act or in that Schedule.

(1) In this Act, unless the contrary intention appears:

100% subsidiary has the same meaning as in the *Income Tax Assessment Act 1997*.

accrued leave transfer payment has the meaning given by section 6G.

AFOF means an Australian venture capital fund of funds within the meaning of subsection 118-410(3) of the *Income Tax Assessment Act 1997*.

agent includes:

- (a) every person who in Australia, for or on behalf of any person out of Australia holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act.

allowable deduction means a deduction allowable under this Act.

amount paid-up on a share means the amount (if any), including any premium, paid on that share.

amount unpaid on a share means the amount (if any) unpaid on that share.

apportionable deductions has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

assessable income has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

assessment means:

- (a) the ascertainment of the amount of taxable income (or that there is no taxable income) and of the tax payable on that taxable income (or that no tax is payable); or

Note 1: A taxpayer does not have a taxable income if the taxpayer's deductions equal or exceed the taxpayer's assessable income: see subsection 4-15(1) of the *Income Tax Assessment Act 1997*.

Note 2: A taxpayer may have no tax payable on an amount of taxable income if that income is below the tax-free threshold or if the taxpayer's tax offsets reduce the taxpayer's basic income tax liability to nil.

- (b) for a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J—the ascertainment of the net income of the trust as defined by section 102D (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or
- (c) for a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R—the ascertainment of the net income of the trust as defined by section 102M (or that there is no net income) and of the tax payable on that net income (or that no tax is payable); or
- (d) for any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust—the ascertainment of so much of the net income of the trust estate as is net income in respect of which the trustee is liable to

- pay tax (or that there is no net income in respect of which the trustee is so liable) and of the tax payable on that net income (or that no tax is payable); or
- (e) the ascertainment of the amount of interest payable under section 102AAM (about distributions from non-resident trust estates); or
 - (f) the ascertainment of an amount of additional tax under section 128TE; or
 - (g) the ascertainment of an amount of tax under section 159GZZZZH; or
 - (h) the ascertainment of the amount of income tax payable on the no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that no tax is payable); or
 - (i) the ascertainment of an amount of FHSA misuse tax (within the meaning of the *Income Tax Assessment Act 1997*) (or that no tax is payable).

Australian superannuation fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

bank or ***banker*** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

base interest rate has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

business has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

capital gain has the same meaning as in the *Income Tax Assessment Act 1997*.

capital loss has the same meaning as in the *Income Tax Assessment Act 1997*.

capital proceeds has the same meaning as in the *Income Tax Assessment Act 1997*.

CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

CGT event has the same meaning as in the *Income Tax Assessment Act 1997*.

child has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Commissioner means the Commissioner of Taxation.

Commonwealth education or training payment has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Commonwealth securities means bonds, debentures, stock or other securities issued under an Act, but does not include:

- (a) securities (not being securities to which paragraph (b) applies) issued in respect of a loan raised outside Australia unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be Commonwealth securities for the purposes of this Act; or
- (b) securities issued after 12 April 1976 by a bank.

company has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

complying approved deposit fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

complying superannuation fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

consolidated group has the same meaning as in the *Income Tax Assessment Act 1997*.

constituent document, in relation to a company, means the memorandum and articles of association of the company, or any rules or other document constituting the company or governing its activities.

corporate tax entity has the same meaning as in the *Income Tax Assessment Act 1997*.

corporate tax rate has the same meaning as in the *Income Tax Assessment Act 1997*.

cost base of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

creditable acquisition has the meaning given by section 195-1 of the GST Act.

debenture, in relation to a company, includes debenture stock, bonds, notes and any other securities of the company, whether constituting a charge on the assets of the company or not.

debt interest has the same meaning as in the *Income Tax Assessment Act 1997*.

demerged entity has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

demerger has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

demerger allocation means:

- (a) the total market value of the allocation represented by the ownership interests issued by the demerged entity in itself under a demerger to the owners of ownership interests in the head entity of the demerger group; or
- (b) the total market value of the allocation represented by the ownership interests disposed of by a member of a demerger group under a demerger to the owners of ownership interests in the head entity; or
- (c) the total of both of those market values.

demerger dividend means that part of a demerger allocation that is assessable as a dividend under subsection 44(1) or that would be so assessable apart from subsections 44(3) and (4).

demerger group has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.

demerger subsidiary has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.

demerging entity has the meaning given by section 125-70 of the *Income Tax Assessment Act 1997*.

depreciating asset has the same meaning as in the *Income Tax Assessment Act 1997*.

Deputy Commissioner means a Deputy Commissioner of Taxation.

distribution, when used in a franking context, has the same meaning as in the *Income Tax Assessment Act 1997*.

dividend includes:

- (a) any distribution made by a company to any of its shareholders, whether in money or other property; and
- (b) any amount credited by a company to any of its shareholders as shareholders;

but does not include:

- (d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company; or
- (e) moneys paid or credited, or property distributed, by a company for the redemption or cancellation of a redeemable preference share if:
 - (i) the company gives the holder of the share a notice when it redeems or cancels the share; and
 - (ii) the notice specifies the amount paid-up on the share immediately before the cancellation or redemption; and
 - (iii) the amount is debited to the company's share capital account;except to the extent that the amount of those moneys or the value of that property, as the case may be, is greater than the amount specified in the notice as the amount paid-up on the share; or
- (f) a reversionary bonus on a life assurance policy.

dual resident investment company has the meaning given by section 6F.

employment termination payment has the same meaning as in the *Income Tax Assessment Act 1997*.

equity holder has the same meaning as in the *Income Tax Assessment Act 1997*.

equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

ESVCLP means an early stage venture capital limited partnership within the meaning of subsection 118-407(4) of the *Income Tax Assessment Act 1997*.

exempt entity has the same meaning as in the *Income Tax Assessment Act 1997*.

exempt income has the meaning given by section 6-20 of the *Income Tax Assessment Act 1997*.

FHSA has the meaning given by the *First Home Saver Accounts Act 2008*.

FHSA trust has the meaning given by the *First Home Saver Accounts Act 2008*.

foreign superannuation fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

frankable distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

franked part of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

franking credit has the same meaning as in the *Income Tax Assessment Act 1997*.

franking debit has the same meaning as in the *Income Tax Assessment Act 1997*.

franking deficit tax has the same meaning as in the *Income Tax Assessment Act 1997*.

franking surplus has the same meaning as in the *Income Tax Assessment Act 1997*.

franks with an exempting credit has the same meaning as in the *Income Tax Assessment Act 1997*.

friendly society has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

friendly society dispensary means an approved pharmaceutical chemist within the meaning of Part VII of the *National Health Act 1953*, being a friendly society, or a friendly society body, within the meaning of that Part.

fringe benefit has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

full self-assessment taxpayer, for a year of income (the **current year**), means any of the following:

- (a) a company;
- (b) the trustee of a trust that is a corporate unit trust in relation to the current year for the purposes of Division 6B of Part III;
- (c) the trustee of a trust that is a public trading trust in relation to the current year for the purposes of Division 6C of Part III;
- (d) the trustee of a complying approved deposit fund or a non-complying approved deposit fund in relation to the current year;
- (e) the trustee of a complying superannuation fund or a non-complying superannuation fund in relation to the current year;
- (f) the trustee of a pooled superannuation trust in relation to the current year.

Note: A corporate limited partnership is taken to be a company under section 94J, so it will fall within paragraph (a) of this definition.

fund payment has the same meaning as in the *Income Tax Assessment Act 1997*.

general insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

general insurance policy has the same meaning as in the *Income Tax Assessment Act 1997*.

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

general partner has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

head company of a consolidated group or a MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

head entity of a demerger group has the meaning given by section 125-65 of the *Income Tax Assessment Act 1997*.

hold, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

holder, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

income from personal exertion or income derived from personal exertion means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, any amount that is included in the assessable income of the taxpayer by reason of section 393-15 of Schedule 2G, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include:

- (a) interest, unless the taxpayer's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to the taxpayer for goods supplied or services rendered by him in the course of his business; or
- (b) rents, dividends or non-share dividends.

income from property or income derived from property means all income not being income from personal exertion.

income tax or tax means income tax imposed as such by any Act, as assessed under this Act, but, except in section 260, does not include mining withholding tax or withholding tax.

insurance business has the same meaning as in the *Insurance Act 1973*.

insurance funds, in relation to a company, means all the Australian statutory funds of the company and all other funds maintained by the company in respect of the life assurance business of the company.

interest income, in relation to a taxpayer, means income consisting of interest, or a payment in the nature of interest, in respect of:

- (a) money lent, advanced or deposited; or
- (b) credit given; or
- (c) any other form of debt or liability;

whether security is given or not, other than:

- (d) an amount to the extent to which it is a return on an equity interest in a company; or
- (e) interest derived by the taxpayer from a transaction directly related to the active conduct of a trade or business; or
- (f) interest derived by the taxpayer from carrying on a banking business or any other business whose income is principally derived from the lending of money; or
- (g) interest received by the taxpayer during a year of income from a foreign company, where:
 - (i) at any time during the year of income, the taxpayer had (or would have had, if the taxpayer were a company and a resident), a voting interest, within the meaning of section 334A, amounting to at least 10% of the voting power, within the meaning of that section, in that company; and
 - (ii) during the year of income or the preceding year of income, the company has not derived an amount of interest income exceeding 10% of the total profits derived by the company during the same year.

international tax sharing treaty:

- (a) means an agreement between Australia and another country under which Australia and the other country share tax revenues from activities undertaken in an area identified by or under the agreement; and
- (b) does not include an agreement within the meaning of the *International Tax Agreements Act 1953*.

life assurance company has the meaning given to **life insurance company** by the *Income Tax Assessment Act 1997*.

life assurance policy has the meaning given to **life insurance policy** by the *Income Tax Assessment Act 1997*.

life assurance premium has the meaning given to **life insurance premium** by the *Income Tax Assessment Act 1997*.

limited partner has the same meaning as in the *Income Tax Assessment Act 1997*.

limited partnership has the same meaning as in the *Income Tax Assessment Act 1997*.

liquidator means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company.

loss year has the same meaning as in the *Income Tax Assessment Act 1997*.

managed investment trust has the same meaning as in the *Income Tax Assessment Act 1997*.

MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

member of a consolidated group or MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

minerals has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

mining withholding tax means income tax payable in accordance with section 128V.

mortgage includes any charge, lien or encumbrance to secure the repayment of money.

mutual life assurance company means a life assurance company the profits of which are divisible only among the policy holders.

natural resource has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

net capital gain has the same meaning as in the *Income Tax Assessment Act 1997*.

net capital loss has the same meaning as in the *Income Tax Assessment Act 1997*.

net GST has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

net input tax credit has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

non-assessable non-exempt income has the meaning given by the *Income Tax Assessment Act 1997*.

non-complying approved deposit fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

non-complying superannuation fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

non-entity joint venture has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

non-equity share has the same meaning as in the *Income Tax Assessment Act 1997*.

non-resident means a person who is not a resident of Australia.

non-share capital account has the same meaning as in the *Income Tax Assessment Act 1997*.

non-share capital return has the same meaning as in the *Income Tax Assessment Act 1997*.

non-share distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

non-share dividend has the same meaning as in the *Income Tax Assessment Act 1997*.

non-share equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

ordinary class has the same meaning as in the *Income Tax Assessment Act 1997*.

ordinary income has the same meaning as in the *Income Tax Assessment Act 1997*.

outstanding claims at the end of a year of income under general insurance policies issued by a general insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

over-franking tax has the same meaning as in the *Income Tax Assessment Act 1997*.

ownership interest has the meaning given by section 125-60 of the *Income Tax Assessment Act 1997*.

paid in relation to dividends or non-share dividends includes credited or distributed.

paid-up share capital of a company means the amount standing to the credit of the company's share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

parent has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

part of a distribution that is franked with an exempting credit has the same meaning as in the *Income Tax Assessment Act 1997*.

part of a distribution that is franked with a venture capital credit has the same meaning as in the *Income Tax Assessment Act 1997*.

partnership has the same meaning as in the *Income Tax Assessment Act 1997*.

passive commodity gain, in relation to a taxpayer, in relation to a year of income, means a gain realised by the taxpayer in a year of income from disposing of a forward contract or a futures contract, or a right or option in respect of a forward contract or a futures contract, in respect of any thing (a **commodity**):

- (a) that is capable of delivery under an agreement for its delivery; and
- (b) that is not an instrument creating or evidencing a chose in action;

unless the contract, right or option relates to the carrying on by the taxpayer of a business:

- (c) of producing or processing the commodity; or

- (d) that involves the use of the commodity as a raw material in a production process.

passive income, in relation to a taxpayer, in relation to a year of income means:

- (a) dividends (within the meaning of this section) and non-share dividends paid to the taxpayer in the year of income; or
- (b) unit trust dividends (within the meaning of Division 6B or 6C) paid to the taxpayer in the year of income; or
- (c) a distribution made to the taxpayer in the year of income that is taken to be a dividend because of section 47; or
- (d) an amount that is taken to be a dividend paid to the taxpayer in the year of income because of section 47A or 108 or Division 7A of Part III; or
- (e) interest income derived by the taxpayer in the year of income; or
- (f) annuities derived by the taxpayer in the year of income; or
- (g) income derived by the taxpayer by way of rent (within the meaning of Part X) in the year of income; or
- (h) royalties derived by the taxpayer in the year of income; or
- (i) an amount derived by the taxpayer in the year of income as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right; or
- (j) profits of a capital nature that accrued to the taxpayer in the year of income; or
- (k) passive commodity gains that accrued to the taxpayer in the year of income; or
- (l) an amount included in the assessable income of the taxpayer of the year of income under section 102AAZD, 456, 457, 459A or 529;

but does not include:

- (m) an amount that arose from an asset necessarily held by the taxpayer in connection with an insurance business actively carried on by the taxpayer; or
- (n) an amount included in the taxpayer's assessable income under Division 13A.

PDF (pooled development fund) means a company that is a PDF within the meaning of the *Pooled Development Funds Act 1992*, but does not include such a company in the capacity of a trustee.

PDF component, in relation to a company that becomes a PDF during the year of income and is still a PDF at the end of the year of income, means:

- (a) in a case where the amount that, if:
 - (i) the period beginning at the start of the year of income and ending immediately before the company becomes a PDF were a year of income of the company; and
 - (ii) the period (*the PDF notional year*) beginning when the company becomes a PDF and ending at the end of the year of income were a year of income of the company; and
 - (iii) paragraph (c) of the definition of **taxable income** were omitted;would be the company's taxable income of the PDF notional year is \$1 or more—that amount; or
- (b) otherwise—a nil amount.

permanent establishment, in relation to a person (including the Commonwealth, a State or an authority of the Commonwealth or a State), means a place at or through which the person carries on any business and, without limiting the generality of the foregoing, includes:

- (a) a place where the person is carrying on business through an agent;
- (b) a place where the person has, is using or is installing substantial equipment or substantial machinery;
- (c) a place where the person is engaged in a construction project; and
- (d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both of those persons—the place where the goods are manufactured, assembled, processed, packed or distributed;

but does not include:

- (e) a place where the person is engaged in business dealings through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his business as a commission agent or broker and does not receive remuneration otherwise than at a rate customary in relation to dealings of that kind, not being a place where the person otherwise carries on business;
- (f) a place where the person is carrying on business through an agent:
 - (i) who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person; or
 - (ii) whose authority extends to filling orders on behalf of the person from a stock of goods or merchandise situated in the country where the place is located, but who does not regularly exercise that authority;not being a place where the person otherwise carries on business; or
- (g) a place of business maintained by the person solely for the purpose of purchasing goods or merchandise.

person includes a company.

pooled superannuation trust has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

prescribed dual resident means a company that satisfies either of the following conditions:

- (a) the first condition is that:
 - (i) the company is a resident of Australia within the meaning of subsection 6(1); and
 - (ii) there is an agreement (within the meaning of the *International Tax Agreements Act 1953*) in force in respect of a foreign country; and
 - (iii) the agreement contains a provision that is expressed to apply where, apart from the provision, the company would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and

- (iv) that provision has the effect that the company is, for the purposes of the agreement, a resident solely of the foreign country;
- (b) the alternative condition is that the company:
 - (i) is a resident of Australia within the meaning of subsection 6(1) for no other reason than that it carries on business in Australia and has its central management and control in Australia; and
 - (ii) it is also a resident of another country; and
 - (iii) its central management and control is in another country.

primary production business has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

private company, in relation to a year of income, means a company that is a private company in relation to that year of income for the purposes of Division 7 of Part III.

proclaimed superannuation standards day means 1 July 1990.

provider, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

prudential standards has the same meaning as in the *Income Tax Assessment Act 1997*.

recognised small credit union has the meaning given by section 6H.

recognised medium credit union has the meaning given by section 6H.

recognised large credit union has the meaning given by section 6H.

reduced cost base of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

registered tax agent has the meaning given by section 251A.

relative has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

reportable fringe benefits total for a year of income for a person who is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) means the employee's reportable fringe benefits total (as defined in that Act) for the year of income.

resident or **resident of Australia** means:

- (a) a person, other than a company, who resides in Australia and includes a person:
 - (i) whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia;
 - (ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia; or
 - (iii) who is:
 - (A) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (B) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (C) the spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B); and
- (b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.

resident trust for CGT purposes has the same meaning as in the *Income Tax Assessment Act 1997*.

return on a debt interest or equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

return of income means a return of income, or of profits or gains of a capital nature, or of both income and such profits or gains.

royalty or **royalties** includes any amount paid or credited, however described or computed, and whether the payment or credit is

periodical or not, to the extent to which it is paid or credited, as the case may be, as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);
- (da) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology;
- (db) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology;
- (dc) the use of, or the right to use, some or all of the part of the spectrum (within the meaning of the *Radiocommunications Act 1992*) specified in a spectrum licence issued under that Act;
- (e) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or video tapes for use in connexion with television; or
 - (iii) tapes for use in connexion with radio broadcasting; or
- (f) a total or partial forbearance in respect of:
 - (i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or any such equipment as is mentioned in paragraph (b);

- (ii) the supply of any such knowledge or information as is mentioned in paragraph (c) or of any such assistance as is mentioned in paragraph (d);
- (iia) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (da);
- (iib) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (db);
- (iic) the use of, or the granting of the right to use, some or all of such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (dc); or
- (iii) the use of, or the granting of the right to use, any such property as is mentioned in paragraph (e).

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Second Commissioner means a Second Commissioner of Taxation.

share in a company has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

share capital account has the same meaning as in the *Income Tax Assessment Act 1997*.

shareholder includes member or stockholder.

shareholders' funds has the same meaning as in the *Life Insurance Act 1995*.

shortfall interest charge means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

small business entity has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

spouse has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

subsidiary member of a consolidated group or a MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

superannuation benefits means individual personal benefits, pensions or retiring allowances.

superannuation fund means:

- (a) a scheme for the payment of superannuation benefits upon retirement or death; or
- (b) a superannuation fund within the definition of *superannuation fund* in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

superannuation fund for foreign residents has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

superannuation lump sum has the same meaning as in the *Income Tax Assessment Act 1997*.

tainted, in relation to a company's share capital account, has the same meaning as in the *Income Tax Assessment Act 1997*.

taxable Australian property has the same meaning as in the *Income Tax Assessment Act 1997*.

taxable income has the same meaning as in the *Income Tax Assessment Act 1997*.

taxable supply has the meaning given by section 195-1 of the GST Act.

tax cost is set has the same meaning as in the *Income Tax Assessment Act 1997*.

tax loss has the same meaning as in the *Income Tax Assessment Act 1997*.

taxpayer means a person deriving income or deriving profits or gains of a capital nature.

this Act includes:

- (a) the *Income Tax Assessment Act 1997*; and
- (b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to:
 - (i) this Act or the *Income Tax Assessment Act 1997*; or

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(ii) Schedule 1 to the *Taxation Administration Act 1953*;
and

(c) Schedule 1 to the *Taxation Administration Act 1953*.

Note: Subsection (1AA) of this section prevents definitions in the *Income Tax Assessment Act 1936* from affecting the interpretation of the *Income Tax Assessment Act 1997*.

Timor Sea Treaty means the Treaty defined by subsection 5(1) of the *Petroleum (Timor Sea Treaty) Act 2003*.

trading stock has the meaning given by section 70-10 of the *Income Tax Assessment Act 1997*.

Tribunal means the Administrative Appeals Tribunal.

trustee in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes:

- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
- (b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability;

unfranked part of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

value of the outstanding claims liability of a general insurance company under general insurance policies has the meaning given by section 321-20 in Schedule 2J.

value of the outstanding claims liability of a company for workers' compensation claims has the meaning given by section 323-15 in Schedule 2J.

value of the unearned premium reserve of a general insurance company under general insurance policies has the meaning given by section 321-60 in Schedule 2J.

VCLP means a venture capital limited partnership within the meaning of subsection 118-405(2) of the *Income Tax Assessment Act 1997*.

VCMP means a venture capital management partnership.

venture capital deficit tax has the same meaning as in the *Income Tax Assessment Act 1997*.

venture capital management partnership has the meaning given by subsection 94D(3).

withholding tax has the same meaning as in the *Income Tax Assessment Act 1997*.

work and income support related withholding payments and benefits means:

- (a) payments from which an amount:
 - (i) must be withheld under a provision of Subdivision 12-B (other than section 12-55), 12-C or 12-D or Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not withheld); or
 - (ii) would be required to be withheld under a provision mentioned in subparagraph (i) (other than section 12-55) apart from subsection 12-1(1A) in Schedule 1 to that Act; and
- (b) amounts included in a person's assessable income under section 86-15 of the *Income Tax Assessment Act 1997* in respect of which an amount must be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid); and
- (c) non-cash benefits in relation to which the provider of the benefit must pay an amount to the Commissioner under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid).

Note: The payments covered by paragraph (a) are: payments to employees and company directors, payments to office holders, return to work payments, payments under labour hire arrangements, payments of annuities, superannuation benefits, employment termination payments, payments for unused leave, benefit payments, compensation payments and payments specified by regulations.

year of income means an income year as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

year of tax means the financial year for which income tax is levied.

Section 6

- (1A) Unless the contrary intention appears, a reference in this Act to a failure to do an act or thing includes a reference to a refusal to do the act or thing.
- (2AA) A reference in this Act to an accounting period adopted in lieu of a year of income includes a reference to an accounting period:
 - (a) that commences or ends under section 18A; and
 - (b) that would, but for that section, form part of an accounting period so adopted.
- (2AB) The Commissioner may, by legislative instrument, make a determination modifying the operation of one or more provisions of this Act in relation to limited partnerships whose accounting periods commence or end under section 18A of the *Income Tax Assessment Act 1936*.
- (2AC) A determination can only be made under subsection (2AB) in order to take account of the fact that such accounting periods are of less than 12 months' duration.
- (3) The express references in this Act to companies do not imply that references to persons do not include references to companies.
- (4) Paragraph (d) of the definition of ***dividend*** in subsection (1) does not apply if, under an arrangement:
 - (a) a person pays or credits any money or gives property to the company and the company credits its share capital account with the amount of the money or the value of the property; and
 - (b) the company pays or credits any money, or distributes property to another person, and debits its share capital account with the amount of the money or the value of the property so paid, credited or distributed.
- (6) Where a place is, by virtue of paragraph (d) of the definition of ***permanent establishment*** in subsection (1), a permanent establishment of a person, the person shall, for the purposes of this Act, be deemed to be carrying on at or through that permanent establishment the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person at the place that is that permanent establishment.

6AA Certain sea installations and offshore areas to be treated as part of Australia

- (1) For all purposes of this Act related directly or indirectly to:
- (a) the exploration for minerals in, or the exploitation of the natural resources (being minerals) of:
 - (i) an eligible external Territory; or
 - (ii) a Petroleum Act offshore area; or
 - (iii) an Installations Act adjacent area by means of a sea installation installed in that area;whether the exploration or exploitation is by the taxpayer concerned or by another person;
 - (b) the carrying on of an environment related activity in:
 - (i) an eligible external Territory; or
 - (ii) a Petroleum Act offshore area; or
 - (iii) an Installations Act adjacent area by means of a sea installation installed in that area;whether the activity is carried on by the taxpayer concerned or by another person; or
 - (c) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration, exploitation or environment related activity;
- including purposes in relation to the application of this Act in respect of income or profits derived from any such exploration, exploitation, environment related activity, act, matter, circumstance or thing, or in respect of dividends paid wholly or partly out of any such profits, the provisions of this Act have effect, subject to this section, as if:
- (d) the whole of each eligible external Territory and each Petroleum Act offshore area were, and at all times had been, a part of Australia;
 - (e) each sea installation, when installed in the Installations Act adjacent area, were a part of Australia; and
 - (f) the Papua New Guinea offshore area were, and at all times had been, a part of Papua New Guinea.
- (2) Where a company carries on business that:
- (a) consists of exploration or exploitation, or an environment related activity, of a kind referred to in subsection (1); or

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- (b) arises out of or is connected with any such exploration, exploitation or environment related activity (whether by that company or by another person);
the company shall, for the purposes of the definition of *resident* or *resident of Australia* in subsection 6(1), be deemed to be carrying on business in Australia.
- (4) For the purposes of this section:
- (a) *eligible external Territory* means the area, whether land or water, within the territorial limits of:
 - (i) the Territory of Ashmore and Cartier Islands;
 - (ii) the Coral Sea Islands Territory; or
 - (iii) the Territory of Heard and McDonald Islands;and includes the space above and below that area;
 - (b) *environment related activity* has the same meaning as in the *Sea Installations Act 1987*; and
 - (c) *Installations Act adjacent area* means an area that is an adjacent area for the purposes of the *Sea Installations Act 1987*;
 - (e) *Petroleum Act offshore area* means:
 - (i) an area that is an offshore area for the purposes of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
 - (ii) the Joint Petroleum Development Area within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*.
- (5) Where, if the definition of *sea installation* in subsection 4(1) of the *Sea Installations Act 1987*:
- (a) extended to include:
 - (i) resources industry fixed structures and resources industry mobile units, within the meaning of subsections 4(2) and (3) of that Act;
 - (ii) partly constructed structures (including pipelines) or vessels that, when completed, are intended to be, or could be, structures or units referred to in subparagraph (i); and
 - (iii) the remains of structures (including pipelines) or vessels that have been structures, units or vessels referred to in subparagraph (i) or (ii); and

- (b) did not include fishing boats, fishing equipment and pearling vessels;

a structure or vessel, or structures or vessels, would, by section 6 of that Act, be deemed for the purposes of that Act to be a sea installation installed in a particular area, the structure or vessel, or the structures or vessels, shall be taken for the purposes of this section to be a sea installation installed in that area.

6A Provisions relating to cessation of superannuation benefits

- (1) For the purposes of this Act:
- (a) a right of a person or of his dependants to receive superannuation benefits from a fund shall be deemed to have ceased at a particular time (whether before or after the commencement of this section) if, by virtue of the terms and conditions applicable to the fund at that time, a right (including a contingent right) of the person, or of his dependants, as the case may be, to an amount that has accrued or could accrue from the fund ceased at that time otherwise than by payment of that amount to, or for the benefit of, the person or his dependants or by the transfer of that amount to another fund in which, as a result of the transfer, the person acquires, or his dependants acquire, as the case may be, a fully-secured right (including a contingent right) to receive superannuation benefits, being a right that is not less valuable than the first-mentioned right; and
 - (b) where a right of a person or of his dependants to receive superannuation benefits from a fund has ceased at any time (whether before or after the commencement of this section)—the amount of those benefits shall be deemed to have been so much of the amount that was included in the fund at that time for the purpose of making provision for superannuation benefits for the person or his dependants as was not required for the purpose of providing for the person or his dependants superannuation benefits (including benefits payable at that time) the right to receive which had not ceased at or before that time.
- (2) For the purposes of this Act, where a right of a person or of his dependants to receive superannuation benefits from a fund has ceased at any time (whether before or after the commencement of this section) and, at that time, a specific part of the amount of the

fund was not appropriated for the purpose of making provision for superannuation benefits for the person or his dependants:

- (a) an amount determined by the Commissioner shall be deemed to have been included in the fund at that time for that purpose;
- (b) any payment made out of the fund at that time or at a later time to the person or his dependants shall be deemed to have been an application at the time at which, and for the purpose for which, the payment was made of so much of the amount determined by the Commissioner in pursuance of paragraph (a) as is equal to the amount of the payment; and
- (c) except to the extent to which the amount determined by the Commissioner in pursuance of paragraph (a) is to be so deemed to have been applied by a payment out of the fund, that amount shall be deemed to have been applied in the year of income of the fund in which the right ceased, to such extent, if any, as the Commissioner determines, for the purpose of making provision for the superannuation benefits that other persons or their dependants had rights to receive from the fund.

6AB Foreign income and foreign tax

- (1) A reference in this Act to foreign income is a reference to income (including superannuation lump sums and employment termination payments) derived from sources in a foreign country or foreign countries, and includes a reference to an amount included in assessable income under section 102AAZD, 456, 457, 459A or 529 of this Act, or section 305-70 of the *Income Tax Assessment Act 1997*.
- (1C) A reference in this Act to foreign income includes a reference to an amount included in assessable income under:
 - (a) Division 301 of the *Income Tax Assessment Act 1997* in its application under section 301-5 of the *Income Tax (Transitional Provisions) Act 1997*; or
 - (b) Division 302 of the *Income Tax Assessment Act 1997* in its application under section 302-5 of the *Income Tax (Transitional Provisions) Act 1997*.
- (2) A reference in this Act to foreign tax is a reference to tax imposed by a law of a foreign country, being:

- (a) tax upon income; or
 - (b) tax upon profits or gains, whether of an income or capital nature; or
 - (c) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*;
- but does not include a unitary tax or a credit absorption tax.
- (5B) This section applies to a non-share dividend in the same way as it applies to a dividend.
- (6) In this section:

credit absorption tax means a tax imposed by a law of a foreign country to the extent that the tax would not have been payable if the taxpayer concerned or another taxpayer had not been entitled to an offset in respect of the tax under Division 770 of the *Income Tax Assessment Act 1997*.

law, in relation to a foreign country, means a law of that country, or of any part of, or place in, that country.

unitary tax means tax imposed by a law of a foreign country, being a law which, for the purposes of taxing income, profits or gains of a company derived from sources within that country, takes into account, or is entitled to take into account, income, losses, outgoings or assets of the company (or of a company that for the purposes of that law is treated as being associated with the company) derived, incurred or situated outside that country, but does not include tax imposed by that law if that law only takes those matters into account:

- (a) if such an associated company is a resident for the purposes of that law; or
- (b) for the purposes of granting any form of relief in relation to tax imposed on dividends received by one company from another company.

6B Income beneficially derived

- (1) For the purposes of this Act, an amount of income derived by a person, not being a dividend paid by a company to the person as a shareholder in the company, shall be deemed to be attributable to a dividend:

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- (a) if the person derived the amount of income by reason of being the beneficial owner of the share in respect of which the dividend was paid; or
 - (b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to the dividend or to an amount that is deemed, by any application or successive applications of this subsection, to be an amount of income attributable to the dividend.
- (1A) For the purposes of this Act, an amount of income derived by a person, being income other than passive income, is to be taken to be income attributable to passive income:
- (a) if the person derived the amount of income by reason of being beneficially entitled to an amount representing passive income; or
 - (b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to passive income or to an amount that is taken, by any application or successive applications of this subsection, to be an amount of income attributable to passive income.
- (2) For the purposes of this Act, an amount of income derived by a person, being income other than interest income, shall be deemed to be income attributable to interest income:
- (a) if the person derived the amount of income by reason of being beneficially entitled to an amount representing interest income; or
 - (b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to interest income or to an amount that is deemed, by any application or successive applications of this subsection, to be an amount of income attributable to interest income.
- (2A) For the purposes of this Act, an amount of income derived by a person shall be deemed to be income derived from a particular source:
- (a) except where paragraph (b) applies:

- (i) if the person derived the amount of income by reason of being beneficially entitled to an amount that is derived from that source; or
 - (ii) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to income derived from that source or to an amount that is deemed, by any other application or applications of this subsection, to be an amount that is income derived from that source; or
- (b) if the income so derived is, by virtue of subsection (1), (1A) or (2), attributable to a dividend, passive income or interest income derived from that source.
- (3) Where a beneficiary in a trust estate is presently entitled to income of the trust estate, that income shall, for the purposes of this section, be deemed to be an amount of income derived by the person.
- (4) This section:
- (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.

6BA Taxation treatment of certain shares

- (1) This section applies if a shareholder holds shares in a company (the *original shares*) and the company issues other shares (the *bonus shares*) in respect of the original shares.
- (2) If the bonus shares are a dividend, or taken to be a dividend (including as a result of section 45C), the consideration for the acquisition of the shares for the purposes of this Act is so much of the dividend as is:
 - (a) included in the taxpayer's assessable income; and
 - (b) is not rebatable under section 46A.

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- (3) If the bonus shares are issued for no consideration and are not a dividend or taken to be a dividend, then for the purposes of this Act (other than section 26AAC), in determining:
- (a) the value of such of the original shares and bonus shares as the taxpayer elects under section 70-45 of the *Income Tax Assessment Act 1997* to value at cost; and
 - (b) where any of the original shares or any of the bonus shares are not articles of trading stock of the taxpayer:
 - (i) the amount or value of the consideration paid in respect of the acquisition of any of those shares for the purposes of Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or
 - (ii) the amount of any profit or loss arising on the sale or disposal of any of those shares;

any amounts paid or payable by the taxpayer in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by the taxpayer in respect of the original shares and the bonus shares in such proportions as the Commissioner considers appropriate in the circumstances.

- (4) A company issues shares for no consideration if:
- (a) it credits its capital account with profits in connection with the issue of the shares; or
 - (b) it credits its capital account with the amount of any dividend to a shareholder and the shareholder does not have a choice whether to be paid the dividend or to be issued with the shares.

This subsection does not limit the generality of subsection (3).

Note: A company that makes a credit covered by paragraph (a) or (b) will have a tainted share capital account.

- (5) Subject to subsection (6), if a shareholder has a choice whether to be paid a dividend or to be issued shares and the shareholder chooses to be issued with shares:
- (a) the dividend is taken to be credited to the shareholder; and
 - (b) the dividend is taken to have been paid out of profits; and
 - (c) subsections (2) and (3) apply in working out the consideration for the acquisition of the shares for the purposes of this Act.

However, the share capital account of the company does not become a tainted share capital account as a result of the crediting of the dividend to the share capital account.

- (6) Subsection (5) does not apply if:
- (a) a shareholder in a listed public company (within the meaning of the *Income Tax Assessment Act 1997*) has a choice whether to be paid a dividend (other than a minimally franked dividend within the meaning of subsection 45(3)) or to be issued shares and the shareholder chooses to be issued with shares; and
 - (b) the company does not credit the share capital account in connection with the issue of those shares.

Note: If subsection (5) does not apply because of this subsection, subsection (3) will apply.

- (7) This section (other than subsection (6)):
- (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.

6C Source of royalty income derived by a non-resident

- (1) This section applies to income that is derived on or after 1 July 1968 by a non-resident and consists of royalty that:
- (a) is paid or credited to the non-resident by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country; or
 - (b) is paid or credited to the non-resident by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in

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carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

- (1A) For the purposes of Division 5 and Division 6 of Part III, but subject to subsections (3) and (4), income to which this section applies shall be deemed to be attributable to sources in Australia.
- (2) For the purposes of sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*, but subject to subsections (3) and (4), income to which this section applies shall be deemed to have been derived from a source in Australia.
- (3) Where:
- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident; and
 - (b) the royalty of which the income consists is, in part, an outgoing incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country;
- subsection (2) has effect in relation to so much only of the income as is attributable to so much of the royalty as is not an outgoing so incurred.
- (4) Where:
- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by a person who, or by persons each of whom, is a non-resident; and
 - (b) the royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid or credited in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia;
- subsection (2) has effect in relation to so much only of the income as is attributable to so much of the royalty as is an outgoing so incurred.

- (5) In subsection (6), a reference to a relevant person is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least 1 of whom is, a resident.
- (6) For the purposes of paragraphs (1)(a) and (3)(b), where:
- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by a relevant person carrying on business in a country outside Australia; and
 - (b) the royalty or a part of the royalty:
 - (i) is incurred by the relevant person in gaining or producing income that is derived by the relevant person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country or is incurred by the relevant person for the purpose of gaining or producing income to be so derived; or
 - (ii) is incurred by the relevant person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the relevant person otherwise than in so carrying on business at or through a permanent establishment of the relevant person in a country outside Australia;
- the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the relevant person in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country.
- (7) For the purposes of paragraphs (1)(b) and (4)(b), where:
- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by another person or other persons (in this subsection referred to as *the payer*), being:
 - (i) another person who is carrying on business in Australia and is a non-resident; or
 - (ii) other persons who are carrying on business in Australia and each of whom is a non-resident; and
 - (b) the royalty or a part of the royalty:
 - (i) is incurred by the payer in gaining or producing income that is derived by the payer in carrying on business in Australia at or through a permanent establishment of the

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payer in Australia or is incurred by the payer for the purpose of gaining or producing income to be so derived; or

- (ii) is incurred by the payer in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the payer in so carrying on business at or through a permanent establishment of the payer in Australia;

the royalty or the part of the royalty, as the case may be, is an outgoing incurred by the payer in carrying on business in Australia at or through a permanent establishment of the payer in Australia.

6CA Source of natural resource income derived by a non-resident

- (1) In this section:

double tax agreement means an agreement within the meaning of the *International Tax Agreements Act 1953*.

natural resource income means income that:

- (a) is derived by a non-resident; and
- (b) is calculated, in whole or in part, by reference to the value or quantity of natural resources produced, recovered or produced and recovered, in Australia after 7 April 1986;

but does not include:

- (c) income that consists of royalty; or
- (d) income where:
 - (i) on 7 April 1986, the non-resident had a continuing entitlement to receive the income;
 - (ii) the income was derived by the non-resident pursuant to that continuing entitlement;
 - (iii) the non-resident was, at 5 o'clock in the afternoon, by standard time in the Australian Capital Territory on 7 April 1986, a resident, within the meaning of a double tax agreement, of a foreign country in respect of which the double tax agreement was in force;
 - (iv) before 8 April 1986, the Commissioner had given a statement in writing to the effect that income tax would be levied on 50% of income included in a specified class of income; and

- (v) the income is included in that class of income.
- (2) For the purposes of Divisions 5 and 6 of Part III, natural resource income shall be deemed to be attributable to sources in Australia.
- (3) For the purposes of section 255 of this Act and sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*, natural resource income shall be deemed to have been derived from a source in Australia.

6D Some tax offsets under the 1997 Assessment Act are treated as credits

A tax offset under a provision of the *Income Tax Assessment Act 1997* that corresponds to a provision of this Act that provides for a credit is taken to be a credit for the purposes of this Act.

Note: All other tax offsets under the *Income Tax Assessment Act 1997* are treated as rebates: see section 160ADA.

6F Dual resident investment company

- (1) For the purposes of this Act, a company (other than a company in the capacity of trustee) is a dual resident investment company in relation to a year of income if:
 - (a) at any time during the year of income the company is a resident of Australia; and
 - (b) the company is liable to tax in a foreign country in respect of some or all of the income or profits of the company of the year of income (or would be so liable if the company derived income or profits) because:
 - (i) the company is treated as a resident of that country for the purposes of the relevant law of that country; or
 - (ii) the company is treated as domiciled in that country for the purposes of the relevant law of that country; or
 - (iii) the company's management and control is treated as being located in that country for the purposes of the relevant law of that country; and
 - (c) at any time during the year of income when the company was in existence:
 - (i) the company was not carrying on business with a reasonable view to profit; or

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- (ii) a substantial purpose of the company (whether or not stated in its constituent document) was to acquire or hold shares, securities or other investments in related companies (whether directly or indirectly through one or more companies, partnerships or trusts).
- (2) For the purposes of this section, companies are related to each other if they are controlled (as defined by subsection (3)) by the same person, either alone or together with associates (whether or not the same associates are involved in relation to each company).
- (3) For the purposes of this section, a person, either alone or together with associates, controls a company if:
 - (a) the person, either alone or together with associates:
 - (i) controls or is capable of controlling, either directly or through one or more interposed companies, partnerships or trusts, at least 50% of the maximum number of votes that might be cast at a general meeting of the company; or
 - (ii) is beneficially entitled to receive, directly or indirectly, at least 50% of any dividends that are or might be paid, or of any distribution of capital that is or may be made, by the company; or
 - (iii) is capable, under a scheme, of gaining such control or such an entitlement; or
 - (b) the company or its directors are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the person, either alone or together with associates.
- (4) Section 159GZH applies for the purposes of this section in determining the beneficial entitlement of a person to receive indirectly the whole or a particular fraction of a dividend that is, or might be, paid by a company or of a distribution of capital of a company.
- (5) In this section:
 - associate* has the same meaning as in section 318.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

6H Recognised small credit unions, recognised medium credit unions and recognised large credit unions

Recognised small credit union in relation to a year of income

- (1) For the purposes of this Act, a credit union is a recognised small credit union in relation to a year of income if:
 - (a) both:
 - (i) the year of income is the 1994-95 year of income; and
 - (ii) either:
 - (A) the credit union is not a designated credit union; or
 - (B) the credit union's notional taxable income of the year of income is less than \$50,000; or
 - (b) both:
 - (i) the year of income is the 1995-96 year of income or a later year of income; and
 - (ii) the credit union's notional taxable income of the year of income is less than \$50,000.

Recognised medium credit union in relation to a year of income

- (2) For the purposes of this Act, a credit union is a recognised medium credit union in relation to a year of income if:
 - (a) the year of income is the 1994-95 year of income or a later year of income; and
 - (b) the credit union is not a recognised small credit union in relation to the year of income; and
 - (c) the credit union's notional taxable income of the year of income is less than \$150,000.

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Recognised large credit union in relation to a year of income

- (3) For the purposes of this Act, a credit union is a recognised large credit union in relation to a year of income if:
- (a) the year of income is the 1994-95 year of income or a later year of income; and
 - (b) the credit union is neither:
 - (i) a recognised small credit union in relation to the year of income; nor
 - (ii) a recognised medium credit union in relation to the year of income.

Designated credit union

- (4) For the purposes of this section, a credit union is a designated credit union if:
- (a) it was in existence on 1 July 1993; and
 - (b) assuming that its accounts for the last accounting period that ended before 1 July 1993 had been prepared in accordance with generally accepted accounting principles—the amount that would have been shown in those accounts as the gross value of its assets as at the end of that accounting period is more than \$30 million.

Notional taxable income

- (5) For the purposes of this section, the notional taxable income of a credit union of a year of income is the amount that would be its taxable income of the year of income if:
- (a) section 23G did not apply to income derived by it in the 1994-95 year of income or any later year of income; and
 - (b) Division 9 of Part III had not been enacted.

Definitions

- (6) In this section:

accounts, in relation to a credit union, means accounts prepared for the purposes of reporting annually to the shareholders in the credit union.

accounting period, in relation to a credit union, means a period at the end of which the balance of its accounts is struck.

credit union means a credit union as defined in section 23G, except a life assurance company.

7A Application of Act in relation to certain Territories

- (1) This Act extends to Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.
- (2) Subject to Division 1A of Part III, this Act has effect as if Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island were part of Australia.

7B Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Administration

8 Commissioner

The Commissioner shall have the general administration of this Act.

14 Annual report

- (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.
- (2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he receives the report.
- (3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

16 Officers to observe secrecy

- (1) In this section, unless the contrary intention appears:

Director of Public Prosecutions means a person holding office as, or acting as, the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983*.

officer means a person who is or has been appointed or employed by the Commonwealth or by a State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act or of any previous law of the Commonwealth relating to income tax.

Royal Commission means a Commission that has been commissioned by the Governor-General, by Letters Patent in pursuance of the *Royal Commissions Act 1902* or of any other power, to conduct an inquiry, and includes any member of such a Commission.

Special Prosecutor means a person holding office as, or acting as, a Special Prosecutor under the *Special Prosecutors Act 1982*.

tax-related offence means:

- (a) an offence against:
 - (i) an Act of which the Commissioner has the general administration or regulations under such an Act; or
 - (ii) the *Crimes (Taxation Offences) Act 1980*; or
 - (b) an offence against the *Crimes Act 1914* relating to a law referred to in paragraph (a).
- (1A) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.
- (2) Subject to this section, an officer shall not either directly or indirectly, either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person any information respecting the affairs of another person acquired by the officer as mentioned in the definition of **officer** in subsection (1).
- (2A) Subsection (2) does not apply to the extent that the person makes the record of the information, or divulges or communicates the information, in the performance of the person's duties as an officer.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.
- (3) An officer shall not be required to produce in Court any return, assessment or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of any previous law of the Commonwealth relating to Income Tax.

- (4) Nothing in this section shall be deemed to prohibit the Commissioner, a Second Commissioner, or a Deputy Commissioner, or any person thereto authorized by him, from communicating any information to:
- (a) any person performing, in pursuance of any appointment or employment by the Commonwealth, any duty arising under any Act administered by the Commissioner of Taxation, for the purpose of enabling that person to carry out any such duty;
 - (b) any board exercising any function under any Act administered by the Commissioner of Taxation, or any member of any such Board;
 - (c) the Tribunal in connection with proceedings under an Act of which the Commissioner has the general administration;
 - (d) the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions;
 - (e) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) for the purpose of the administration of that law; or
 - (ea) the Secretary to the Department of Employment, Education and Training for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits;
 - (eb) the Chief Executive Officer of the Commonwealth Services Delivery Agency, established by the *Commonwealth Services Delivery Agency Act 1997*, for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*);
 - (f) the Secretary to the Department of Health for the purpose of the administration of any law of the Australian Capital Territory or of the Northern Territory which is administered by the Minister of State for Health;
 - (fa) the Chief Executive Officer of Medicare Australia for the purpose of the administration of the *Childcare Rebate Act 1993*, being information as to whether a registered carer (within the meaning of that Act) or an applicant for registration as a registered carer has a tax file number;

- (fb) the Chief Executive Officer of Medicare Australia for the purpose of the administration of the *Private Health Insurance Incentives Act 1998* or Part 2-2 or 6-4 of the *Private Health Insurance Act 2007*;
- (fc) the Secretary to the Department of Family and Community Services for the purpose of the administration of the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- (fd) Comcare, established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*, for purposes consistent with the functions of that body under that Act;
- (g) the Safety, Rehabilitation and Compensation Commission, established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*, for purposes consistent with the functions of that body under that Act;
- (gaa) the Military Rehabilitation and Compensation Commission established by section 361 of the *Military Rehabilitation and Compensation Act 2004*, for purposes consistent with the functions of that body under that Act;
- (ga) the Australian Statistician for the purposes of the *Census and Statistics Act 1905*, being the following kind of information about a person who is an employer (whether or not the person is also a business person):
 - (i) the name and address of the person;
 - (ii) the name or description of the industry, trade, business, calling, service, profession or occupation in which the person is an employer;
 - (iii) the number of males and the number of females who are employees of the person;
- (gb) the Australian Statistician for the purposes of the *Census and Statistics Act 1905*, being the following kind of information about a person who is a business person (whether or not the person is also an employer):
 - (i) the name and address of the person;
 - (ii) the name or description of the business;
 - (iii) such other information in relation to the business as is requested by the Australian Statistician;
- (h) the Secretary, Department of Defence, for the purpose of the administration of any law of the Commonwealth relating to payments in respect of dependants of members of the Defence Force;

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- (ha) the authorized person holding office under the *Loan (Income Equalization Deposits) Act 1976* for the purposes of the administration of that Act;
- (hb) the Secretary to the Department of Education and the Secretary to the Department of Social Security for the purpose of the administration of any law of the Commonwealth relating to financial assistance to students;
- (hba) the Development Allowance Authority, for the purpose of the administration of the *Development Allowance Authority Act 1992* or of the prosecution provisions within the meaning of Chapter 4 of that Act;
- (hc) the Australian Prudential Regulation Authority, for the purpose of the administration of the *Superannuation (Excluded Funds) Taxation Act 1987* (including a repealed provision of that Act as that provision continues to apply because of the *Taxation Laws Amendment (Superannuation) Act 1992* or the *Occupational Superannuation Standards Amendment Act 1993*) or of the prosecution provisions within the meaning of that Act;
- (hca) the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission, for the purpose of the administration of the *Superannuation Industry (Supervision) Act 1993*;
- (hcaa) the Australian Prudential Regulation Authority, or the Australian Securities and Investments Commission, for the purpose of that body performing its functions in relation to FHSAs;
- (hcb) the Australian Prudential Regulation Authority, for the purpose of the administration of the *Financial Institutions Supervisory Levies Collection Act 1998*;
- (hd) the Secretary to the Department of Immigration and Ethnic Affairs, for the purpose of assisting in locating persons who are unlawfully in Australia;
- (j) the Secretary to the Department of Housing and Construction, for the purpose of the administration of any law of the Commonwealth having an object of assisting persons to purchase or build their own homes;
- (ja) the Child Support Registrar, for the purposes of the administration of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*;

- (k) a Royal Commission in respect of which Letters Patent issued by the Governor-General declare that the Royal Commission is a Royal Commission to which this paragraph applies, for the purpose of conducting its inquiry; or
- (l) the Treasurer, for the purpose of exercising his or her powers under subsection 128AE(2A) or (2C); or
- (m) Innovation Australia, established by section 6 of the *Industry Research and Development Act 1986*, for the purpose of the administration of a law of the Commonwealth relating to venture capital.

(4AA) In paragraphs (4)(ga) and (gb):

business person means a person who is carrying on a business, whether alone, in partnership or otherwise.

description, in relation to a business, includes a description or specification of a category in which the business is included.

employee means a person who receives, or is entitled to receive, work and income support related withholding payments and benefits.

employer means a person who pays or is liable to pay work and income support related withholding payments and benefits, and includes:

- (a) in the case of an unincorporate body of persons other than a partnership—the manager or other principal officer of that body; and
- (b) in the case of a partnership—each partner; and
- (c) an Australian government agency as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

(4A) Subject to subsections (4B) and (4C), where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k):

- (a) the Royal Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates:
 - (i) communicate the information to the Governor-General in a report by the Royal Commission; or

- (ii) divulge the information in the course of a proceeding conducted by the Royal Commission other than a proceeding conducted in private;
 - (aa) the Royal Commission may divulge the information in the course of a proceeding conducted in private by the Royal Commission;
 - (b) the Royal Commission may communicate the information to the Attorney-General if the Royal Commission is of the opinion that the information indicates that a person may have committed an offence against an Act, being an offence the punishment, or maximum punishment, for which is or includes imprisonment for life or for a period exceeding 6 months;
 - (ba) the Royal Commission may communicate the information to the Director of Public Prosecutions or a Special Prosecutor if the Royal Commission is of the opinion that the information relates or may relate to an investigation of a tax-related offence;
 - (c) subject to the preceding paragraphs, the Royal Commission shall not divulge or communicate the information;
 - (d) a person who has ceased to be the person constituting, or to be a member of, the Royal Commission shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
 - (e) a person to whom information has been communicated in accordance with paragraph (c) or subsection (4AAA) shall not:
 - (i) while he is a person or employee under the control of the Royal Commission—divulge or communicate the information; or
 - (ii) after he ceases to be a person or employee under the control of the Royal Commission—make a record of the information, or divulge or communicate the information, in any circumstances.
- (4AAA) Paragraph (4A)(c) and subparagraph (4A)(e)(i) do not apply to the extent that the person divulges or communicates the information to the Royal Commission or a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the inquiry being conducted by the Royal Commission.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4AAA), see subsection 13.3(3) of the *Criminal Code*.

- (4B) Where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k), nothing in subsection (4A) prevents the communication of the information to:
- (a) if the person to whose affairs the information relates is not a company—that person;
 - (b) if the person to whose affairs the information relates is a company:
 - (i) any person who is, or has been, a director or officer of the company; or
 - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner on behalf of the company; or
 - (c) the person who furnished the information to the Commissioner of Taxation.
- (4C) Where subsection (4B) permits the communication of information to a person, nothing in subsection (4A) prevents the communication of the information to a barrister or solicitor appearing before the Royal Commission for the purpose of representing the person.
- (4D) Where information is communicated to a person in accordance with subsection (4B) or (4C) or paragraph (4A)(aa), being information that was not furnished to the Commissioner of Taxation by the person and does not relate to the affairs of the person, the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.
- (4E) Where information is communicated to the Attorney-General under paragraph (4A)(b), the Attorney-General may communicate the information to the Commissioner of the Australian Federal Police.
- (4EA) Subject to subsection (4E), the Attorney-General must not divulge or communicate information communicated to the Attorney-General under paragraph (4A)(b).
- (4EB) Subsection (4EA) does not apply to the extent that the Attorney-General divulges or communicates the information to a person or employee under his or her control for the purposes of, or
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in connection with, the performance by the Attorney-General of his or her function under subsection (4E).

Note: A defendant bears an evidential burden in relation to the matters in subsection (4EB), see subsection 13.3(3) of the *Criminal Code*.

- (4EC) A person who has ceased to be the Attorney-General must not make a record of information communicated to the person under paragraph (4A)(b), or divulge or communicate the information, in any circumstances.
- (4ED) A person to whom information has been communicated in accordance with subsection (4EB) or (4EE) must not:
- (a) while he or she is a person or employee under the control of the Attorney-General—divulge or communicate the information; or
 - (b) after he or she ceases to be a person or employee under the control of the Attorney-General—make a record of the information, or divulge or communicate the information, in any circumstances.
- (4EE) Paragraph (4ED)(a) does not apply to the extent that the person divulges or communicates the information to the Attorney-General or another person or employee under the control of the Attorney-General for the purposes of, or in connection with, the performance by the Attorney-General of his or her function under subsection (4E).
- Note: A defendant bears an evidential burden in relation to the matters in subsection (4EE), see subsection 13.3(3) of the *Criminal Code*.
- (4F) Where information is communicated to the Commissioner of the Australian Federal Police under subsection (4E):
- (a) the Commissioner of the Australian Federal Police must not divulge or communicate the information; and
 - (b) a person who has ceased to be the Commissioner of the Australian Federal Police must not make a record of the information, or divulge or communicate the information, in any circumstances; and
 - (c) a person to whom information has been communicated in accordance with subsection (4FAA) or (4FAB) must not:
 - (i) while he or she is a person or employee under the control of the Commissioner of the Australian Federal Police—divulge or communicate the information; or

- (ii) after he or she ceases to be a person or employee under the control of the Commissioner of the Australian Federal Police—make a record of the information, or divulge or communicate the information, in any circumstances.

(4FAA) Paragraph (4F)(a) does not apply to the extent that the Commissioner of the Australian Federal Police divulges or communicates the information to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FAA), see subsection 13.3(3) of the *Criminal Code*.

(4FAB) Subparagraph (4F)(c)(i) does not apply to the extent that the person divulges or communicates the information:

- (a) to the Commissioner of the Australian Federal Police for the purposes of, or in connection with, the performance by the Commissioner of the Australian Federal Police of the duties of his or her office; or
- (b) another person or employee under the control of the Commissioner of the Australian Federal Police for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment, as the case may be.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FAB), see subsection 13.3(3) of the *Criminal Code*.

(4FA) Where information is communicated to the Director of Public Prosecutions under paragraph (4A)(ba):

- (a) the Director of Public Prosecutions must not divulge or communicate the information; and
- (b) a person who is no longer the Director of Public Prosecutions must not make a record of the information, or divulge or communicate the information, in any circumstances; and
- (c) a person to whom information has been communicated in accordance with subsection (4FAAA) or (4FAAB) must not:
 - (i) while he or she is a person or employee under the control of the Director of Public Prosecutions—divulge or communicate the information; or

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- (ii) when he or she is no longer a person or employee under the control of the Director of Public Prosecutions—make a record of the information, or divulge or communicate the information, in any circumstances.

(4FAAA) Paragraph (4FA)(a) does not apply to the extent that the Director of Public Prosecutions divulges or communicates the information to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FAAA), see subsection 13.3(3) of the *Criminal Code*.

(4FAAB) Subparagraph (4FA)(c)(i) does not apply to the extent that the person divulges or communicates the information to:

- (a) the Director of Public Prosecutions for the purposes of, or in connection with, the performance by the Director of Public Prosecutions of the duties of his or her office; or
- (b) to another person or employee under the control of the Director of Public Prosecutions, for the purposes of, or in connection with, the performance by that other person or employee of the duties of his or her office or employment, as the case may be.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FAAB), see subsection 13.3(3) of the *Criminal Code*.

(4FB) Where information is communicated to a Special Prosecutor under paragraph (4A)(ba):

- (a) the Special Prosecutor must not divulge or communicate the information; and
- (b) a person who is no longer a Special Prosecutor must not make a record of the information, or divulge or communicate the information, in any circumstances; and
- (c) a person to whom information has been communicated in accordance with subsection (4FBA) or (4FBB) must not:
 - (i) while he or she is a person or employee under the control of the Special Prosecutor—divulge or communicate the information; or
 - (ii) when he or she is no longer a person or employee under the control of the Special Prosecutor—make a record of the information, or divulge or communicate the information, in any circumstances.

- (4FBA) Paragraph (4FB)(a) does not apply to the extent that the Special Prosecutor divulges or communicates the information to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FBA), see subsection 13.3(3) of the *Criminal Code*.

- (4FBB) Subparagraph (4FB)(c)(i) does not apply to the extent that the person divulges or communicates the information to:
- (a) the Special Prosecutor for the purposes of, or in connection with, the performance by the Special Prosecutor of the duties of his or her office; or
 - (b) to another person or employee under the control of the Special Prosecutor, for the purposes of, or in connection with, the performance by that other person or employee of the duties of his or her office or employment, as the case may be.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4FBB), see subsection 13.3(3) of the *Criminal Code*.

- (4G) A reference in subsection (4AAA) to a person under the control of a Royal Commission includes a reference to:
- (a) a barrister or solicitor appointed by the Attorney-General to assist the Royal Commission;
 - (b) a person assisting a barrister or solicitor so appointed; and
 - (c) a member or special member of the Australian Federal Police, or a member of a police force of a State or Territory, assigned to the Royal Commission to carry out an investigation on behalf of, or under the control of, the Royal Commission.
- (4H) A reference in subsection (4EB), (4ED) or (4EE) to a person under the control of the Attorney-General includes a reference to:
- (a) an officer of, or person employed in, the Attorney-General's Department;
 - (b) a person holding office, or employed, under an Act administered by the Attorney-General; and
 - (c) a person under the control of a person to whom paragraph (b) applies.

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- (4J) A person to whom information has been communicated under paragraph (4)(k) or under subsection (4A), (4AAA), (4E), (4EB), (4EE), (4FAA), (4FAB), (4FAAA), (4FAAB), (4FBA) or (4FBB) shall not be required to divulge or communicate that information to any court.
- (4JA) Where information is communicated to a person under paragraph (4A)(ba) or subsection (4FAAA), (4FAAB), (4FBA) or (4FBB), nothing in subsection (4FA) or (4FB) prevents:
- (a) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence; or
 - (b) if the information is admissible in a prosecution of a person for a tax-related offence—the communication of the information to a court in the course of proceedings before that court against the last-mentioned person for that offence.
- (4JB) A person to whom information has been communicated in accordance with paragraph (4JA)(a) shall not make a record of the information, or divulge or communicate the information.
- (4JC) Subsection (4JB) does not apply to the extent that the person makes the record of the information, or divulges or communicates the information, for the purposes of, or in connection with, the prosecution of a person for a tax-related offence.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (4JC), see subsection 13.3(3) of the *Criminal Code*.
- (5) Any person to whom information is communicated under subsection (4) other than paragraph (4)(k) or (4)(l), and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under subsections (2) and (3), as if he were an officer.
- (5A) For the purposes of subsections (2) and (5), an officer or person shall be deemed to have communicated such information to another person in contravention of those subsections if he communicates that information to any Minister or to any Minister of the Crown of a State.
- (5B) Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act providing for

rebates of tax by reference to export market development expenditure, he may, by writing under his hand, request the Commissioner to communicate to him, or to a person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Trade, information relating to such matters as are specified in the request, and, notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.

- (5BA) Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act providing for allowable deductions in respect of moneys paid on shares in companies that hold licences in force under the *Management and Investment Companies Act 1983*, he may, by writing signed by him, request the Commissioner to communicate to him or to another person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Science, information relating to such matters as are specified in the request, and, notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.
- (5C) The Secretary to the Department of the Treasury, the Secretary to the Department of Trade, the Secretary to the Department of Science or any other officer or employee of the Commonwealth shall not, either while he is, or after he ceases to be, such an officer or employee:
- (a) make a record of, or divulge or communicate to a Minister of State or any other officer or employee of the Commonwealth, any information relating to the affairs of a person acquired by him by reason, directly or indirectly, of a communication in accordance with subsection (5B) or (5BA); or
 - (b) divulge or communicate any such information to any person who is not a Minister of State or officer or employee of the Commonwealth.
- (5CA) Paragraph (5C)(a) does not apply to the extent that the person makes the record of the information, or divulges or communicates
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the information, in the performance of a duty as an officer or employee of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5CA), see subsection 13.3(3) of the *Criminal Code*.

- (5D) A person to whom subsection (5C) applies shall not be required to produce in a court a document containing information referred to in that subsection or to divulge or communicate to a court any such information.
- (6) Any officer shall, if and when required by the Commissioner, a Second Commissioner or Deputy Commissioner to do so, make an oath or declaration, in the approved form, to maintain secrecy in conformity with the provisions of this section.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

16A Provisions relating to the Fitzgerald inquiry

- (1) In this section:

inquiry means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made under *The Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this section.

proceeds of crime proceedings means proceedings under the *Proceeds of Crime Act 1987* or a law of the State of Queensland relating to the restraint of dealing with, or the confiscation of, proceeds of crime, being:

- (a) if the proceedings relate to a tax-related offence—proceedings commenced before or after a conviction for that offence; and
- (b) if the proceedings relate to any other offence—proceedings commenced after a conviction for that offence.

State Attorney-General means the Attorney-General of the State of Queensland.

State Commissioner means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry.

State Police Commissioner means the Commissioner of the Police Force of the State of Queensland or a person for the time being performing the duties of that Commissioner.

- (2) In this section, **Director of Public Prosecutions, officer, Special Prosecutor** and **tax-related offence** have the same respective meanings as in section 16.
- (3) Nothing in section 16 shall be deemed to prohibit the Commissioner of Taxation, a Second Commissioner or a Deputy Commissioner, or any person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from communicating any information to the State Commissioner for the purposes of the inquiry.
- (4) Subject to subsections (8) and (9), where information respecting the affairs of a person is communicated to the State Commissioner, the State Commissioner may:
- (a) in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates:
 - (i) communicate the information to the Governor of the State of Queensland in a report by the State Commissioner; or
 - (ii) divulge the information in the course of a proceeding conducted by the State Commissioner, other than a proceeding conducted in private;
 - (b) divulge the information in the course of a proceeding conducted in private by the State Commissioner;
 - (c) communicate the information to the Attorney-General if the State Commissioner is of the opinion that the information indicates that a person may have committed an offence against an Act punishable by imprisonment for life or for a period exceeding 6 months;
 - (d) communicate the information to the State Attorney-General if the State Commissioner is of the opinion that the

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- information indicates that a person may have committed an offence against a law of the State of Queensland punishable by imprisonment for life or for a period exceeding 6 months;
- (e) communicate the information to the Director of Public Prosecutions or a Special Prosecutor if the State Commissioner is of the opinion that the information relates, or may relate, to an investigation of a tax-related offence or to proceeds of crime proceedings, being proceedings under the *Proceeds of Crime Act 1987*; and
 - (f) communicate the information to the Director of Prosecutions of the State of Queensland if the State Commissioner is of the opinion that the information relates, or may relate, to proceeds of crime proceedings, being proceedings under a law of the State of Queensland relating to the restraint of dealing with, or the confiscation of, proceeds of crime.
- (5) Where information respecting the affairs of a person is communicated to the State Commissioner under this section, the State Commissioner may divulge or communicate the information to a person or employee under the control of the State Commissioner for the purposes of, or in connection with, the inquiry but shall not, except under subsection (4), otherwise divulge or communicate the information.
- (6) Where the State Commissioner ceases to be the State Commissioner, he shall not in any circumstances make a record of, or divulge or communicate, any information respecting the affairs of a person that was communicated to the State Commissioner under this section.
- (7) A person to whom information has been communicated under subsection (5) or this subsection shall not:
- (a) while he or she is a person or employee under the control of the State Commissioner—divulge or communicate the information except to the State Commissioner, or another person or employee under the control of the State Commissioner, for the purposes of, or in connection with, the inquiry; or
 - (b) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

- (8) Where information respecting the affairs of a person is communicated to the State Commissioner under this section, nothing in this section prevents the communication of the information to:
- (a) if the person to whose affairs the information relates is not a company—that person;
 - (b) if the person to whose affairs the information relates is a company:
 - (i) any person who is, or has been, a director or officer of the company; or
 - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information given to the Commissioner of Taxation on behalf of the company; or
 - (c) the person who gave the information to the Commissioner of Taxation.
- (9) Where the communication of information to a person is permitted under subsection (8), nothing in this section prevents the communication of the information to a barrister or solicitor appearing before the State Commissioner for the purpose of representing the person.
- (10) Where information is communicated to a person under subsection (8) or (9) or paragraph (4)(b), being information that was not given to the Commissioner of Taxation by the person and does not relate to the affairs of the person, the person shall not in any circumstances make a record of, or divulge or communicate, the information.
- (11) Where information is communicated to the Attorney-General under this section:
- (a) the Attorney-General may communicate the information to the Commissioner of Police;
 - (b) the Attorney-General shall not otherwise divulge or communicate the information except to a person or employee under the control of the Attorney-General for the purpose of, or in connection with, the performance by the Attorney-General of the function under paragraph (a);
 - (c) a person who has ceased to be the Attorney-General shall not in any circumstances make a record of, or divulge or communicate, the information; and
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- (d) a person to whom information has been communicated under paragraph (b) or this paragraph shall not:
 - (i) while he or she is a person or employee under the control of the Attorney-General—divulge or communicate the information except to the Attorney-General, or another person or employee under the control of the Attorney-General, for the purposes of, or in connection with, the performance by the Attorney-General of the function under paragraph (a); or
 - (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

- (12) Where information is communicated to the State Attorney-General under this section:
 - (a) the State Attorney-General may communicate the information to the State Police Commissioner;
 - (b) the State Attorney-General shall not otherwise divulge or communicate the information except to a person or employee under the control of the State Attorney-General for the purpose of, or in connection with, the performance by the State Attorney-General of the function under paragraph (a);
 - (c) a person who has ceased to be the State Attorney-General shall not in any circumstances make a record of, or divulge or communicate, the information; and
 - (d) a person to whom information has been communicated under paragraph (b) or this paragraph shall not:
 - (i) while he or she is a person or employee under the control of the State Attorney-General—divulge or communicate the information except to the State Attorney-General, or another person or employee under the control of the State Attorney-General, for the purposes of, or in connection with, the performance by the State Attorney-General of the function under paragraph (a); or
 - (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.

- (13) Where information is communicated to the Commissioner of Police or the State Police Commissioner under this section:
- (a) that Commissioner shall not divulge or communicate the information except to a person or employee under the control of that Commissioner for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
 - (b) a person who has ceased to be the Commissioner of Police or the State Police Commissioner, as the case may be, shall not in any circumstances make a record of, or divulge or communicate, the information; and
 - (c) a person to whom information has been communicated by a Commissioner under paragraph (a) or this paragraph shall not:
 - (i) while he or she is a person or employee under the control of that Commissioner—divulge or communicate the information except to that Commissioner, or another person or employee under the control of that Commissioner, for the purposes of, or in connection with, the performance by that Commissioner of the duties of his or her office, or the performance by that person or employee of the duties of his or her office or employment, as the case may be; or
 - (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.
- (14) Where information is communicated to the Director of Public Prosecutions or the Director of Prosecutions of the State of Queensland under this section:
- (a) that Director shall not divulge or communicate the information except to a person or employee under the control of that Director for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
 - (b) a person who is no longer the Director of Public Prosecutions or the Director of Prosecutions of the State of Queensland, as the case may be, shall not in any circumstances make a record of, or divulge or communicate, the information; and
 - (c) a person to whom information has been communicated by a Director under paragraph (a) or this paragraph shall not:
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- (i) while he or she is a person or employee under the control of that Director—divulge or communicate the information except to that Director, or to another person or employee under the control of that Director, for the purposes of, or in connection with, the performance by that Director of the duties of his or her office, or the performance by that person or employee of the duties of his or her office or employment, as the case may be; or
 - (ii) after he or she ceases to be such a person or employee—in any circumstances make a record of, or divulge or communicate, the information.
- (15) Where information is communicated to a Special Prosecutor under this section:
 - (a) the Special Prosecutor shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
 - (b) a person who is no longer a Special Prosecutor shall not, in any circumstances, make a record of, or divulge or communicate, the information; and
 - (c) a person to whom information has been communicated under paragraph (a) or this paragraph shall not:
 - (i) while he or she is a person or employee under the control of the Special Prosecutor—divulge or communicate the information except to the Special Prosecutor, or to another person or employee under the control of the Special Prosecutor, for the purposes of, or in connection with, the performance by the Special Prosecutor of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or
 - (ii) when he or she is no longer such a person or employee—in any circumstances, make a record of, or divulge or communicate, the information.
- (16) In this section:
 - (a) a reference to a person under the control of the State Commissioner includes a reference to:

- (i) a barrister or solicitor appointed by the State Attorney-General to assist the State Commissioner;
 - (ii) a person assisting a barrister or solicitor so appointed; and
 - (iii) a member of the police force of the State of Queensland assigned to the inquiry to carry out an investigation on behalf of, or under the control of, the State Commissioner;
- (b) a reference to a person under the control of the Attorney-General includes a reference to:
- (i) an officer of, or a person employed in, the Attorney-General's Department;
 - (ii) a person holding office, or employed, under an Act administered by the Attorney-General; and
 - (iii) a person under the control of a person referred to in subparagraph (ii); and
- (c) a reference to a person under the control of the State Attorney-General includes a reference to:
- (i) an officer of, or a person employed in, the Department of Justice of the State of Queensland;
 - (ii) a person holding office, or employed, under a law of that State administered by the State Attorney-General; and
 - (iii) a person under the control of a person referred to in subparagraph (ii).
- (17) A person to whom information has been communicated under this section shall not be required to divulge or communicate that information to any court.
- (18) Where information is communicated to a person under paragraph (4)(e) or (f) or subsection (14) or (15), nothing in subsection (14) or (15) prevents:
- (a) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence or proceeds of crime proceedings against a person; or
 - (b) if the information is admissible in the prosecution of a person for a tax-related offence, or in proceeds of crime proceedings against a person, the communication of the information to a court in proceedings before that court against the
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last-mentioned person for that offence or in those proceeds of crime proceedings, as the case may be.

- (19) A person to whom information has been communicated under paragraph (18)(a) shall not make a record of, or divulge or communicate, the information except for the purposes of, or in connection with, the prosecution of a person for a tax-related offence or proceeds of crime proceedings against a person.

Penalty: \$10,000 or imprisonment for 2 years, or both.

Part III—Liability to taxation

Division 1—General

18 Accounting period

Any person may, with the leave of the Commissioner, adopt an accounting period being the 12 months ending on some date other than 30 June. For the purposes of this Act, the person's accounting period in each succeeding year shall end on the corresponding date of that year, unless:

- (a) with the leave of the Commissioner some other date is adopted; or
- (b) the accounting period ends earlier under section 18A.

18A Accounting periods for VCLPs, ESVCLPs, AFOFs and VCMPs

- (1) If a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP on a particular day:
 - (a) the accounting period during which that day occurs (the *first accounting period*) is taken to have ended immediately before that day; and
 - (b) another accounting period is taken to have commenced at the beginning of that day.

The other accounting period ends on the day on which the first accounting period would have ended if this section did not apply.

Example: A partnership whose accounting periods ended on 30 June becomes a VCLP, an ESVCLP on 1 October 2002, and ceases to be a VCLP, an ESVCLP on 1 April 2003.

The effect of becoming a VCLP, an ESVCLP: the accounting period that commenced on 1 July 2002 is taken under this section to end on 30 September 2002, and a second accounting period commences on 1 October 2002. The second accounting period is scheduled to end on 30 June 2003.

The effect of ceasing to be a VCLP, an ESVCLP: the second accounting period is now taken under this section to end on 31 March 2003, and a third accounting period commences on 1 April 2003. The third accounting period is to end on 30 June 2003.

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- (2) This section does not apply in relation to a partnership becoming, or ceasing to be, a VCLP, an ESVCLP, an AFOF or a VCMP on the day on which an accounting period commences.

21 Where consideration not in cash

- (1) Where, upon any transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.
- (2) This section has effect subject to section 21A.

21A Non-cash business benefits

- (1) For the purposes of this Act, in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash shall be treated as if it were convertible to cash.
- (2) For the purposes of this Act, if a non-cash business benefit (whether or not convertible to cash) is income derived by a taxpayer:
 - (a) the benefit shall be brought into account at its arm's length value reduced by the recipient's contribution (if any); and
 - (b) if the benefit is not convertible to cash—in determining the arm's length value of the benefit, any conditions that would prevent or restrict the conversion of the benefit to cash shall be disregarded.
- (3) Where:
 - (a) a non-cash business benefit is income derived by a taxpayer in a year of income; and
 - (b) if the taxpayer had, at the time the benefit was provided, incurred and paid unreimbursed expenditure in respect of the provision of the benefit equal to the amount of the arm's length value of the benefit—a once-only deduction would, or would but for section 82A, and Subdivisions F, GA and G of Division 3 of this Part, of this Act, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the taxpayer in respect of a percentage (in this subsection called the *deductible percentage*) of the expenditure;

the amount that, apart from this subsection, would be applicable under subsection (2) of this section in respect of the benefit shall be reduced by the deductible percentage.

(4) Where:

- (a) a non-cash business benefit is income derived by a taxpayer in a year of income; and
- (b) a percentage (in this subsection called the ***non-deductible entertainment percentage***) of any expenditure incurred by the provider in respect of the provision of the benefit is non-deductible entertainment expenditure;

the amount that, apart from this subsection, would be applicable under subsection (2) in respect of the benefit shall be reduced by the non-deductible entertainment percentage.

(5) In this section:

arm's length value, in relation to a non-cash business benefit, means:

- (a) the amount that the recipient could reasonably be expected to have been required to pay to obtain the benefit from the provider under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction; or
- (b) if such an amount cannot be practically determined—such amount as the Commissioner considers reasonable.

income derived by a taxpayer means income derived by a taxpayer in carrying on a business for the purpose of gaining or producing assessable income.

non-cash business benefit means property or services provided after 31 August 1988:

- (a) wholly or partly in respect of a business relationship; or
- (b) wholly or partly for or in relation directly or indirectly to a business relationship.

non-deductible entertainment expenditure means expenditure to the extent to which:

- (a) section 32-5 of the *Income Tax Assessment Act 1997* applies to the expenditure; and

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- (b) but for that section, the expenditure would be deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

once-only deduction, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income.

provide:

- (a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise); and
- (b) in relation to services—includes allow, confer, give, grant or perform.

recipient's contribution, in relation to a non-cash business benefit, means the amount of any consideration paid to the provider by the recipient in respect of the provision of the benefit, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
- (i) the performance of work (including work of a professional nature), whether with or without the provision of property;
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.
- (6) Notwithstanding section 21, the consideration referred to in the definition of **recipient's contribution** in subsection (5) of this section is consideration in money.

23AA Income of persons connected with certain projects of United States Government

- (1) In this section, unless the contrary intention appears:

approved project means the establishment, maintenance or operation of the North West Cape naval communication station, of the Joint Defence Space Research Facility, of the Sparta project or of the Joint Defence Space Communications Station.

Australia includes the Territories.

civilian accompanying the United States Forces means a person (not being a member of the United States Forces, an Australian citizen or a person ordinarily resident in Australia) who:

- (a) is an employee:
 - (i) of the United States Forces; or
 - (ii) of, or of a body conducting, a club or other facility established for the benefit or welfare of members of the United States Forces or of persons accompanying those Forces and which is recognized by the Government of the United States of America as a non-appropriated fund activity; or
- (b) is serving with an organization that, with the approval of the Government of the Commonwealth, accompanies the United States Forces in Australia.

dependant, in relation to a person, means:

- (a) the spouse of that person; or
- (b) a relative, other than the spouse, of that person who is wholly or mainly dependent for support on that person;

but, in the case of a person who, immediately before becoming such a spouse or relative, was ordinarily resident in Australia, does not include that person so long as that person continues to be ordinarily resident in Australia.

foreign contractor means a person who is a party to a prescribed contract and is not:

- (a) a company incorporated in Australia;
- (b) an Australian citizen; or
- (c) a person, other than a company, who is ordinarily resident in Australia.

foreign employee means a person who:

- (a) is an employee of a foreign contractor; or
 - (b) is a director of a company that is a foreign contractor;
- and is not an Australian citizen or ordinarily resident in Australia.

prescribed contract means:

- (a) a contract to which the Government of the United States of America is a party in connexion with an approved project; or
- (b) a contract made for purposes connected with the performance of a contract referred to in paragraph (a).

prescribed purposes means:

- (a) in relation to a foreign contractor or foreign employee—purposes relating to the performance of a prescribed contract;
- (aa) in relation to a United States employee—purposes relating to an approved project; and
- (b) in relation to a member of the United States Forces or a civilian accompanying the United States Forces—purposes relating to the carrying on of activities agreed upon between the Government of the Commonwealth and the Government of the United States of America.

the Joint Defence Space Communications Station means the undertaking the establishment of which is provided for by an agreement dated 10 November 1969 between the Government of the Commonwealth and the Government of the United States of America.

the Joint Defence Space Research Facility means the undertaking the establishment of which is provided for by an agreement dated 9 December 1966 between the Government of the Commonwealth and the Government of the United States of America.

the North West Cape naval communication station means the naval communication station the establishment of which is provided for by the agreement approved by the *United States Naval Communication Station Agreement Act 1963*.

the Sparta project means the undertaking the establishment of which is provided for by a memorandum of arrangement dated 30 March 1966 between the Government of the Commonwealth, the Government of the United Kingdom of Great Britain and

Northern Ireland and the Government of the United States of America.

the United States Forces means the armed forces of the Government of the United States of America.

United States employee means a person who is employed by the Government of the United States of America and is not:

- (a) a member of the United States Forces;
 - (b) a civilian accompanying the United States Forces;
 - (c) an Australian citizen; or
 - (d) a person ordinarily resident in Australia.
- (2) For the purposes of this section, a foreign contractor, foreign employee or United States employee who is in Australia, or is carrying on business in Australia, solely for prescribed purposes does not cease to be in Australia solely for those purposes, or to be carrying on business in Australia solely for those purposes, by reason of anything undertaken or done by him in connexion with an undertaking in Australia of the Government of the United States of America, other than an approved project, agreed upon between the Government of the Commonwealth and the Government of the United States of America.
- (3) Where a person:
- (a) has been in Australia, or has carried on business in Australia, solely for prescribed purposes during a period when he was a foreign contractor or foreign employee;
 - (b) has been in Australia solely for prescribed purposes during a period when he was a member of the United States Forces, a civilian accompanying the United States Forces or a United States employee; or
 - (c) has been in Australia during a period when he was a dependant of such a contractor, employee, member or civilian who was in Australia solely for prescribed purposes;
- that person shall, for the purposes of the provisions of this Act other than Subdivision A of Division 17, be deemed not to have been a resident of Australia during that period, and the presence of that person in Australia during that period shall be disregarded in determining, for the purposes of those provisions, whether the person was a resident of Australia at any other time.

(4) Subsection (3) does not apply in respect of, or of a part of, a period when a person was, or was a dependant of, a foreign contractor, a foreign employee, a civilian accompanying the United States Forces or a United States employee if the person:

(a) being a company—was not a domestic corporation for the purposes of the law of the United States of America relating to income tax; or

(b) not being a company—was not a resident of the United States of America for the purposes of that law or a citizen of the United States of America;

during that period or that part of that period, as the case may be.

(5) Where:

(a) a foreign contractor or a foreign employee has derived income wholly and exclusively from, or from employment in connexion with, the performance in Australia of a prescribed contract;

(b) the income is not exempt from income tax imposed by Chapter One of Subtitle A of the Internal Revenue Code of 1986 of the United States of America; and

(c) the foreign contractor or foreign employee was, at the time the income was derived, in Australia, or carrying on business in Australia, solely for prescribed purposes;

the income shall, for the purposes of this Act, be deemed to have been derived from sources out of Australia.

(6) Where:

(a) a person has derived income in respect of service as a civilian accompanying the United States Forces or as a United States employee during a period when he was in Australia solely for prescribed purposes; and

(b) the income is not exempt from income tax imposed by Chapter One of Subtitle A of the Internal Revenue Code of 1986 of the United States of America;

the income shall, for the purposes of this Act, be deemed to have been derived from sources out of Australia.

23AB Income of certain persons serving with an armed force under the control of the United Nations

- (1) In this section:

prescribed taxpayer means a taxpayer who, being a resident of Australia, is, or is included in a class of persons that is, prescribed by the regulations for the purposes of this section.

tax deductions unapplied, in relation to a deceased person, means any amounts withheld under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* from work and income support related withholding payments and benefits derived by the deceased person in respect of United Nations service:

- (a) that have not been credited in payment of income tax; and
- (b) in respect of which a payment has not been made by the Commissioner.

the prescribed area has the same meaning as in section 79A.

United Nations service means service, other than service as a member of the Defence Force, performed, at the direction or with the approval of the Commonwealth, outside Australia with an armed force under the control of the United Nations, at a time when the person performing the service was a prescribed taxpayer.

- (2) The regulations may prescribe a person or a class of persons for the purposes of this section but shall not so prescribe a person or class of persons unless the salary, wages and allowances received by the person or by all the persons in that class, as the case may be, in respect of his or their United Nations service are paid, given or granted by the Commonwealth or by the United Nations for and on behalf of the Commonwealth.
- (3) A succeeding provision of this section does not apply in relation to a person if the regulations provide that that provision does not apply in relation to that person or in relation to a class of persons in which that person is included.
- (4) Regulations made for the purposes of subsection (2) or (3) may provide that the regulations shall be deemed to have taken effect on a date specified in the regulations, being a date before the date on which the regulations are notified in the *Gazette*, and, in that case,

the regulations shall be deemed to have taken effect on the date so specified.

(5) Where:

- (a) a payment of compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* is made in respect of the incapacity, impairment or death of a taxpayer;
- (b) the incapacity, impairment or death of the taxpayer resulted from an occurrence that happened during the performance by the taxpayer of United Nations service; and
- (c) if the taxpayer had, at the time of the happening of the occurrence, been a member of the Defence Force rendering continuous full-time service outside Australia while the taxpayer was allotted for duty in an operational area described in item 4, 5, 6, 7 8, 9, 10, 11, 12, 13 or 14 of Column 1 of Schedule 2 to the *Veterans' Entitlements Act 1986*, the Commonwealth would be liable to pay a pension under that Act in respect of the incapacity, impairment or death of the taxpayer;

the payment of compensation is exempt from income tax.

- (6) For the purposes of section 15-2 of the *Income Tax Assessment Act 1997*, the total value of all allowances, gratuities, compensations, benefits, bonuses and premiums (in this subsection referred to as **living allowances**) allowed, given or granted in meals, sustenance or the use of premises or quarters (including payment in lieu of one or more of those living allowances) to a taxpayer in respect of, or for or in relation directly or indirectly to, United Nations service shall be deemed to be an amount calculated at the rate of \$2 for each week of that service in which any of those living allowances were so allowed, given or granted, or in which payment in lieu of any of those living allowances was made, to the taxpayer.
- (7) Subject to subsections (8), (8A) and (9A) and subsection 79B(4), a taxpayer is entitled to a rebate of tax in his assessment in respect of income of a year of income in which he has performed United Nations service and derived income by way of salary, wages or other allowances in respect of that service:
 - (a) where the total period of that service performed by the taxpayer during the year of income is more than one-half of the year of income or where the taxpayer dies while

performing that service during the year of income—an amount equal to the sum of:

- (i) \$338; and
- (ii) an amount equal to 50% of the sum of the following rebates (if any) in respect of the year of income:
 - (AA) any rebate to which the taxpayer would be entitled under section 159L, apart from subsections 159L(3A), (5A) and (5B);
 - (B) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2);
 - (BA) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 2 in the table in subsection 159J(2), apart from subsections 159J(1AA), (3AA) and (3AB);
 - (C) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);
 - (D) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) (ignoring subsections 159J(1AA), (3AA) and (3AB)) if subsection 159J(1B) also included a reference to any dependant included in class 1 of that table and the amount applicable to class 1 of that table were \$2,440;
- (b) in any other case—such amount as, in the opinion of the Commissioner, is reasonable in the circumstances, being an amount not greater than the amount of the rebate to which the taxpayer would have been entitled under this subsection if paragraph (a) had applied to him in respect of the year of income.

Note 1: Paragraph 23AB(7)(a) lets a taxpayer include the dependent spouse rebate (without child), the child-housekeeper rebate or the housekeeper rebate for the purpose of working out the amount of rebate under this section, even if the taxpayer or the taxpayer's spouse

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is eligible for family tax benefit at the Part B rate for the whole or part of a year.

Note 2: Another effect of that paragraph (see sub-subparagraph (D)) is to let a taxpayer include the dependent spouse rebate (with child), despite its abolition by the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*, for the purpose of working out the rebate amount under this section.

- (8) For the purposes of subsection (7), but subject to subsection (8A), the total period of United Nations service of a taxpayer in any year of income shall be deemed to include any period in that year of income during which the taxpayer has resided, or has actually been, in the prescribed area.
- (8A) For the purposes of subsection (7), United Nations service does not include any period of service of the taxpayer in respect of which an exemption from income tax applies under section 23AG.
- (9) Where a rebate is allowable under subsection (7) in the assessment of a taxpayer in respect of income of a year of income and, but for this subsection, a rebate of a lesser amount would be allowable in that assessment under section 79A, a rebate under section 79A is not allowable in that assessment.
- (9A) Where a rebate is allowable under section 79A in the assessment of a taxpayer in respect of income of a year of income and, but for this subsection, a rebate of the same or a lesser amount would be allowable in that assessment under subsection (7), a rebate under subsection (7) is not allowable in that assessment.
- (9B) Subsection 79B(4) shall be disregarded in determining for the purposes of subsections (9) and (9A) of this section the amount of a rebate allowable to a taxpayer under subsection (7) of this section or under section 79A.
- (10) Where:
- (a) the trustee of the estate of a deceased person who has performed United Nations service is liable to pay income tax, in respect of a year of income, upon income that consists of or includes salary, wages or allowances derived by the deceased person in respect of that service;
 - (b) the death of the person resulted from an occurrence that happened during that service; and

- (c) if the person had, at the time of the happening of the occurrence, been a member of the Defence Force rendering continuous full-time service outside Australia while the taxpayer was allotted for duty in an operational area described in item 4, 5, 6, 7 or 8 of Column 1 of Schedule 2 to the *Veterans' Entitlements Act 1986*, the Commonwealth would be liable to pay a pension under that Act in respect of the death of the person;

the trustee is, by force of this subsection, released from the payment of so much of that tax as remains after deducting any tax deductions unapplied:

- (d) if the assessable income of the deceased person of the year of income consists solely of the salary, wages or allowances derived in respect of that service—from the amount of income tax so payable by the trustee; or
- (e) if the assessable income of the deceased person of the year of income includes income other than the salary, wages or allowances derived in respect of that service:
 - (i) from the amount of income tax so payable by the trustee; or
 - (ii) from the amount by which the income tax payable in respect of the income of the year of income has been increased by the inclusion of the salary, wages or allowances so derived in the assessable income of the deceased person of the year of income;

whichever is the less.

- (11) Nothing in subsection (10) shall be construed as authorizing or requiring the Commissioner to refund any amount paid as or for income tax by or on behalf of the deceased person or the trustee of his estate.

23AC Exemption of pay and allowances of members of Defence Force serving in operational areas

- (1) Pay and allowances earned by a person as a member of the Defence Force are exempt from income tax where:
 - (a) the pay and allowances are earned during a period of operational service of the person; and
 - (b) the person served in an operational area during the whole or a part of that period.

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- (2) Subject to this section, the operational service of a member of the Defence Force, for the purposes of this section, is the member's service where all of the following conditions are satisfied:
- (a) the member's service was while:
 - (i) a member of, or attached to, a body, contingent or detachment of the Naval, Military or Air Forces of the Commonwealth at a time when it was allotted for duty in an operational area; or
 - (ii) a member of the Naval, Military or Air Forces of the Commonwealth allotted for duty in an operational area; or
 - (iii) a member of the Naval, Military or Air Forces of the Commonwealth attached to a particular part of the armed forces of the United Kingdom or of the United States of America at a time when that part was allotted, by the appropriate authority of the country concerned, for duty in an operational area;
 - (b) if the operational area is covered by subsection (6) and:
 - (i) subparagraph (a)(i) or (ii) applies; or
 - (ii) subparagraph (a)(iii) applies and the member was not serving in an operational area on 2 August 1990; there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in response to Iraq's invasion of Kuwait;
 - (c) if the operational area is covered by subsection (6) and paragraph (b) does not apply—the member was serving in the operational area on 2 August 1990;
 - (ca) if the operational area is covered by subsection (6A)—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in response to Iraq's invasion of Kuwait;
 - (cb) if the operational area is Cambodia—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in respect of the member's service as part of:
 - (i) the group called the United Nations Advance Mission in Cambodia; or
 - (ii) the group called the United Nations Transitional Authority in Cambodia;

- (cc) if the operational area is the former Yugoslavia—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in respect of the member's service as part of a United Nations peacekeeping force;
 - (cd) if the operational area is Somalia—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in respect of the member's service as part of:
 - (i) the operation called Operation Restore Hope; or
 - (ii) the operation called the United Nations Operation in Somalia;
 - (d) the member's service was not as or under an attaché at an Australian embassy or legation.
- (2A) A certificate issued in accordance with paragraph (2)(cb), (cc) or (cd) shall cease to have force only in accordance with a certificate of revocation signed by the Chief of the Defence Force.
- (2B) A certificate of revocation made in accordance with subsection (2A) is a legislative instrument.
- (3) For the purposes of this section, the operational service of a member of the Defence Force allotted for duty in an operational area covered by subsection (6), (6A) or (6B):
- (a) is taken to have commenced:
 - (i) if he was in Australia at the time at which he was allotted for duty in the operational area—at the time of his departure from the last port of call in Australia for duty in that area;
 - (ii) if he was outside Australia at the time at which he was allotted for duty in the operational area—at the time at which he was so allotted;
 - (iii) if he was allotted for duty in the area before the time at which it became an operational area and he was in Australia at that time—at the time of his departure from the last port of call in Australia for duty in that area; or
 - (iv) if he was allotted for duty in the area before the time at which it became an operational area and he was outside Australia at that time—at that time;

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- (b) is taken to have ended at the earlier of the end of the termination date (if any) applicable to the operational area and:
 - (i) on his returning to Australia—at the time at which he arrived at the first port of call in Australia, unless he left Australia for further duty in an operational area within 14 days after his arrival in Australia; or
 - (ii) where he was allotted for duty in an area outside Australia other than an operational area—at the time at which he arrived in that area, or, if he was in that area at the time at which he was so allotted, at that time; and
 - (c) is taken to include a period of hospital treatment consequent upon an illness contracted or injuries sustained during the person's operational service.
- (3A) For the purposes of this section, the operational service of a member of the Defence Force allotted for duty in an operational area to which subsection (6C) or (6D) applies:
- (a) is taken to have begun at the later of:
 - (i) the time when the member arrived in the operational area; and
 - (ii) the time when the member's allotment for the duty in the operational area began; and
 - (b) is taken to have ended at the earliest of:
 - (i) the time when the member departed from the operational area; and
 - (ii) the time when the member's allotment for the duty in the operational area ended; and
 - (iii) the end of any termination date (defined in subsection (7)) applicable to the operational area; and
 - (c) is taken to include a period of hospital treatment resulting from an illness contracted, or injuries sustained, during the member's operational service.
- (4) The Chief of the Defence Force may, by signed instrument, delegate to an officer of the Defence Force the powers conferred by paragraph (2)(b), (ca), (cb), (cc) or (cd).
- (5) Applications may be made to the Tribunal for review of decisions of the Chief of the Defence Force under paragraph (2)(b), (ca), (cb), (cc) or (cd).

- (6) For the purposes of this section, the area comprising the following countries and sea areas:
- (a) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the island of Cyprus;
 - (b) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;
 - (c) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next:
 - (i) 20° 30' N 70° 40' E;
 - (ii) 14° 30' N 67° 35' E;
 - (iii) 8° 30' N 60° 00' E;
 - (iv) 6° 20' N 53° 52' E;
 - (v) 5° 48' N 49° 02' E;
 - (d) the sea areas contained within the Suez Canal and the Mediterranean Sea east of 30° E;
- is taken to have become an operational area on 2 August 1990.
- (6A) For the purposes of this section, the area comprising Iraq and Kuwait is taken to have become an operational area on 23 February 1991.
- (6B) For the purposes of this section, the area comprising Cambodia is taken to have become an operational area on 20 October 1991.
- (6C) For the purposes of this section, the area comprising the former Yugoslavia is taken to have become an operational area on 12 January 1992.
- (6D) For the purposes of this section, the area comprising Somalia is taken to have become an operational area on 20 October 1992.
- (7) In this section:

operational area has the meaning given by subsection (6), (6A), (6B), (6C) or (6D).

port includes airport.

termination date means:

- (a) in relation to an operational area covered by subsection (6) or (6A)—9 June 1991; or

- (b) in relation to an operational area covered by subsection (6B), (6C) or (6D)—the date prescribed by regulations (which may be a date before the commencement of the regulations) for the purposes of this definition as the termination date in respect of the operational area covered by that subsection.

23AD Exemption of pay and allowances of Defence Force members performing certain overseas duty

Requirements for exemption

- (1) The pay and allowances earned by a person serving as a member of the Defence Force are exempt from tax if:
 - (a) they are earned while there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the person is on eligible duty with a specified organisation in a specified area outside Australia; and
 - (b) the eligible duty is not as, or under, an attache at an Australian embassy or legation.

Eligible duty

- (2) The regulations may declare that duty with a specified organisation, in a specified area outside Australia and after a specified day, is eligible duty for the purposes of this section.

Where paragraph (1)(a) certificate in force

- (3) A certificate under paragraph (1)(a):
 - (a) comes into force at the later of:
 - (i) the time specified in the certificate (which may be before the time when it is issued, but not before the end of the specified day under the regulations); and
 - (ii) the time when the person arrives for duty in the specified area concerned; and
 - (b) subject to paragraph (c), continues in force until the earliest of:
 - (i) the time of the person's departure from the specified area; and

- (ii) the time when, in accordance with a certificate of revocation signed by the Chief of the Defence Force, it ceases to be in force; and
- (iii) any time prescribed by the regulations in relation to the eligible duty for the purposes of this subparagraph; and
- (c) is in force during any period of hospital treatment resulting from an illness contracted, or injuries sustained, during the person's eligible duty.

Review of paragraph (1)(a) certificate

- (4) An application may be made to the Tribunal for review of a decision of the Chief of the Defence Force under paragraph (1)(a).

Delegation of paragraph (1)(a) power

- (5) The Chief of the Defence Force may, by signed instrument, delegate to an officer of the Defence Force the power conferred by paragraph (1)(a).

Revocation certificate is legislative instrument

- (6) A certificate of revocation referred to in subparagraph (3)(b)(ii) is a legislative instrument.

23AF Exemption of certain income derived in respect of approved overseas projects

- (1) Where a taxpayer, being a natural person, has been engaged on qualifying service on a particular approved project for a continuous period of not less than 91 days, any eligible foreign remuneration derived by the person that is attributable to that qualifying service is exempt from tax.
- (3) Subject to subsections (4) and (5), a person shall be taken for the purposes of this section to be engaged on qualifying service on an approved project during any period during which:
 - (a) the person is outside Australia and is engaged in the performance of personal services in connection with the approved project;
 - (b) the person is travelling between Australia and the site of the approved project;

- (c) by reason of an incapacity for work due to accident or illness occurring while the person was, by virtue of paragraph (a) or (b), to be taken to be engaged on qualifying service on the approved project, the person is absent from work; or
 - (d) the person is on eligible leave, being leave that accrued in respect of a period during which the person was, by virtue of any of the preceding paragraphs, to be taken to be engaged on qualifying service on the approved project.
- (4) A person shall not be taken to have been engaged on qualifying service on a particular approved project while the person was travelling between Australia and the site of the approved project unless the Commissioner is satisfied that the time taken for the journey is reasonable.
- (5) A person shall not be taken to have been engaged on qualifying service on a particular approved project by virtue of paragraph (3)(c) during a period of incapacity for work unless the person is taken to have been engaged on qualifying service on that approved project by virtue of paragraph (3)(a), (b) or (d) during a period that commenced immediately after the incapacity ceased.
- (6) Where:
 - (a) a person was engaged on qualifying service on a particular approved project; and
 - (b) due to unforeseen circumstances, the person ceased to be engaged on qualifying service on that approved project;the period during which the person is to be taken to have been engaged on qualifying service on that approved project shall, except for the purpose of determining whether income derived by the person is eligible foreign remuneration, be taken to include the additional period after the person ceased to be engaged on qualifying service on that approved project during which the person would, in the opinion of the Commissioner, have continued to be engaged on qualifying service on that approved project but for those unforeseen circumstances.
- (7) Where:
 - (a) a person (in this subsection referred to as the *original person*) was engaged on qualifying service on a particular approved project;

- (b) due to unforeseen circumstances, the original person ceased to be engaged on qualifying service on that approved project; and
 - (c) as soon as practicable after the time when the original person ceased to be engaged on qualifying service on that approved project, another person (in this subsection referred to as the ***substituted person***) commenced to be engaged on qualifying service on that approved project in lieu of the original person; the period during which the substituted person is to be taken to have been engaged on qualifying service on that approved project shall, except for the purpose of determining whether income derived by the substituted person is eligible foreign remuneration, be taken to include a period that ended immediately before the substituted person commenced to be engaged on qualifying service on that approved project in lieu of the original person and was of the same duration as the continuous period during which the original person was, immediately before the original person ceased to be engaged on qualifying service on that approved project, taken to have been engaged on qualifying service on that approved project.
- (8) Where:
- (a) during the period (in this subsection referred to as the ***total project period***) commencing at the time when a person was first engaged on qualifying service on an approved project and ending at the time when the person was last engaged on qualifying service on that approved project, the person was in Australia during a period or periods (in this subsection referred to as the ***intervening period or intervening periods***) during which the person was not engaged on qualifying service on that approved project;
 - (b) the total number of days in the intervening period or intervening periods does not exceed one-sixth of the total number of days during the total project period during which the person was engaged on qualifying service on the approved project; and
 - (c) at all times during the total project period, the person was engaged on qualifying service on the approved project or was in Australia;
- the periods during the total project period during which the person was engaged on qualifying service on the approved project shall

together be taken to constitute a continuous period during which the person was engaged on qualifying service on the approved project.

- (9) Where, immediately before a person commences to take eligible leave, leave of the same kind as the eligible leave has accrued in relation to the person but has not been used and that unused leave consists of:
- (a) leave that accrued in respect of a period or periods when the person was engaged on qualifying service on an approved project and leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project;
 - (b) leave that accrued in respect of 2 or more periods when the person was engaged on qualifying service on 2 or more different approved projects; or
 - (c) leave that accrued in respect of 2 or more periods when the person was engaged on qualifying service on 2 or more different approved projects and leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project;

the following provisions apply for the purposes of determining the extent to which the eligible leave taken by the person was eligible leave that accrued in respect of a period when the person was engaged on qualifying service on a particular approved project:

- (d) in a case to which paragraph (a) applies—the person shall be deemed first to have taken leave that accrued in respect of the period when the person was engaged on qualifying service on the approved project referred to in that paragraph;
- (e) in a case to which paragraph (b) applies—the leave shall be deemed to have been taken in the order that is reverse to the order in which it accrued;
- (f) in a case to which paragraph (c) applies:
 - (i) the person shall be deemed not to have taken any of the leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project until the person had taken leave for a number of days equal to the number of days of leave referred to in that paragraph that had accrued in respect of periods when the person was engaged on qualifying service on approved projects; and

- (ii) the leave that had accrued in respect of periods when the person was engaged in qualifying service on approved projects shall be deemed to have been taken by the person in the order that is reverse to the order in which that leave accrued.
- (10) Where the amount of income derived by a person that:
- (a) is attributable to qualifying service on an approved project; and
 - (b) would, apart from this subsection, be eligible foreign remuneration;
- exceeds the amount of income that the Commissioner considers would be reasonable remuneration in respect of that qualifying service, the amount of the excess is not eligible foreign remuneration for the purposes of this section.
- (11) Where the Minister for Trade is satisfied that the undertaking of an eligible project that was commenced, or is proposed to be commenced, after 19 August 1980 is, or will be, in the national interest, he may, by writing signed by him, approve that eligible project for the purposes of this section.
- (12) The Minister for Trade may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person his power under subsection (11).
- (13) The power so delegated, when exercised by the delegate shall, for the purposes of this section, be deemed to have been exercised by the Minister for Trade.
- (14) A delegation under subsection (12) does not prevent the exercise of a power by the Minister for Trade.
- (15) Where:
- (a) a person has derived eligible foreign remuneration during a year of income; and
 - (b) at the time of making an assessment in respect of income of the person of the year of income, the Commissioner is of the opinion that, at a later time, circumstances will exist by reason of which that eligible foreign remuneration will be exempt from tax by virtue of this section;
- the Commissioner may apply the provisions of this section as if those circumstances existed at the time of making the assessment.
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- (16) Where, in the making of an assessment, this section has been applied on the basis that a circumstance that did not exist at the time of making the assessment would exist at a later time and the Commissioner, after making the assessment, becomes satisfied that that circumstance will not exist, then, notwithstanding anything contained in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that this section shall be taken always to have applied on the basis that that circumstance did not exist.
- (17) For the purposes of this section, income is excluded income if:
- (a) the income is income to which section 23AG applies; or
 - (aa) the income is a payment, consideration or amount that:
 - (i) is included in assessable income under Division 82, section 83-295 or Division 301, 302, 304 or 305 of the *Income Tax Assessment Act 1997*; or
 - (ii) is included in assessable income under Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; or
 - (iii) is mentioned in paragraph 82-135(e), (f), (g), (i) or (j) of the *Income Tax Assessment Act 1997*; or
 - (iv) is an amount transferred to a fund, if the amount is included in the assessable income of the fund under section 295-200 of the *Income Tax Assessment Act 1997*; or
 - (b) the income is derived from sources in a country other than Australia and:
 - (i) is exempt from income tax in that country; and
 - (ii) would not be exempt from income tax in that country apart from the operation of an agreement applying to Australia and that other country relating to the avoidance of double taxation or of a law of that other country giving effect to such an agreement; or
 - (c) the income consists of:
 - (i) payments in lieu of long service leave; or
 - (ii) payments by way of superannuation or pension.
- (17A) If the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section (in this section called the *exempt amount*) and other income, the amount of tax (if any) payable in respect of the other income is calculated using the formula:

$$\frac{\text{Notional gross tax}}{\text{Notional gross taxable income}} \times \text{Other taxable income}$$

where:

Notional gross tax means the number of whole dollars in the amount of income tax that would be assessed under this Act in respect of the taxpayer's taxable income of the year of income if:

- (a) the exempt amount were not exempt income; and
- (aa) if the exempt amount is a payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997*—the exempt amount (excluding any part of that amount that represented contributions made by the taxpayer) were assessable income of the taxpayer; and
- (b) the taxpayer were not entitled to any rebate of tax.

Notional gross taxable income means the number of whole dollars in the amount that would have been the taxpayer's taxable income of the year of income if the exempt amount were not exempt income.

Other taxable income means the amount (if any) remaining after deducting from so much of the other income as is assessable income:

- (d) any deductions allowable to the taxpayer in relation to the year of income that relate exclusively to that assessable income; and
- (e) so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that assessable income; and
- (f) the amount calculated using the formula in subsection (17B).

(17B) The formula referred to in paragraph (17A)(f) is:

$$\text{Apportionable deductions} \times \left[\frac{\text{Other taxable income}}{\text{Apportionable deductions} + \text{National gross taxable income}} \right]$$

where:

Apportionable deductions means the number of whole dollars in the apportionable deductions allowable to the taxpayer in relation to the year of income.

Other taxable income means the amount that, apart from paragraph (17A)(f), would be represented by the component **Other taxable income** in subsection (17A).

Notional gross taxable income means the number of whole dollars in the amount that would have been the taxpayer's taxable income of the year of income if the exempt amount were not exempt income.

(17C) Subsection (17A) applies to a taxpayer in respect of income of a year of income as if any payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997* in relation to qualifying service that was made in respect of the taxpayer during that year of income were income of the taxpayer of that year of income that is exempt from tax under this section.

(18) In this section, unless the contrary intention appears:

approved project means a project in respect of which there is in force an approval granted under subsection (11).

eligible contractor means:

- (a) a resident of Australia;
- (b) the Commonwealth, a State, a Territory, the government of a country other than Australia or an authority of the Commonwealth, of a State, of a Territory or of the government of a country other than Australia;
- (c) an organization:
 - (i) of which Australia and a country or countries other than Australia are members; or
 - (ii) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia; or
- (d) an agency of an organization to which paragraph (c) applies.

eligible foreign remuneration, in relation to a person, means income (not being excluded income) that is derived by the person at a time when the person is a resident, being:

- (a) income consisting of salary, wages, commission, bonuses or allowances, or of amounts included in a person's assessable income under Division 13A, derived by the person in his capacity as an employee of an eligible contractor; or
- (b) income, or amounts included in a person's assessable income under Division 13A, derived by the person under a contract with an eligible contractor, being a contract that is wholly or substantially for the personal services of the person;

that is directly attributable to qualifying service by the person on an approved project and includes any payments received in lieu of eligible leave that accrued in respect of a period during which the person was a resident and was engaged on qualifying service on an approved project.

eligible leave means leave other than long service leave.

eligible project means:

- (a) a project for the design, supply or installation of any equipment or facilities;
- (b) a project for the construction of works;
- (c) a project for the development of an urban area or a regional area;
- (d) a project for the development of agriculture;
- (e) a project consisting of giving advice or assistance relating to the management or administration of a government department or of a public utility; or
- (f) a project included in a class of projects approved in writing for the purposes of this section by the Minister for Trade.

employee includes:

- (a) a person employed by the Commonwealth, by a State, by a Territory, by the government of a country other than Australia or by an authority of the Commonwealth, of a State, of a Territory or of the government of a country other than Australia; and
- (b) a member of the Defence Force.

long service leave means long leave, furlough, extended leave or leave of a similar kind (however described).

23AG Exemption of income earned in overseas employment

- (1) Where a resident, being a natural person, has been engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived by the person from that foreign service is exempt from tax.
- (1A) A person is taken, for the purposes of subsection (1), to have been engaged in foreign service for a continuous period of 91 days if:
- (a) the person died at a time when he or she was engaged in foreign service for a continuous period of less than 91 days; and
 - (b) he or she would have otherwise continued to be engaged in the foreign service; and
 - (c) his or her continuous period of engagement in the foreign service would have otherwise been a period of at least 91 days.
- (2) An amount of foreign earnings derived in a foreign country is not exempt from tax under this section if the amount is exempt from income tax in the foreign country only because of any of the following:
- (a) a law of the foreign country giving effect to a double tax agreement;
 - (b) a double tax agreement;
 - (c) provisions of a law of the foreign country under which income covered by any of the following categories is generally exempt from income tax:
 - (i) income derived in the capacity of an employee;
 - (ii) income from personal services;
 - (iii) similar income;
 - (d) the law of the foreign country does not provide for the imposition of income tax on one or more of the categories of income mentioned in paragraph (c);
 - (e) a law of the foreign country corresponding to the *International Organisations (Privileges and Immunities) Act 1963* or to the regulations under that Act;
 - (f) an international agreement to which Australia is a party and that deals with:
 - (i) diplomatic or consular privileges and immunities; or

- (ii) privileges and immunities in relation to persons connected with international organisations;
 - (g) a law of the foreign country giving effect to an agreement covered by paragraph (f).
- (2A) Subsection (2) does not apply in relation to foreign earnings to the extent that the person derived them from foreign service in Iraq after 31 December 2002 but before 1 May 2004.
- (3) If the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section (in this section called the *exempt amount*) and other income, the amount of tax (if any) payable in respect of the other income is calculated using the formula:

$$\frac{\text{Notional gross tax}}{\text{Notional gross taxable income}} \times \text{Other taxable income}$$

where:

Notional gross tax means the number of whole dollars in the amount of income tax that would be assessed under this Act in respect of the taxpayer's taxable income of the year of income if:

- (a) the exempt amount were not exempt income; and
- (aa) if the exempt amount is a payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997*—the exempt amount (excluding any part of that amount that represented contributions made by the taxpayer) were assessable income of the taxpayer; and
- (b) the taxpayer were not entitled to any rebate of tax.

Notional gross taxable income means the number of whole dollars in the amount that would have been the taxpayer's taxable income of the year of income if the exempt amount were not exempt income.

Other taxable income means the amount (if any) remaining after deducting from so much of the other income as is assessable income:

- (d) any deductions allowable to the taxpayer in relation to the year of income that relate exclusively to that assessable income; and

- (e) so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that assessable income; and
 - (f) the amount calculated using the formula in subsection (4).
- (4) The formula referred to in paragraph (3)(f) is:

$$\text{Apportionable deductions} \times \left[\frac{\text{Other taxable income}}{\text{Apportionable deductions} + \text{Notional gross taxable income}} \right]$$

where:

Apportionable deductions means the number of whole dollars in the apportionable deductions allowable to the taxpayer in relation to the year of income.

Other taxable income means the amount that, apart from paragraph (3)(f), would be represented by the component **Other taxable income** in subsection (3).

Notional gross taxable income means the number of whole dollars in the amount that would have been the taxpayer's taxable income of the year of income if the exempt amount were not exempt income.

- (5) Subsection (3) applies to a taxpayer in respect of income of a year of income as if any payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997* that related to the termination of employment that was made in respect of the taxpayer during that year of income were income of the taxpayer of that year of income that is exempt from tax under this section.
- (6) For the purposes of this section, a period during which a person is engaged in foreign service includes any period during which the person is, in accordance with the terms and conditions of that service:
- (a) absent on recreation leave, other than:
 - (i) leave wholly or partly attributable to a period of service or employment other than that foreign service;
 - (ii) long service leave, furlough, extended leave or leave of a similar kind (however described); or
 - (iii) leave without pay or on reduced pay; or

(b) absent from work because of accident or illness.

(6A) 2 or more periods in which a person has been engaged in foreign service are together taken to constitute a continuous period of foreign service until:

(a) the end of the last of the 2 or more periods; or

(b) a time (if any), since the start of the first of the 2 or more periods, when the person's total period of absence exceeds $\frac{1}{6}$ of the person's total period of foreign service;

whichever happens sooner.

Example: Kate is engaged in foreign service for 20 days, is absent for 2 days and is then engaged in foreign service for 10 days. These 2 periods of foreign service constitute a continuous period of foreign service, because the total period of absence is never more than $\frac{1}{10}$ of the total period of foreign service.

Kate is then absent for 5 days before commencing a further period of foreign service. No matter how long the further period lasts, it can never constitute a continuous period of foreign service with the first 2 periods of foreign service, because on the fourth day of the second absence the total period of absence is $\frac{1}{5}$ of the total period of foreign service.

(6B) In subsection (6A):

total period of absence, in relation to a particular time, means the number of days, in the period starting at the start of the first of the 2 or more periods and ending at that time, for which the person was not engaged in foreign service.

total period of foreign service, in relation to a particular time, means the number of days, in the period starting at the start of the first of the 2 or more periods and ending at that time, for which the person was engaged in foreign service.

(6F) Where:

(a) a person has derived foreign earnings during a year of income; and

(b) at the time of making an assessment in respect of income of the person of the year of income, the Commissioner is of the opinion that, at a later time, circumstances will exist because of which those foreign earnings will be exempted from tax by this section;

the Commissioner may apply the provisions of this section as if those circumstances existed at the time of making the assessment.

(6G) Where:

- (a) in the making of an assessment, this section has been applied on the basis that a circumstance that did not exist at the time of making the assessment would exist at a later time; and
- (b) the Commissioner, after making the assessment, becomes satisfied that the circumstance will not exist;

then, notwithstanding anything contained in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that this section shall be taken always to have applied on the basis that the circumstance did not exist.

(7) In this section:

double tax agreement means:

- (a) double tax agreement within the meaning of Part X; or
- (b) the Timor Sea Treaty.

employee includes:

- (a) a person employed by a government or an authority of a government or by an international organisation; or
- (b) a member of a disciplined force.

foreign earnings means income consisting of earnings, salary, wages, commission, bonuses or allowances, or of amounts included in a person's assessable income under Division 13A, but does not include any payment, consideration or amount that:

- (a) is included in assessable income under Division 82 or Subdivision 83-295 or Division 301, 302, 304 or 305 of the *Income Tax Assessment Act 1997*; or
- (b) is included in assessable income under Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; or
- (c) is mentioned in paragraph 82-135(e), (f), (g), (i) or (j) of the *Income Tax Assessment Act 1997*; or
- (d) is an amount transferred to a fund, if the amount is included in the assessable income of the fund under section 295-200 of the *Income Tax Assessment Act 1997*.

foreign service means service in a foreign country as the holder of an office or in the capacity of an employee.

income tax, in relation to a foreign country:

- (a) in all cases—does not include a municipal income tax; and

- (b) in the case of a federal foreign country—does not include a State income tax.

23AH Foreign branch income of Australian companies not assessable

Objects

- (1) The objects of this section are:
 - (a) to ensure that active foreign branch income derived by a resident company, and capital gains made by a resident company in disposing of non-tainted assets used in deriving foreign branch income, (except income and capital gains from the operation of ships or aircraft in international traffic) are not assessable income or exempt income of the company; and
 - (b) to include in the assessable income of a resident company that part of its income and capital gains derived through a branch in a foreign country that is comparable to the amounts that would be included in an attributable taxpayer's assessable income for income and capital gains derived by a CFC resident in the same foreign country; and
 - (c) to get the same outcomes where one or more partnerships or trusts are interposed between a resident company and a foreign branch.

Foreign branch income not assessable

- (2) Subject to this section, foreign income derived by a company, at a time when the company is a resident in carrying on a business, at or through a PE of the company in a listed country or unlisted country is not assessable income, and is not exempt income, of the company.

Foreign capital gains and losses disregarded

- (3) Subject to this section, a capital gain from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:
 - (a) the gain is made by a company that is a resident; and
 - (b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or

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through a PE of the company in a listed country or unlisted country; and

- (c) the asset is not taxable Australian property.
- (4) Subject to this section, a capital loss from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:
- (a) the loss is made by a company that is a resident; and
 - (b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or through a PE of the company in a listed country or unlisted country; and
 - (c) had the loss been a gain, it would be disregarded under subsection (3).

Exceptions: listed country PE

- (5) Subsection (2) does not apply to foreign income derived by the company if:
- (a) the PE is in a listed country; and
 - (b) the PE does not pass the active income test (see subsection (12)); and
 - (c) the foreign income is both:
 - (i) adjusted tainted income (see subsection (13)); and
 - (ii) eligible designated concession income in relation to a listed country.
- (6) Subsection (3) or (4) does not apply to a capital gain or capital loss if:
- (a) the PE is in a listed country; and
 - (b) for a capital gain—the gain is from a tainted asset and is eligible designated concession income in relation to a listed country; and
 - (c) for a capital loss—the loss is from a tainted asset and would be eligible designated concession income in relation to a listed country if it were a capital gain.

Exceptions: unlisted country PE

- (7) Subsection (2) does not apply to foreign income derived by the company if:

- (a) the PE is in an unlisted country; and
 - (b) the PE does not pass the active income test (see subsection (12)); and
 - (c) the foreign income is adjusted tainted income (see subsection (13)).
- (8) Subsection (3) or (4) does not apply to a capital gain or capital loss if:
- (a) the PE is in an unlisted country; and
 - (b) the gain or loss is from a tainted asset.

Income derived in disposing of a business

- (9) This section applies to foreign income derived by an entity in the course of disposing, in whole or in part, of a business carried on in a listed country or unlisted country at or through a PE of the entity in the listed country or unlisted country as if the foreign income had been derived in carrying on that business.

Interposed partnerships or trusts

- (10) This section applies to any indirect interest (through one or more partnerships or trust estates) of a company in foreign income derived by a partnership or trustee through a PE of the partnership or trustee in a listed country or unlisted country as if that indirect interest were foreign income derived by the company through a PE of the company in that country.
- (11) This section applies to any indirect interest (through one or more partnerships or trust estates) of a company in a capital gain or capital loss made in relation to an asset of a partnership, or made by a trustee, in carrying on a business at or through a PE of the partnership or trustee in a listed country or unlisted country as if that indirect interest were a capital gain or capital loss made by the company through a PE of the company in that country.

Active income test

- (12) A PE of an entity passes the **active income test** for a year of income if the entity would have passed the active income test in section 432 if:
- (a) the assumptions in subsection (14) were made; and

- (b) subsection 432(3) and 446(2) and paragraphs 432(1)(b) and (e) and 447(1)(b), (d) and (f) had not been enacted.

Adjusted tainted income

- (13) For the purposes of this section, the *adjusted tainted income* of a PE of an entity is income or other amounts that would be adjusted tainted income of the entity for the purposes of Part X if:
 - (a) the assumptions in subsection (14) were made; and
 - (b) subsection 446(2) and paragraphs 447(1)(b), (d) and (f) had not been enacted.

Assumptions for subsections (12) and (13)

- (14) The assumptions referred to in paragraphs (12)(a) and (13)(a) are:
 - (a) except in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b), the only income or other amounts derived by the entity were the income derived in carrying on business at or through the PE; and
 - (b) the entity's statutory accounting periods were the same as the entity's years of income; and
 - (c) in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b):
 - (i) the part of the entity's operations that consists of the business carried on at or through the PE were a company (the *PE company*); and
 - (ii) the remaining part of the entity's operations were a separate company (the *HQ company*); and
 - (iii) the PE company and the HQ company had carried out the transactions that they would have carried out if the PE company were engaged in the same or similar activities as the PE under the same or similar conditions as the PE and were dealing wholly independently with the HQ company; and
 - (iv) any income derived by the HQ company were disregarded; and
 - (d) if the entity is an AFI entity (within the meaning of subsection 326(2))—the entity were an AFI subsidiary; and
 - (e) in applying paragraphs 447(1)(a), (c) and (e), the HQ company were an associate of the PE company.

- (14A) This section does not apply to foreign income, or to a capital gain or capital loss, of a company to the extent that the income, gain or loss is from:
- (a) the operation of ships or aircraft in international traffic at or through a PE of the company in a listed country or unlisted country; or
 - (b) things that are ancillary to that operation.
- (14B) A company operates a ship or aircraft in international traffic if the company operates it for transporting passengers or goods between a place in one country and a place in another country.

Definitions

- (15) In this section:

company does not include a company in the capacity of a trustee.

double tax agreement has the same meaning as in Part X.

eligible designated concession income has the same meaning as in Part X.

foreign income includes an amount that:

- (a) apart from this section, would be included in assessable income under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (CGT); and
- (b) is derived from sources in a listed country or unlisted country.

listed country has the same meaning as in Part X.

permanent establishment, or **PE**, in relation to a listed country or unlisted country:

- (a) if there is a double tax agreement in relation to that country—has the same meaning as in the double tax agreement; or
- (b) in any other case—has the meaning given by subsection 6(1).

statutory accounting period has the same meaning as in Part X.

tainted asset has the same meaning as in Part X.

unlisted country has the same meaning as in Part X.

23AI Amounts paid out of attributed income not assessable

(1) Where:

(a) either:

(i) an attribution account payment of a kind referred to in paragraph 365(1)(a), (b), (c) or (e) is made to a taxpayer (other than a partnership or taxpayer in the capacity of trustee of a trust); or

(ii) an attribution account payment of a kind referred to in paragraph 365(1)(d) is made to a taxpayer; and

(b) on the making of the payment, an attribution debit arises, for the entity making the payment, in relation to the taxpayer;

the following provisions have effect:

(c) if the payment is of a kind referred to in paragraph 365(1)(a)—the payment is not assessable income, and is not exempt income, to the extent of the debit;

(d) if the payment is of a kind referred to in paragraph 365(1)(b) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 92 in respect of an individual interest in the net income of the partnership of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

(e) if the payment is of a kind referred to in paragraph 365(1)(c) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not assessable income and is not exempt income, to the extent of the debit;

(ea) if the payment is of a kind referred to in paragraph 365(1)(c) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;

(f) if the payment is of a kind referred to in paragraph 365(1)(d)—the payment is not, to the extent of the debit, assessable to the taxpayer as mentioned in that paragraph;

- (g) if the payment is of a kind referred to in paragraph 365(1)(e) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit.
- (2) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.
- (3) In this section:

attribution account payment has the same meaning as in Part X.

attribution debit has the same meaning as in Part X.

company has the same meaning as in Part X.

trust has the same meaning as in Part X, but does not include a trust covered by subsection 371(7).

23AJ Certain non-portfolio dividends from foreign countries not assessable

A non-portfolio dividend (as defined in section 317) paid to a company is not assessable income, and is not exempt income, of the company if:

- (a) the company is an Australian resident and does not receive the dividend in the capacity of a trustee; and
- (b) the company that paid the dividend is not a Part X Australian resident (as defined in that section).

23AK Amounts paid out of attributed foreign investment fund income not assessable

- (1) If:
 - (a) either:
 - (i) a FIF attribution account payment of a kind referred to in paragraph 603(1)(a), (b), (c), (d), (f), (g) or (h) is made to a taxpayer (other than a partnership or taxpayer in the capacity of trustee of a trust); or

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- (ii) a FIF attribution account payment of a kind referred to in paragraph 603(1)(e) is made to a taxpayer; and
 - (b) on the making of the payment, a FIF attribution debit arises, for the FIF attribution account entity making the payment, in relation to the taxpayer;
- the following provisions have effect:
- (c) if the payment is of a kind referred to in paragraph 603(1)(a) or (b)—the payment is not assessable income, and is not exempt income, to the extent of the debit;
 - (d) if the payment is of a kind referred to in paragraph 603(1)(c) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 92 in respect of an individual interest in the net income of the partnership of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;
 - (e) if the payment is of a kind referred to in paragraph 603(1)(d) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;
 - (ea) if the payment is of a kind referred to in paragraph 603(1)(d) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;
 - (f) if the payment is of a kind referred to in paragraph 603(1)(e)—the payment is not, to the extent of the debit, assessable to the taxpayer as mentioned in that paragraph;
 - (g) if the payment is of a kind referred to in paragraph 603(1)(f) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

- (h) if the payment is of a kind referred to in paragraph 603(1)(g)—the payment is not assessable income, and is not exempt income, to the extent of the debit;
 - (i) if the payment is of a kind referred to in paragraph 603(1)(h)—the payment is not assessable income, and is not exempt income, to the extent of the debit.
- (2) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.
 - (3) In this section:

FIF attribution account entity has the same meaning as in Part XI.

FIF attribution account payment has the same meaning as in Part XI.

FIF attribution debit has the same meaning as in Part XI.

trust has the same meaning as in Part XI, but does not include a trust covered by subsection 605(11).

23E Redemption of Special Bonds redeemable at a premium

- (1) An amount received by a person upon the redemption of a Special Bond, other than a part of that amount paid as accrued interest, is not assessable income and is not exempt income of the person.
- (2) Subsection (1) does not affect the operation of this Act in relation to the redemption of a Special Bond owned by a person where, if the Special Bond had been sold by that person at the time of the redemption:
 - (a) the proceeds of the sale would have been included in the assessable income of that person; or
 - (b) any profit arising from the sale would, disregarding section 26BB, have been included in the assessable income of that person.
- (3) In this section, *Special Bond* means security of the Commonwealth issued under the *Commonwealth Inscribed Stock Act 1911* and bearing on its face the words “Special Bond”.

23G Exemption of interest received by credit unions

(1) In this section:

credit union means a company in relation to which the following conditions are satisfied:

- (a) the company is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
- (b) the company has a consent under section 66 of that Act that allows it to assume or use the expression “credit union” or “credit society”, or another expression (whether or not in English) that is of like import to either of those expressions.

(2) Income derived during a year of income by a credit union that is an approved credit union in relation to that year of income, being interest paid to the credit union by members of the credit union not being companies in respect of loans made to those members, is exempt from income tax.

(2A) Subsection (2) does not apply to a credit union in relation to a year of income if:

- (a) the credit union is a recognised medium credit union in relation to the year of income; or
- (b) the credit union is a recognised large credit union in relation to the year of income.

(3) For the purposes of this section, a credit union is an approved credit union in relation to a year of income if, and only if, the Commissioner is satisfied that:

- (a) during that year of income the credit union did not enter into any transactions of a kind not ordinarily entered into by a company of a kind referred to in paragraph (a) of the definition of **credit union** in subsection (1); and
- (b) by comparison with the profits of other credit unions for that year of income and the amounts transferred by those credit unions out of those profits to reserves, and after making due allowance for differences in the numbers of transactions entered into by other credit unions and the first-mentioned credit union and the amounts to which the respective transactions related, the profit of the first-mentioned credit union for that year of income was not excessive and the

first-mentioned credit union did not transfer an unreasonable part of that profit to a reserve.

- (4) In determining for the purposes of paragraph (3)(a) whether any transactions entered into by a credit union during a year of income were transactions of a kind referred to in that paragraph, the Commissioner may have regard to:
- (a) the circumstances in which, and the terms and conditions upon which, during that year of income:
 - (i) moneys were lent to, invested with, or otherwise obtained by, the credit union;
 - (ii) moneys were lent or otherwise made available by the credit union to its members or to other persons; and
 - (iii) moneys were invested by the credit union;
 - (b) the nature of the connexion (if any) between:
 - (i) the credit union or any of its members and any of the persons by whom moneys were lent to, invested with, or otherwise made available to, the credit union during that year of income;
 - (ii) the credit union or any of its members and any of the persons who owed moneys to the credit union at any time during that year of income; or
 - (iii) any of the persons by whom moneys were lent to, invested with, or otherwise made available to, the credit union during that year of income and any of the persons who owed moneys to the credit union at any time during that year of income; and
 - (c) any other relevant matters.

23J Sale of securities purchased at a discount

- (1) An amount received by a person upon the sale or redemption of eligible securities purchased or otherwise acquired at a discount on or before 30 June 1982, other than any part of that amount received as accrued interest, is not assessable income and is not exempt income of the person.
- (2) Subsection (1) does not apply in relation to an amount received by a person by virtue of a transaction that is part of, or is incidental to, the carrying on by the person of a business that includes buying and selling eligible securities of any kind.

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- (3) Subsection (1) does not affect the operation of section 25A or 26C of this Act or section 15-15 of the *Income Tax Assessment Act 1997*.
- (4) In this section, *eligible securities* means:
 - (a) bonds, debentures, stock or other securities; and
 - (b) any other document evidencing or acknowledging the indebtedness of a person, whether or not the debt is secured.

23K Substitution of certain securities

- (1) In this section:

central borrowing authority means:

- (a) the New South Wales Treasury Corporation;
- (b) the Victorian Public Authorities Finance Agency;
- (c) the Victoria Transport Borrowing Agency;
- (d) the Queensland Government Development Authority;
- (e) the Treasurer of the State of Western Australia;
- (f) the South Australian Government Financing Authority;
- (g) the Local Government Finance Authority of South Australia;
- (h) any other public authority of a State, being a public authority that is empowered to issue securities in the manner referred to in paragraph (2)(a).

public authority includes a Minister of the Crown in right of a State, a municipal corporation and any other local government body.

security means stock, a bond or debenture, or any other document evidencing the indebtedness of a person, whether or not the debt is secured.

- (2) For the purposes of this section, a person shall be taken to have issued a security (in this subsection referred to as the *substituted security*) to a taxpayer in substitution for another security (in this subsection referred to as the *original security*) held by the taxpayer if and only if:
 - (a) the substituted security was issued by the person to the taxpayer in exchange for the surrender or transfer of, or otherwise in replacement or substitution for, the original security; and

- (b) the terms and conditions provided for by the substituted security were identical in all material respects to those provided for by the original security.
- (3) Where:
- (a) but for this subsection, a person would be taken to have issued a security (in this subsection referred to as the *substituted security*) to a taxpayer in substitution for another security (in this subsection referred to as the *original security*) held by the taxpayer; and
 - (b) either or both of the following conditions is or are satisfied:
 - (i) an amount was payable by the taxpayer by way of consideration for the issue of the substituted security; or
 - (ii) an amount was payable to the taxpayer by way of consideration for the surrender, transfer, replacement or substitution of the original security;
- the person shall not be taken for the purposes of this section to have issued the substituted security in substitution for the original security.
- (4) Where:
- (a) under terms and conditions provided for by a security, the day on which interest is payable in respect of a period is different from that on which interest is payable in respect of the same period under another security; and
 - (b) the terms and conditions provided for by the securities are otherwise identical in all material respects;
- the following provisions have effect:
- (c) if the days on which the interest is payable are separated by an interval not exceeding 31 days—the terms and conditions provided for by the 2 securities shall, for the purposes of paragraph (2)(b), be taken to be identical in all material respects; and
 - (d) in any other case—the terms and conditions provided for by the 2 securities shall, for the purposes of paragraph (2)(b), be taken not to be identical in all material respects.
- (5) Where, on or after 8 August 1984, a central borrowing authority issued or issues a security (in this subsection referred to as the *substituted security*) to a taxpayer in substitution for another security (in this subsection referred to as the *original security*) held
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by the taxpayer that was issued by a public authority other than the central borrowing authority:

- (a) the substituted security shall, for the purposes of this Act, be deemed to be a continuation of the original security on the terms and conditions provided for by the substituted security; and
- (b) no amount shall, in respect of the issue of the substituted security or the surrender, transfer, replacement or substitution of the original security, be included in, allowable as a deduction from or taken into account in ascertaining any amount included in or allowable as a deduction from, the assessable income of any taxpayer in respect of any year of income.

23L Certain benefits in the nature of income not assessable

- (1) Income derived by a taxpayer by way of the provision of a fringe benefit is not assessable income and is not exempt income of the taxpayer.
- (1A) Income derived by a taxpayer by way of the provision of a benefit (other than a benefit to which section 15-70 of the *Income Tax Assessment Act 1997* applies) that, but for paragraph (g) of the definition of **fringe benefit** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit is exempt income of the taxpayer.
- (2) Where:
 - (a) in a year of income, a taxpayer derives income consisting of one or more non-cash business benefits (within the meaning of section 21A); and
 - (b) the total amount that is applicable under section 21A in respect of those benefits does not exceed \$300;the income is exempt income.

**Division 1AB—Certain State/Territory bodies exempt from
income tax**

Subdivision A—Exemption for certain State/Territory bodies

24AK Key principle

A body that is a State/Territory body (an *STB*) is exempt from income tax under this Division unless it is an excluded STB. There are 5 different ways in which a body can be an STB.

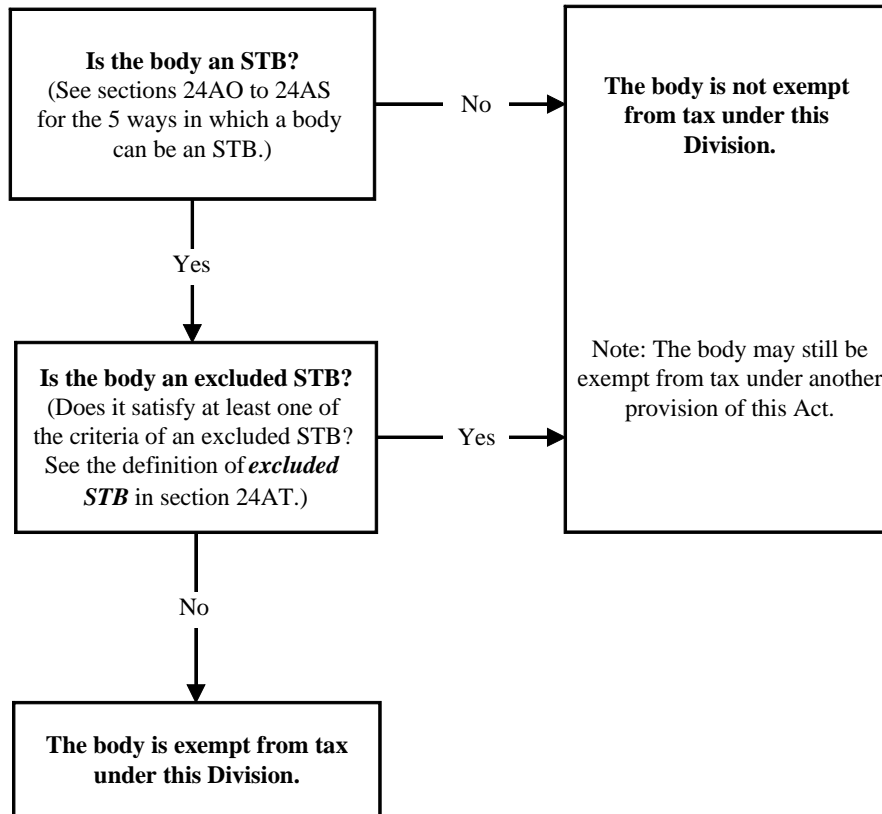
**24AL Diagram—guide to work out if body is exempt under this
Division**

The following diagram is a guide to help work out whether a body is exempt from income tax under this Division:

Part III Liability to taxation

Division 1AB Certain State/Territory bodies exempt from income tax

Section 24AM



24AM Certain STBs exempt from tax

The income of a State/Territory body (an *STB*) is exempt from income tax unless section 24AN applies to the STB.

24AN Certain STBs not exempt from tax under this Division

Income derived by an STB is not exempt from income tax under this Division if, at the time that it is derived, the STB is an excluded STB.

- Notes:
1. For the definition of *excluded STB* see section 24AT.
 2. Even though an excluded STB is not exempt from income tax under this Division, it may still be exempt under another provision of this Act.

24AO First way in which a body can be an STB

A body is an *STB* if:

- (a) it is a company limited solely by shares; and
- (b) all the shares in it are beneficially owned by one or more government entities.

Note: For the definition of *government entity* see section 24AT. Note that an excluded STB is not a government entity.

24AP Second way in which a body can be an STB

A body is an *STB* if:

- (a) it is established by State or Territory legislation; and
- (b) it is not a company limited solely by shares; and
- (c) the legislation provides that it must distribute all of its profits (if any) only to one or more government entities; and
- (d) if the legislation makes provision as to the way its net assets may be distributed if it is dissolved or wound up—the provision is that, if it is dissolved, all of its net assets (if any) must be distributed only to one or more government entities.

24AQ Third way in which a body can be an STB

A body is an *STB* if:

- (a) it is established by State or Territory legislation; and
- (b) it is not a company limited solely by shares; and
- (c) the legislation gives the power to appoint or dismiss its governing person or body only to one or more government entities.

24AR Fourth way in which a body can be an STB

A body is an *STB* if:

- (a) it is established by State or Territory legislation; and
- (b) it is not a company limited solely by shares; and
- (c) the legislation gives the power to direct its governing person or body as to the conduct of its affairs only to one or more government entities.

24AS Fifth way in which a body can be an STB

A body is an **STB** if:

- (a) it is not a company limited solely by shares; and
- (b) it is not established by State or Territory legislation; and
- (c) all the legal and beneficial interests (including, but not limited to, interests as to income, profits, dividends, capital and distributions of capital) in it are held only by one or more government entities; and
- (d) all the rights or powers (if any) to vote, appoint or dismiss its governing person or body and direct its governing person or body as to the conduct of its affairs are held only by one or more government entities.

24AT What do *excluded STB*, *government entity* and *Territory* mean?

In this Division:

excluded STB means an STB that:

- (a) at a particular time, is prescribed as an excluded STB in relation to that time; or
- (b) is a municipal corporation or other local governing body (within the meaning of section 50-25 of the *Income Tax Assessment Act 1997*); or
- (c) is a public educational institution to which any of paragraphs 50-55(a) to (c) of the *Income Tax Assessment Act 1997* applies; or
- (d) is a public hospital to which any of paragraphs 50-55(a) to (c) of the *Income Tax Assessment Act 1997* applies; or
- (e) is a superannuation fund.

government entity means:

- (a) a State; or
- (b) a Territory; or
- (ba) a municipal corporation or other local governing body (within the meaning of section 50-25 of the *Income Tax Assessment Act 1997*); or

Note: The effect of this paragraph is that some bodies owned or controlled by a municipal corporation or other local governing body may be an STB even though the municipal corporation or other local governing body is an excluded STB.

- (c) another STB that is not an excluded STB.

Territory means the Northern Territory or the Australian Capital Territory.

24AU Governor, Minister and Department Head taken to be a government entity

For the purposes of sections 24AQ, 24AR and 24AS, if the power to appoint, dismiss or direct the governing body is given to, or is held by:

- (a) a Governor of a State; or
 - (b) a Minister of the Crown of a State; or
 - (c) a Minister of a Territory; or
 - (d) the head of a Department of a State or a Territory; or
 - (e) any combination of paragraphs (a) to (d);
- the power is taken to be given to, or held by, a government entity.

24AV Regulations prescribing excluded STBs

States and Territories to consent to STBs being excluded STBs

- (1) The regulations may prescribe that an STB is an excluded STB only if all States and Territories consent to the STB being so prescribed.

Regulations prescribing excluded STBs may be retrospective

- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a regulation prescribing an STB as an excluded STB may provide that the STB is an excluded STB in relation to a time before the day of the notification of the regulation in the *Gazette*.

Subdivision B—Body ceasing to be an STB

24AW Body ceasing to be an STB

If a body ceases to be an STB in a year of income (the *cessation year*), this Act applies to the body as if:

- (a) the cessation were a change which requires a company to calculate its taxable income and tax loss under

Part III Liability to taxation

Division 1AB Certain State/Territory bodies exempt from income tax

Section 24AX

Subdivision 165-B of the *Income Tax Assessment Act 1997*;
and

- (b) the references in that Subdivision to “company” were references to “body”; and
- (c) if the body is not a company—there were no further requirement for the body to calculate its taxable income for the year of income under that Subdivision; and
- (d) the amount of any notional loss of the body calculated under section 165-50 of that Act for the period before the cessation were nil; and
- (e) the body’s deductions for tax losses were attributed under section 165-55 of that Act to the period before the cessation and not to any other period; and
- (f) those deductions were taken not to be full year deductions under section 165-55 of that Act; and
- (g) the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* were modified, for the purposes of that Subdivision, in accordance with section 24AX of this Act.

24AX Special provisions relating to capital gains and losses

Period after cessation date—prior net capital losses to be disregarded

- (1) In determining if an amount is to be included in the assessable income of the body under Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* for a period that occurred after the cessation, any net capital losses incurred before the cessation are to be disregarded.

Special cases where net capital gain before cessation and net capital loss after cessation

- (2) Subsections (3) and (4) apply if:
 - (a) a net capital gain accrued in the period before the cessation; and
 - (b) if the period from the cessation until the end of the year of income were treated as a year of income—a net capital loss would have accrued in that period.

Special case 1—gain exceeds loss

- (3) If this subsection applies and the net capital gain exceeds the net capital loss:
- (a) the amount that is to be included in the assessable income of the body for the period that occurred before the cessation as a result of the net capital gain accruing to the body is taken to be the amount by which the net capital gain exceeds the net capital loss; and
 - (b) no net capital gain is taken to have accrued, and no net capital loss is taken to have been incurred, in any period in the cessation year after the cessation; and
 - (c) in determining if a net capital gain accrued to, or a net capital loss was incurred by, the body for the year following the cessation year, no net capital loss is taken to have been incurred by the body in the cessation year.

Special case 2—loss equal to or exceeds gain

- (4) If this subsection applies and the net capital gain does not exceed the net capital loss:
- (a) no amount is to be included in the assessable income of the body for any period in the cessation year as a result of a net capital gain accruing to the body; and
 - (b) in determining if a net capital gain accrued to, or a net capital loss was incurred by, the body for the year following the cessation year, the net capital loss that the body incurred in the cessation year is taken to be the amount (if any) by which the net capital loss exceeds the net capital gain.

24AY Losses from STB years not carried forward

- (1) If a body is an STB on the last day of a year of income in which it incurs a tax loss, the tax loss is not allowable as a deduction from the body's assessable income of a later year of income unless the body is an STB on the first day of that later year of income.

Note: This section prevents losses from years prior to the cessation year from being carried forward to years after the cessation year.

- (2) This section only applies to a tax loss incurred in the 1995-96 year of income or a later year of income.

24AYA Effect of unfunded superannuation liabilities

- (1) This section applies to a deduction under section 290-60 of the *Income Tax Assessment Act 1997* in respect of a contribution made in relation to a person who was an employee of a prescribed excluded STB when it ceased to be an STB.
- (2) A deduction to which this section applies is not allowable to the body for any year of income unless the requirements of subsections (3) and (4) are complied with.
- (3) For the deduction to be allowable, the body must obtain a certificate by an authorised actuary stating the actuarial value, as at the time the body ceases to be an STB, of liabilities of the STB to provide superannuation benefits for, or for SIS dependants of, employees of the body, where the liabilities:
 - (a) accrued after 30 June 1995 and before the time when the body ceased to be an STB; and
 - (b) were, according to actuarial principles, unfunded at that time.
- (4) The certificate must be in a form approved in writing by the Commissioner. The body must obtain the certificate:
 - (a) before the date of lodgment of its return of income of the year of income in which the body ceased to be an STB; or
 - (b) within such further time as the Commissioner allows.
- (5) If the body obtains the certificate, a deduction to which this section applies is nevertheless not allowable for a year of income if the sum of all deductions to which this section applies for the year of income is less than or equal to the unfunded liability limit (see subsection (6)) for the year of income.
- (6) If the sum is greater than that limit, so much of the deduction as is worked out using the following formula is not allowable:
$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions to which this section applies for the year of income}} \times \text{Unfunded liability limit for the year of income}$$

where:

Unfunded liability limit for a year of income is:

- (a) if the year of income is the one in which the body ceases to be an STB—the actuarial value of the liabilities set out in the actuary’s certificate; or

- (b) in any other case—that actuarial value as reduced by the total amount of deductions to which this section applies that, because of subsection (5), have not been allowable to the body for all previous years of income.
- (7) Expressions used in this section that are also used in section 290-60 of the *Income Tax Assessment Act 1997* have the same respective meanings as in that section.

24AZ Meaning of *period* and *prescribed excluded STB*

In this Subdivision:

period means any of the periods into which the cessation year is divided under section 165-45 of the *Income Tax Assessment Act 1997*.

prescribed excluded STB means an STB that is an excluded STB as a result of regulations made for the purposes of paragraph (a) of the definition of ***excluded STB*** in section 24AT.

Division 1A—Provisions relating to certain External Territories

24B Interpretation

- (1) In this Division, unless the contrary intention appears:

prescribed person means:

- (a) a person who is a Territory resident;
- (b) a person who is a trustee of a trust that is a Territory trust in relation to the year of income, being the person in his capacity as trustee of that trust; or
- (c) a company that is a Territory company in relation to the year of income.

prescribed Territory means Norfolk Island.

- (2) For the purposes of this Division:

- (a) a reference to an agreement, right, power or option shall be construed as including a reference to an agreement, right, power or option that is not enforceable by legal proceedings whether or not it was intended to be so enforceable; and
- (b) an arrangement or understanding, whether formal or informal and whether expressed or implied, shall be deemed to be an agreement.

- (3) Where the effect of a provision of this Division that refers to the derivation of income by a person not being a company or to the application of income for the benefit of a person not being a company depends upon the determination of the question whether or not the person is a Territory resident, that question shall be determined as at the time of the derivation of the income by the person or of the application of the income for the benefit of the person, as the case may be.

- (4) This Division applies in relation to profits or gains of a capital nature in the same manner as it applies in relation to income.

- (5) For the purposes of this Division (other than section 24C), the adjacent area, within the meaning of the *Sea Installations Act 1987*,

in relation to a prescribed Territory shall, after the commencement of this subsection, be taken to be part of the prescribed Territory.

24C Territory resident

A reference in this Division to a Territory resident is a reference to a person, not being a company, who:

- (a) resides, and has his ordinary place of residence, in a prescribed Territory; and
- (b) would not, but for the operation of subsection 7A(2), be treated as a resident of Australia.

24D Territory company

- (1) Subject to this section, a company is, for the purposes of this Division, a Territory company in relation to the year of income if, and only if:
 - (a) the company was incorporated in a prescribed Territory;
 - (b) at all times during the year of income the company was managed and controlled wholly and exclusively in that Territory and was so managed and controlled by a person who was a Territory resident or by persons who were Territory residents;
 - (c) at no time during the year of income was a shareholding interest in the company held by a person (not being a company) who was not a Territory resident;
 - (d) at no time during the year of income was a person, or were 2 or more persons, in a position to affect any rights in connexion with the company of the holder of a shareholding interest in the company; and
 - (e) no agreement was entered into before or during the year of income by virtue of which a person or persons would be in a position after the year of income to affect any rights in connexion with the company of the holder of a shareholding interest in the company.
- (2) For the purposes of this section, a person shall be deemed to have held a shareholding interest in a company at a particular time if at that time:
 - (a) in the case of a company having a share capital—the person was beneficially entitled to, or to an interest in, any shares in

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- the company (whether or not the whole or any part of the legal ownership of the shares was vested in the person); or
- (b) in the case of a company limited by guarantee or limited by both shares and guarantee—the person was a member of the company or had a beneficial interest in any right or interest of a member of the company in or in relation to the company.
- (3) For the purposes of this section, where at any time a person held a shareholding interest in a company and at that time that company held a shareholding interest in another company (including a shareholding interest that the first-mentioned company is deemed to have held by another application or other applications of this subsection), that person shall be deemed to have held at that time a shareholding interest in that other company.
- (4) For the purposes of paragraphs (1)(d) and (e), a person or persons shall be taken to have been, or to be, in a position at a particular time to affect rights in connexion with a company of the holder of a shareholding interest in the company if at that time that person had or has, or those persons had or have, a right, power or option (whether by virtue of any provision of the constituent document of the company or of any other company or by virtue of any agreement or instrument or otherwise) to do any act or thing that would divest the holder of that shareholding interest of all or any of those rights, to reduce the extent of all or any of those rights, to specify the manner in which all or any of those rights were or are to be exercised or to do any act or thing that would prevent the holder of that shareholding interest from exercising all or any of those rights for his own benefit or receiving any benefits accruing by reason of the existence of all or any of those rights.
- (5) A reference in subsection (4) to the doing of any act or thing that would reduce the extent of any rights in connexion with a company of the holder of a shareholding interest in the company includes a reference to the doing of any act or thing that would reduce the proportion that those rights bear to the total number of the rights of the same kind in connexion with the company of all the holders of shareholding interests in the company.
- (6) A company that would, apart from this subsection, be a Territory company for the purposes of this Division in relation to the year of income shall be deemed not to be a Territory company for the purposes of this Division in relation to the year of income if the

affairs or business operations of the company were to any extent managed or conducted in the year of income in the interests of persons other than the holders of shareholding interests in the company or are likely to be so managed or conducted in a later year of income.

- (7) In determining for the purposes of this section whether the affairs or business operations of a company were, or are likely to be, managed or conducted to any extent in the interests of persons other than the holders of shareholding interests in the company, regard shall be had to any act or thing done, or likely to be done, in the course of the management or conduct of those affairs or operations, irrespective of the purpose or purposes for which that act or thing was done, or is likely to be done, and notwithstanding that the doing of that act or thing took place, or is likely to take place, in the course of ordinary family or commercial dealing.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of subsection (7).

- (8) Where, but for this subsection, a company would not be a Territory company for the purposes of this Division in relation to a year of income by reason of a non-compliance of a temporary nature with the requirements of paragraph (1)(b) or (c), the Commissioner may disregard that non-compliance.
- (9) Where, but for this subsection, a company would not be a Territory company for the purposes of this Division in relation to a year of income by reason of a non-compliance with paragraph (1)(d) or (e) or by reason of subsection (6) but the Commissioner is of the opinion that, having regard to the general effect of the provisions of this section and to special circumstances that exist in relation to the company, it would be inappropriate not to regard the company as a Territory company in relation to that year of income, the Commissioner may regard the company as a Territory company for the purposes of this Division in relation to that year of income.

24E Territory trusts

- (1) A trust is, for the purposes of this Division, a Territory trust in relation to the year of income if:
- (a) the trust resulted from:

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- (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;
 - (b) the deceased person was a Territory resident immediately before his death; and
 - (c) either of the following subparagraphs applies in relation to the trust:
 - (i) the administration of the estate of the deceased person had not, before the end of the year of income, progressed to a stage that would give to any beneficiary a present entitlement to income that was derived by the trustee before or during the year of income; or
 - (ii) at no time during the year of income was any person presently entitled to income derived by the trustee during the year of income and at the end of the year of income no person other than a Territory resident had any interest, whether vested or contingent, in any income derived by the trustee during the year of income or could by the exercise of a power conferred on any person obtain such an interest.
- (2) A trust is, for the purposes of this Division, a Territory trust in relation to the year of income if:
- (a) the trust was created by an instrument (not being a will or a codicil) executed in a prescribed Territory by a Territory resident; and
 - (b) at no time during the year of income was any person presently entitled to income derived by the trustee during the year of income and at the end of the year of income no person other than a Territory resident had any interest, whether vested or contingent, in any income derived by the trustee during the year of income or could by the exercise of a power conferred on any person obtain such an interest.
- (3) A trust is not, for the purposes of this Division, a Territory trust in relation to the year of income except as provided by this section.

- (4) For the purposes of this Division:
- (a) where 2 or more beneficiaries are presently entitled to shares of any income derived by a trustee (whether or not any of those beneficiaries is under a legal disability), the respective shares of that income to which those beneficiaries are so entitled shall be deemed to be held by the trustee upon separate trusts for those beneficiaries;
 - (b) if there is a share of any income derived by a trustee to which no beneficiary is presently entitled, the trustee shall be deemed to hold that share upon a trust separate from the trust or trusts upon which he holds the remainder of that income; and
 - (c) a reference to income derived by a trustee of a trust is a reference to income derived by the trustee in his capacity as trustee of that trust.

24F Exemption from tax of certain income derived from sources outside Australia

- (1) Subject to subsections (2), (3) and (4), this section applies to:
- (a) income derived (otherwise than as a trustee) from sources outside Australia by a person being a Territory resident or by a company being a Territory company in relation to the year of income; and
 - (b) income derived from sources outside Australia by a trustee of a trust that is a Territory trust in relation to the year of income.
- (2) This section does not apply to income consisting of a dividend paid by a company that is a resident of Australia other than a company that is a resident of Australia by reason only of the operation of subsection 7A(2).
- (3) Subject to subsection (4), this section does not apply to income if the Commissioner is satisfied that the income has been, or may be, applied for the benefit of a person not being a Territory resident, or for the benefit of a company not being a Territory company in relation to the year of income of the company in which the income has been or may be applied.
- (4) Subsection (3) does not exclude the operation of this section in relation to any income if the Commissioner is satisfied that the

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application of the income as mentioned in that subsection resulted, or would result, from an agreement or transaction that was a genuine commercial or family dealing and was not entered into or effected for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of subsection (4).

- (5) Income to which this section applies is exempt from income tax.

24G Exemption from tax of certain income derived from sources in a prescribed Territory

- (1) Subject to subsections (2) and (3), this section applies to:
- (a) income derived (otherwise than as a trustee) from sources in a prescribed Territory by a person who is a Territory resident;
 - (b) income derived (otherwise than as a trustee) from sources in a prescribed Territory by a company that is a Territory company in relation to the year of income;
 - (c) income derived from sources in a prescribed Territory by a trustee of a trust that is a Territory trust in relation to the year of income;
 - (d) income derived from sources in a prescribed Territory by a trustee of a trust, being income to which a beneficiary who is under a legal disability and is a Territory resident is presently entitled; and
 - (e) income derived by a person from an office or employment the duties of which are wholly or mainly performed in a prescribed Territory, if the Commissioner is satisfied that, at the time when the person commenced to perform duties of that office or employment in that Territory, he intended to remain in that Territory for a continuous period of more than 6 months.
- (2) Subject to subsection (3), this section does not apply to income if the Commissioner is satisfied that the income has been, or may be, applied for the benefit of a person not being a Territory resident, or for the benefit of a company not being a Territory company in relation to the year of income of the company in which the income has been or may be applied.

- (3) Subsection (2) does not exclude the operation of this section in relation to any income if the Commissioner is satisfied that the application of the income as mentioned in that subsection resulted, or would result, from an agreement or transaction that was a genuine commercial or family dealing and was not entered into or effected for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of subsection (3).

- (4) Income to which this section applies is exempt from income tax.

24H When income to be taken to be applied for benefit of a person

- (1) In determining for the purposes of this Division whether any income has been, or may be, applied for the benefit of a person, regard shall be had to all benefits that have accrued, or may accrue, as the case may be, at any time to the person (whether or not the person had, or may have, rights at law or in equity in or to those benefits) as a result of the derivation of, or in relation to, that income, irrespective of the nature or form of the benefits.
- (2) Without limiting the generality of subsection (1), income shall be taken, for the purposes of this Division, to have been applied for the benefit of a person if:
- (a) the income has been so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the person;
 - (b) the derivation of the income has operated to increase the value to the person of any property or rights of any kind held by or for the benefit of the person;
 - (c) the person has received or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) provided out of the income or out of property or money that was available for the purpose by reason of the derivation of the income;
 - (d) the person has power, by means of the exercise by the person of any power of appointment or revocation or otherwise, to obtain, whether with or without the consent of any other person, the beneficial enjoyment of the income; or

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- (e) the person is able, in any manner whatsoever, and whether directly or indirectly, to control the application of the income.
- (3) Without limiting the generality of subsection (1), it shall be taken, for the purposes of this Division, that income may be applied for the benefit of a person if:
- (a) the income may be so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the person;
 - (b) the derivation of the income may operate to increase the value to the person of any property or rights of any kind held by or for the benefit of the person;
 - (c) the person may receive or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) to be provided out of the income or out of property or money that is or will be available for the purpose by reason of the derivation of the income;
 - (d) the person may, in the event of the exercise of any power vested in any other person, become entitled to the beneficial enjoyment of the income; or
 - (e) the person may become able, in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

24J Source of dividends

- (1) In this section:

prescribed income means income consisting of Territory income or residual income, or both.

residual income means income derived before 20 July 1972 from a source that, for the purposes of the *Income Tax Assessment Act 1936* as amended and in force at the time when the income was derived, was a source outside Australia or was a source in a Territory that is a prescribed Territory.

Territory income means income to which section 24F or 24G applies.

- (2) For the purposes of this Division, but subject to subsection (3), income consisting of a dividend shall be deemed to be derived from a source in a prescribed Territory if, and only if:
- (a) the dividend:
 - (i) is paid by a company that is a Territory company in relation to the year of income of the company in which the dividend is paid; and
 - (ii) is paid by that company wholly and exclusively out of the amount remaining after deducting from prescribed income of the company all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income; or
 - (b) the dividend is paid by a company that was incorporated in a prescribed Territory but is not a Territory company in relation to the year of income of the company in which the dividend is paid, and is paid by that company:
 - (i) wholly and exclusively out of the amount remaining after deducting from residual income of the company all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income; or
 - (ii) wholly and exclusively out of the amount remaining after deducting from income, being a dividend, derived by the company, being a dividend that is deemed to be derived from a source in a prescribed Territory by another application or other applications of this paragraph, all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income.
- (3) Where:
- (a) a dividend derived by a prescribed person is attributable to residual income; and
 - (b) the Commissioner is satisfied that the dividend would not have been derived by a prescribed person but for:
 - (i) a change in the beneficial ownership of shares in a company that took place on or after 20 July 1972; or
 - (ii) the making of any agreement or other instrument, the granting or assignment of, or the failure to exercise, any
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Part III Liability to taxation

Division 1A Provisions relating to certain External Territories

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right, power or option, or the doing of any other act or thing, in relation to shares in a company on or after that date;

the dividend shall be deemed, for the purposes of this Division, not to have been derived from a source in a prescribed Territory.

- (4) Subparagraph (3)(b)(i) does not apply in relation to a change in the beneficial ownership of shares resulting from:
- (a) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
 - (b) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate.
- (5) For the purposes of subsection (3), a dividend is attributable to residual income if the dividend is paid in whole or in part out of:
- (a) an amount ascertained in accordance with paragraph (2)(a), where the amount is so ascertained by reference to an amount of prescribed income of a company that includes residual income of the company; or
 - (b) an amount ascertained in accordance with paragraph (2)(b).
- (6) Where a dividend paid by a company incorporated in a prescribed Territory to another company incorporated in a prescribed Territory is attributable to residual income, any dividend paid by the other company in whole or in part out of the first-mentioned dividend shall be deemed to be attributable to residual income.
- (7) The reference in subsection (6) to a dividend that is attributable to residual income includes a reference to a dividend that is deemed to be attributable to residual income by virtue of any other application or applications of that subsection.

24K Source of income from employment

For the purposes of this Division, income derived from an office or employment shall be deemed to be derived from a source in a prescribed Territory:

- (a) if, and only if, the duties of that office or employment are wholly or mainly performed in a prescribed Territory; and

- (b) to such extent only as the Commissioner considers reasonable remuneration for the performance of those duties.

24L Source of interest or royalty

- (1) This section applies to income derived by a person who is a prescribed person, being income that consists of interest or a royalty that:
 - (a) is paid to the prescribed person by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country; or
 - (b) is paid to the prescribed person by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.
- (2) For the purposes of this Division, but subject to this section, income to which this section applies shall be deemed:
 - (a) not to have been derived from a source in a prescribed Territory; and
 - (b) not to have been derived from a source outside Australia.
- (3) Where:
 - (a) income to which this section applies is paid to the prescribed person by whom it is derived by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident; and
 - (b) the interest or royalty of which the income consists is, in part, an outgoing incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country;

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subsection (2) has effect in relation to so much only of the income as is attributable to so much of the interest or royalty as is not an outgoing so incurred.

(4) Where:

- (a) income to which this section applies is paid to the prescribed person by whom it is derived by a person who, or by persons each of whom, is a non-resident; and
- (b) the interest or royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia;

subsection (2) has effect in relation to so much only of the income as is attributable to so much of the interest or royalty as is an outgoing so incurred.

(4A) In subsection (4B), a reference to a relevant person is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least 1 of whom is, a resident.

(4B) For the purposes of paragraphs (1)(a) and (3)(b), where:

- (a) interest or royalty is paid, after the commencement of this subsection, to a prescribed person by a relevant person carrying on business in a country outside Australia; and
- (b) the interest, a part of the interest, the royalty or a part of the royalty:
 - (i) is incurred by the relevant person in gaining or producing income that is derived by the relevant person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country or is incurred by the relevant person for the purpose of gaining or producing income to be so derived; or
 - (ii) is incurred by the relevant person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the relevant person otherwise than in so carrying on business at or through a permanent establishment of the relevant person in a country outside Australia;

the interest, the part of the interest, the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the relevant person in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country.

- (4C) For the purposes of paragraphs (1)(b) and (4)(b), where:
- (a) interest or royalty is paid, after the commencement of this subsection, to a prescribed person by another person or persons (in this subsection referred to as *the payer*), being:
 - (i) another person who is carrying on business in Australia and is a non-resident; or
 - (ii) other persons who are carrying on business in Australia and each of whom is a non-resident; and
 - (b) the interest, a part of the interest, the royalty or a part of the royalty:
 - (i) is incurred by the payer in gaining or producing income that is derived by the payer in carrying on business in Australia at or through a permanent establishment of the payer in Australia or is incurred by the payer for the purpose of gaining or producing income to be so derived; or
 - (ii) is incurred by the payer in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the payer in so carrying on business at or through a permanent establishment of the payer in Australia;

the interest, the part of the interest, the royalty or the part of the royalty, as the case may be, is an outgoing incurred by the payer in carrying on business in Australia at or through a permanent establishment of the payer in Australia.

- (5) In subsections (1), (3), (4), (4A), (4B) and (4C), *Australia, resident* and *non-resident* have the meanings that those expressions would have if subsection 7A(2) did not refer to Norfolk Island.
- (6) For the purposes of this section, interest or a royalty shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or

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insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs.

24M Certain income deemed not to be derived from sources in a prescribed Territory or outside Australia

- (1) Income (not being a dividend) that would, but for this subsection, be taken to be derived from a source in a prescribed Territory shall be deemed, for the purposes of this Division, not to be derived from such a source to the extent to which the income is received or accrues, directly or indirectly, in pursuance of an agreement or transaction that:

- (a) was not a genuine commercial or family agreement or transaction; or
- (b) was entered into for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of paragraph (1)(a).

- (2) Income that would, but for this subsection, be taken to be derived from a source outside Australia shall be deemed, for the purposes of this Division, not to be derived from such a source to the extent to which the income is received or accrues, directly or indirectly, in pursuance of an agreement or transaction that:

- (a) was not a genuine commercial or family agreement or transaction; or
- (b) was entered into for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of paragraph (2)(a).

24P Transitional capital gains tax provisions for certain Cocos (Keeling) Islands assets

- (1) Subject to an election under subsection (5), this section applies to a CGT asset held by a taxpayer where all of the following conditions are satisfied:

- (a) the asset was owned by the taxpayer at the end of 30 June 1991;

- (b) if there had been a disposal (within the meaning of former Part IIIA) of the asset by the taxpayer on 1 July 1991, that Part would have applied in respect of that disposal (ignoring former section 160ZZF and former Divisions 5A, 7A and 17 of that Part);
- (c) if:
 - (i) there had been a disposal (within the meaning of former Part IIIA) of the asset by the taxpayer on 1 July 1991; and
 - (ii) profits or gains of a capital nature had been derived by the taxpayer in respect of that disposal; and
 - (iii) former section 24BB had not been enacted; and
 - (iv) former section 24BA had applied in relation to the year of income in which disposal occurred;the profits or gains would have been exempt income under this Division.
- (2) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*:
 - (a) except for the purposes of determining the cost base to the taxpayer of the asset—the asset is taken to have been acquired by the taxpayer on 30 June 1991; and
 - (b) the first element of the asset's cost base in the hands of the taxpayer (at the end of 30 June 1991) is its market value at that time.
- (3) Despite Division 121 of the *Income Tax Assessment Act 1997*, the taxpayer is not required to keep records of the date of acquisition of the asset, or its cost base on 30 June 1991.
- (5) If, as at the date on which a CGT event happens in relation to the asset, the taxpayer has complied with former section 160ZZU of this Act and Division 121 of the *Income Tax Assessment Act 1997* in relation to the asset, the taxpayer may elect that this section does not apply in relation to the asset.

Division 2—Income

Subdivision A—Assessable income generally

25A Assessable income to include certain profits

(1A) This section does not apply in respect of the sale of property acquired on or after 20 September 1985.

(1B) This section does not apply to a profit arising in the 1997-98 year of income or a later year of income from the carrying on or carrying out of a profit-making undertaking or scheme, even if the undertaking or scheme was entered into, or began to be carried on or carried out, before the 1997-98 year of income.

Note: Section 15-15 (Profit-making undertaking or plan) of the *Income Tax Assessment Act 1997* deals with such a profit.

(1) The assessable income of a taxpayer shall include profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme.

(2) Subject to subsection (3), where:

(a) after 23 August 1983, a taxpayer sold or sells property (in this subsection referred to as the *relevant property*) being:

- (i) shares in a private company;
- (ii) an interest in a partnership; or
- (iii) an interest in a private trust estate; and

(b) at the time of sale of the relevant property:

(i) the company, partnership or trustee of the trust estate, as the case may be, held property that:

(A) was acquired for the purpose of profit-making by sale by the company, partnership or trustee, as the case may be; and

(B) was not excepted property of the company, partnership or trust estate, as the case may be; or

(ii) the company, partnership or trustee of the trust estate, as the case may be, held an interest, through one or more

interposed companies, partnerships or trusts, in property that:

- (A) was acquired for the purpose of profit-making by sale by another private company, partnership or trustee of a private trust estate; and
- (B) was not excepted property of that other company, partnership or trust estate, as the case may be;

the taxpayer shall, for the purposes of the application of this Act (including any application of any other provision of this section), be deemed to have acquired the relevant property for the purpose of profit-making by sale.

- (3) Subsection (2) does not apply in relation to the sale by a taxpayer of property where the Commissioner, having regard to:
 - (a) the extent to which the assets of the company, partnership or trust estate, as the case may be, referred to in paragraph (2)(a), immediately before the time of sale, consisted of the property referred to in subparagraph (2)(b)(i) or the interest referred to in subparagraph (2)(b)(ii), as the case may be;
 - (b) the nature and extent, immediately before the time of sale, of the taxpayer's control of the company, partnership or trust estate, as the case may be, referred to in paragraph (2)(a) including, in the case of a company, the nature and extent of the taxpayer's shareholding in the company;
 - (c) the circumstances surrounding any other sale, whether or not by the taxpayer, of shares in the company, or an interest in the partnership or trust estate, as the case may be, referred to in paragraph (2)(a), being a sale at a time when the property of that company, partnership or trust estate included the property referred to in subparagraph (2)(b)(i) or the interest referred to in subparagraph (2)(b)(ii), as the case may be; and
 - (d) such other matters as the Commissioner considers relevant; considers that it is not appropriate that that subsection should apply in relation to the sale of the property by the taxpayer.
- (4) Where:
 - (a) a taxpayer acquired or acquires property, being shares in a company, for the purpose of profit-making by sale; and
 - (b) after 23 August 1983:

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- (i) the company issued or issues other shares (in this subsection referred to as the *bonus shares*) to the taxpayer in satisfaction of a dividend (including an amount debited against an amount standing to the credit of a share premium account) payable to the taxpayer in respect of the shares referred to in paragraph (a); or
- (ii) by reason that the taxpayer was the owner of the shares referred to in paragraph (a), the company issued or issues to the taxpayer rights to acquire other shares in the company;

the taxpayer shall, for the purposes of the application of this Act (including any other application of this subsection and any application of any other provision of this section), be deemed to have acquired the bonus shares or the rights, as the case may be, for the purpose of profit-making by sale.

- (5) Where, after 23 August 1983, property was or is acquired by a taxpayer as a result of a transfer in the prescribed manner by a person who acquired the property for the purpose of profit-making by sale, the taxpayer shall, for the purposes of the application of this Act (including any other application of this subsection and any application of any other provision of this section), be deemed to have acquired the property for the purpose of profit-making by sale.

- (6) Where:

- (a) after 23 August 1983, a taxpayer sold or sells property; and
- (b) the property sold was:

- (i) an interest in property, being property acquired by the taxpayer for the purpose of profit-making by sale; or
- (ii) property, or an interest in property, in which was merged an interest in property, being an interest acquired by the taxpayer for the purpose of profit-making by sale;

the taxpayer shall, for the purposes of the application of this Act (including any application of any other provision of this section), be deemed to have acquired the property sold for the purpose of profit-making by sale.

- (7) For the purposes of subsection (2), where a company, partnership or trustee of a trust estate holds or held property (in this subsection referred to as the *underlying property*) consisting of:

- (a) an interest in property, being property acquired by the company, partnership or trustee for the purpose of profit-making by sale; or
 - (b) property, or an interest in property, in which was merged an interest in property, being an interest acquired by the company, partnership or trustee for the purpose of profit-making by sale;
- the company, partnership or trustee, as the case may be, shall be deemed to have acquired the underlying property for the purpose of profit-making by sale.
- (8) Where:
- (a) property (in this subsection referred to as the ***acquired property***) was or is acquired for the purpose of profit-making by sale; and
 - (b) after 23 August 1983, property (in this subsection referred to as the ***transferred property***) being:
 - (i) an interest in the acquired property; or
 - (ii) property, or an interest in property, in which was merged an interest in the acquired property;was or is transferred to a taxpayer in the prescribed manner;
- the taxpayer shall, for the purposes of the application of this Act (including any other application of this subsection and any application of any other provision of this section), be deemed to have acquired the transferred property for the purpose of profit-making by sale.
- (9) Where a taxpayer sold or sells property that, by virtue of any of the preceding provisions of this section, is deemed to have been acquired by the taxpayer for the purpose of profit-making by sale, so much (if any) of the proceeds of sale as, in the opinion of the Commissioner, is appropriate shall, for the purposes of this Act, be deemed to be profit arising from the sale by the taxpayer of the property.
- (10) For the purposes of the application of subsection (9) in relation to the sale of property (in this subsection referred to as the ***relevant property***) by a taxpayer:
- (a) if:

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- (i) the relevant property is deemed by subsection (2) to have been acquired by the taxpayer for the purpose of profit-making by sale;
- (ii) the property (in this paragraph referred to as the *underlying property*) to which sub-subparagraph (2)(b)(i)(A) or (2)(b)(ii)(A), as the case may be, applies was actually acquired for the purpose of profit-making by sale by the company, partnership or trustee referred to in that sub-subparagraph (which company, partnership or trustee is in this paragraph referred to as the *underlying owner*); and
- (iii) the relevant property was not transferred to the taxpayer in the prescribed manner;

the Commissioner shall have regard to the extent to which, in his opinion, the proceeds of sale of the relevant property are attributable to the amount of any increase in the value of the underlying property during the period (in this paragraph referred to as the *relevant period*) when the underlying property was held by the underlying owner and the relevant property was held by the taxpayer reduced by the amount of any capital expenditure incurred by the underlying owner in respect of the underlying property during the relevant period (not including expenditure in respect of which a deduction has been allowed, or is allowable, to the underlying owner);

- (b) if the relevant property is deemed by subsection (5) to have been acquired by the taxpayer for the purpose of profit-making by sale and the relevant property was actually acquired for the purpose of profit-making by sale by the person (in this paragraph referred to as the *transferor*) who transferred the relevant property to the taxpayer in the prescribed manner—the Commissioner shall have regard to the extent to which the amount (if any) that would have been included in the assessable income of the transferor if the transferor had sold the relevant property at the time when it was sold by the taxpayer for an amount of consideration equal to the amount of the consideration received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer exceeds the sum of:
 - (i) any expenditure incurred by the taxpayer in respect of the relevant property, not including:

- (A) any consideration given by the taxpayer in respect of the transfer of the relevant property to the taxpayer; or
- (B) expenditure to which subparagraph (ii) applies;
- (ii) where the taxpayer incurred expenditure of a capital nature in respect of the relevant property otherwise than:
 - (A) in acquiring property for the purpose of profit-making by sale; or
 - (B) as part of a profit-making undertaking or scheme;
an amount equal to so much of the consideration received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer as exceeds the amount that, in the opinion of the Commissioner, would have been the consideration received or receivable by the taxpayer if the taxpayer had not incurred that capital expenditure; and
- (iii) the amount of any profit included in the assessable income of the transferor in respect of the transfer of the relevant property to the taxpayer;
- (c) if the relevant property is deemed to have been acquired by the taxpayer by virtue of the application of this section (either directly or indirectly) in relation to property (in this paragraph referred to as the *related property*) that was actually acquired by the taxpayer or by another person or other persons for the purpose of profit-making by sale—the Commissioner shall have regard to the extent to which the relevant property consists of, or is attributable to, the related property;
- (d) if the relevant property consists of rights to acquire shares in a company, being rights that the taxpayer is deemed by subsection (4) to have acquired for the purpose of profit-making by sale—the relevant property shall be deemed to have been acquired by the taxpayer at no cost; and
- (e) if the relevant property consists of bonus shares that the taxpayer is deemed by subsection (4) to have acquired for the purpose of profit-making by sale—the cost to the taxpayer of the relevant property shall be ascertained in accordance with section 6BA.

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- (11) For the purposes of this section, property shall be taken to have been transferred to a person (in this subsection referred to as the *transferee*) in the prescribed manner if:
- (a) the following conditions are satisfied:
 - (i) the property is transferred by way of gift or for consideration the amount or value of which is less than the amount that, in the opinion of the Commissioner, is the value of the property immediately before the time of transfer;
 - (ii) the property is transferred otherwise than as a result of:
 - (A) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
 - (B) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; and
 - (iii) the Commissioner is satisfied that the transferee and the person who transferred the property were not dealing with each other at arm's length in relation to the transfer of the property; or
 - (b) the property:
 - (i) is transferred by way of a distribution of property of a private company or private trust estate made (whether in the course of the winding up of the company or trust estate or otherwise) to the transferee in his capacity as a shareholder in the company or a beneficiary of the trust estate, as the case may be; and
 - (ii) is not excepted property of the company or trust estate, as the case may be.
- (12) In this section:
- (a) a reference to excepted property of a company, partnership or trust estate is a reference to:
 - (i) trading stock of the company, partnership or trustee; or
 - (ii) property being plant within the meaning of section 45-40 of the *Income Tax Assessment Act 1997* purchased for use by the company, partnership or

trustee of the trust estate for the purpose of producing assessable income;

- (b) a reference to a private company is a reference to a company other than a company the shares in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere;
- (c) a reference to a private trust estate is a reference to a trust estate other than a unit trust the units in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere or are ordinarily available for subscription or purchase by the public; and
- (d) a reference to property generally or to a particular kind of property includes a reference to an estate or interest in property or in that kind of property, as the case may be.

26AAC Shares and rights acquired under schemes for the acquisition of shares by employees

- (1) For the purposes of this section and section 26AAD, a taxpayer shall be taken to have acquired a share in a company, or a right to acquire a share in a company, under a scheme for the acquisition of shares by employees if:
 - (a) in the case of a share, the share was acquired by the taxpayer:
 - (i) in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, the taxpayer or a relative of the taxpayer; or
 - (ii) as a result of the exercise or operation of a right to acquire the share, being a right that was acquired by the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, the taxpayer or a relative of the taxpayer; or
 - (b) in the case of a right, the right was acquired by the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, the taxpayer or a relative of the taxpayer.
- (2) Where a taxpayer who has acquired a right to acquire a share in a company in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, the taxpayer or a relative of the taxpayer disposes of, and re-acquires, the right on one or more occasions, each such re-acquisition of the right shall

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be taken, for the purposes of this section and section 26AAD, to be an acquisition of the right in respect of, or for or in relation directly or indirectly to, that employment of, or those services rendered by, the taxpayer or that relative of the taxpayer, as the case may be.

- (3) A reference in this section to a share in a company, or a right to acquire a share in a company, having been acquired by a taxpayer in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, the taxpayer or a relative of the taxpayer includes, but is not limited to, a reference to such a share or right having been acquired by a taxpayer:
- (a) in pursuance of an agreement, arrangement or understanding under which a company was to issue shares in the company to employees of the company or of another company or to relatives of those employees; or
 - (b) in pursuance of the terms of a trust deed under which a trustee is required or authorized to sell, or otherwise to transfer, shares in a company to employees of the company or of another company or to relatives of those employees.
- (4) Subject to subsection (4AA), this section applies to and in relation to an acquisition by a taxpayer of a share in a company, or of a right to acquire a share in a company, if, and only if:
- (a) in the case of a share, the share was acquired by the taxpayer after 17 September 1974 otherwise than as a result of the exercise or operation of a right that:
 - (i) being a right that had not previously been acquired and disposed of by the taxpayer—was acquired by the taxpayer on or before that date; or
 - (ii) being a right that had previously been acquired and disposed of by the taxpayer, was first acquired by the taxpayer on or before that date; or
 - (b) in the case of a right to acquire a share:
 - (i) where the right had not previously been acquired and disposed of by the taxpayer—the right was acquired by the taxpayer after 17 September 1974; or
 - (ii) where the right had previously been acquired and disposed of by the taxpayer—the right was first acquired by the taxpayer after that date;
- and a reference in this section to the acquisition by a taxpayer of a share or a right to acquire a share shall be construed accordingly.

- (4AA) This section and section 26AAD do not apply to an acquisition by a taxpayer of a share in a company, or of a right to acquire a share in a company, if:
- (a) an amount is, or apart from section 139BA would be, included in the assessable income of a taxpayer under Division 13A in relation to the acquisition; or
 - (aa) the consideration for the acquisition is equal to, or more than, the market value of the share or right (within the meaning of Subdivision F of Division 13A) at the time of the acquisition; or
 - (b) in the case of a share—the share was acquired as a result of the exercise of a right and this section did not apply in relation to the acquisition of the right.
- (4A) For the purposes of this section, a taxpayer shall be taken to have acquired an ESAS share in a company (in this section called the *issuing company*), or to have acquired an ESAS right to acquire a share in a company (in this section also called the *issuing company*), if:
- (a) the share or right was acquired under a scheme (in this subsection called the *acquisition scheme*) for the acquisition of shares by employees;
 - (b) in the case of a share—the share was acquired by the taxpayer on or after 1 July 1988:
 - (i) in respect of, or for or in relation directly or indirectly to, any employment of the taxpayer by the issuing company or a related company; or
 - (ii) as a result of the exercise or operation of a right to acquire the share, being a right that was acquired, or first acquired, by the taxpayer on or after 1 July 1988 in respect of, or for or in relation directly or indirectly to, any employment of the taxpayer by the issuing company or a related company;
 - (c) in the case of a right—the right was acquired by being issued to the taxpayer on or after 1 July 1988 in respect of, or for or in relation directly or indirectly to, any employment of the taxpayer by the issuing company or a related company;
 - (d) the Commissioner is satisfied that all of the following conditions were satisfied in relation to the acquisition scheme as at the time the share or right was acquired:
 - (i) both:

- (A) the acquisition scheme; and
 - (B) any scheme for the provision of financial assistance in respect of acquisitions of shares or rights under the acquisition scheme;
were operated on a non-discriminatory basis;
 - (ii) all the shares available for acquisition under the scheme were ordinary shares;
 - (iii) all the rights available for acquisition under the scheme were rights to acquire ordinary shares;
 - (iv) the scheme was operated so that no employee would be permitted to dispose of a share or right (whether by assignment, declaration of trust or otherwise) before the earlier of the following times:
 - (A) the end of the period of 3 years after the time of the acquisition of the share or right;
 - (B) the time when the employee ceased, or first ceased, to be employed by a member of the group constituted by the issuing company and any related companies;
 - (v) neither shares nor rights were available for acquisition under the acquisition scheme by persons other than permanent employees of the issuing company or of related companies; and
 - (e) no deduction is allowable to the issuing company or a related company in any year of income in respect of expenditure incurred in relation to the acquisition of shares or rights under the acquisition scheme.
- (4B) For the purposes of subsection (4A), a scheme shall be taken to be operated on a non-discriminatory basis if, and only if:
- (a) participation in the scheme is open to all permanent employees of the issuing company and related companies;
 - (b) in the case of an acquisition scheme—the following conditions are satisfied in relation to all offers to acquire shares or rights under the scheme:
 - (i) the time for acceptance of each offer is reasonable;
 - (ii) the following features of each offer are the same for all permanent employees of the issuing company and related companies:

- (A) the consideration for the acquisition concerned (whether that consideration is determined by reference to the value of the share or right or otherwise);
 - (B) the number of shares or rights, the minimum number of shares or rights or the maximum number of shares or rights, offered to each employee, as applicable;
 - (C) the time for acceptance of the offer;
 - (D) the steps taken for the circulation of information about the offer; and
- (c) in the case of a scheme for the provision of financial assistance by way of the making of a loan to acquire shares or rights under the acquisition scheme—the following conditions are satisfied in relation to all loans made to acquire shares or rights to which a particular offer under the acquisition scheme relates:
- (i) the time for taking up each loan is reasonable;
 - (ii) both of the following features of each loan are the same for all permanent employees of the issuing company and related companies:
 - (A) the terms and conditions of the loan;
 - (B) the loan amount, the minimum loan amount, or the maximum loan amount, offered to each employee, as applicable.
- (4C) Subsection (4F) applies to a taxpayer in relation to a year of income and in relation to:
- (a) all of the ESAS rights to acquire shares in a particular issuing company, being rights acquired by the taxpayer during the year of income; and
 - (b) all of the ESAS shares in a particular issuing company, being shares acquired by the taxpayer during the year of income;
- unless:
- (c) the taxpayer elects that subsection (4F) does not apply to the taxpayer in relation to that year of income; or
 - (d) the taxpayer was not employed by the issuing company or a related company on the last day of the year of income.

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- (4D) Where, apart from this subsection, subsection (4F) would apply to a taxpayer in relation to a year of income and in relation to 2 or more issuing companies:
- (a) if the taxpayer elects that subsection (4F) shall apply in relation to only one of those companies—subsection (4F) does not apply in relation to the remaining companies; or
 - (b) in any other case—subsection (4F) does not apply in relation to any of those companies.
- (4E) An election by a taxpayer under subsection (4C) or (4D) must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates, or before such later date as the Commissioner allows.
- (4F) Where this subsection applies to a taxpayer in relation to a year of income:
- (a) the taxpayer shall be taken to have made an election under subsection (8A) in relation to all of the ESAS rights to acquire shares in a particular company, being rights acquired by the taxpayer during the year of income;
 - (b) the taxpayer shall be taken to have made an election under subsection (15A) in relation to all of the ESAS shares in a particular company, being shares acquired by the taxpayer during the year of income; and
 - (c) the aggregate of the amounts that would, apart from this subsection, be included in the assessable income of the taxpayer of the year of income under subsection (5) and paragraph (8C)(a) in respect of those shares and those rights (which aggregate is in this subsection called the *aggregate discount amount*) shall be reduced by the amount obtained by multiplying whichever is the lesser of the following amounts:
 - (i) \$2,000;
 - (ii) the aggregate of:
 - (A) in the case of shares—the values of the shares when they were acquired by the taxpayer; and
 - (B) in the case of rights to acquire shares—the amounts that would have been the value of the shares if they had been acquired by the taxpayer at the time the rights were acquired by the taxpayer;

as the case requires (which aggregate is in this subsection called the *aggregate value*);

by whichever is the lesser of the following percentages:

- (iii) 10%;
- (iv) the percentage calculated by dividing the aggregate discount amount by the aggregate value.

- (5) Where a taxpayer has acquired during the year of income a share in a company under a scheme for the acquisition of shares by employees, the assessable income of the taxpayer of the year of income includes the value of that share at the time when it was acquired by the taxpayer less the sum of:
 - (a) the amount, if any, paid or payable by the taxpayer as consideration for the share; and
 - (b) if the taxpayer acquired the share as a result of the exercise or operation of a right (whether that right was unconditional or subject to conditions) to acquire the share—the amount, if any, paid or payable by the taxpayer as consideration for the right.
- (6) Where:
 - (a) a taxpayer has acquired a right (whether that right was unconditional or was subject to conditions) to acquire a share in a company under a scheme for the acquisition of shares by employees;
 - (b) as a result of a disposition or successive dispositions of the right, the right was subsequently acquired by an associate of the taxpayer without having been, at any time since it was first acquired by the taxpayer, in the ownership of a person other than the taxpayer or an associate of the taxpayer; and
 - (c) as a result of the exercise or operation of the right, that associate of the taxpayer acquired a share in the company;the taxpayer shall be deemed for the purposes of this section (other than subsections (4A), (4B), (4C), (4D) and (4F)):
 - (d) to have acquired the share under a scheme for the acquisition of shares by employees and to have so acquired the share at the time when it was acquired by the associate; and
 - (e) to have paid as consideration for the share the amount, if any, paid or payable by the associate as consideration for the share.

(7) Where:

- (a) a taxpayer has acquired a right (whether that right was unconditional or was subject to conditions) to acquire a share in a company under a scheme for the acquisition of shares by employees;
- (b) as a result of a disposition or of successive dispositions of the right, the right was subsequently acquired by an associate of the taxpayer without having been, at any time since it was first acquired by the taxpayer, in the ownership of a person other than the taxpayer or an associate of the taxpayer; and
- (c) the associate has disposed of the right to a person, not being the taxpayer or another associate of the taxpayer;

the assessable income of the taxpayer of the year of income during which the associate disposed of the right as mentioned in paragraph (c) includes the amount, if any, received by the associate as consideration for the right less the amount, if any, paid or payable by the taxpayer as consideration for the right.

(8) Where a taxpayer:

- (a) has acquired a right (whether that right was unconditional or was subject to conditions) to acquire a share in a company under a scheme for the acquisition of shares by employees (including a right that has been previously acquired and disposed of by the taxpayer but not including a right that has, at any time since it was first acquired by the taxpayer, been in the ownership of a person other than the taxpayer or an associate of the taxpayer); and
- (b) has disposed of that right to a person not being an associate of the taxpayer;

the assessable income of the taxpayer of the year of income during which the taxpayer disposed of the right as mentioned in paragraph (b) includes the amount, if any, received by the taxpayer as consideration for the right less the amount, if any, paid or payable by the taxpayer as consideration for the right.

- (8A) Where a taxpayer has acquired a right (whether that right was unconditional or was subject to conditions) to acquire a share in a company under a scheme for the acquisition of shares by employees, being a right issued after 19 September 1985, the taxpayer may elect that subsection (8C) is to apply in relation to that right.

- (8B) An election under subsection (8A) in relation to a right must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the right was acquired, or before such later date as the Commissioner allows.
- (8C) Where a taxpayer has made an election under subsection (8A) in relation to a right:
- (a) the assessable income of the taxpayer of the year of income during which that right was issued to the taxpayer includes the value of that right at the time when it was issued to the taxpayer less the amount, if any, paid or payable by the taxpayer as consideration for the right;
 - (b) no amount shall be included in the assessable income of the taxpayer of any year of income in respect of that right by virtue of any other provision of this section; and
 - (c) no amount shall be included in the assessable income of the taxpayer of any year of income by virtue of subsection (5) in respect of a share acquired by the taxpayer as a result of the exercise or operation of the right.
- (8D) Where:
- (a) a taxpayer has made an election under subsection (8A) in relation to a right;
 - (b) by virtue of paragraph (8C)(a), an amount has been included, or would, but for this subsection, be included, in the assessable income of the taxpayer of a year of income in respect of that right; and
 - (c) by virtue of any conditions or restrictions (being conditions or restrictions applicable only to rights to acquire shares in the company acquired under a scheme for the acquisition of shares by employees) attached to, or to the issue of, the right, the taxpayer has been divested of ownership of the right;
- then, notwithstanding paragraph (8C)(a), the assessable income of the taxpayer of the year of income referred to in paragraph (b) of this subsection shall be deemed not to have included, or not to include, as the case may be, the amount referred to in that paragraph.
- (9) Where:
- (a) the trustee of the estate of a deceased person has acquired a share in a company as a consequence of the exercise or

operation of a right to acquire the share, being a right owned by the deceased person at the time of his death; and

- (b) an amount would have been included in the assessable income of the deceased person under this section if he had not died and had acquired the share on the day on which it was acquired by the trustee for a consideration equal to the consideration, if any, paid by the trustee for the share;

the amount that would have been so included in the assessable income of the deceased person shall be included in the assessable income of the trust estate of the year of income during which the trustee acquired the share and shall be deemed to be income to which no beneficiary is presently entitled.

- (11) Where, as a result of a disposition of a right to acquire a share in a company:

- (a) an amount would, but for this subsection, be included by virtue of this section in the assessable income of a taxpayer of a year of income; and
- (b) an amount has been, or will be, included by virtue of another section of this Act in the assessable income of any year of income of the taxpayer or of an associate of the taxpayer (including, in the case of an associate being a trustee, the assessable income of the trust estate);

the amount referred to in paragraph (a) that would, but for this subsection, be included in the assessable income of the taxpayer shall be reduced by so much of that amount as does not exceed the amount referred to in paragraph (b).

- (11A) Subsection (11) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

- (12) Where:

- (a) as a result of the acquisition by a taxpayer or by an associate of a taxpayer of a share in a company, an amount has been, or will be, included by virtue of this section in the assessable income of the taxpayer of a year of income; and
- (b) as a result of the first disposition of the share after the acquisition referred to in paragraph (a), an amount would, but for this subsection, be included by virtue of another section of this Act in the assessable income of any year of income of

the taxpayer or of an associate of the taxpayer (including, in the case of an associate being a trustee, the assessable income of the trust estate);

the amount referred to in paragraph (b) that would, but for this subsection, be included in the assessable income of a person or of a trust estate shall be reduced by so much of that amount as does not exceed the amount referred to in paragraph (a).

(12A) Subsection (12) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

(13) Where:

- (a) an amount is included in the assessable income of a trust estate by virtue of subsection (9) as a result of the acquisition by the trustee of a share in a company; and
- (b) as a result of the first disposition of the share after the acquisition referred to in paragraph (a), an amount would, but for this subsection, be included by virtue of another section of this Act in the assessable income of the trust estate of any year of income;

the amount referred to in paragraph (b) that would, but for this section, be included in the assessable income of the trust estate shall be reduced by so much of that amount as does not exceed the amount referred to in paragraph (a).

(13A) Subsection (13) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

(14) A reference in this section to an associate of a taxpayer is a reference to any of the following persons:

- (a) a relative of the taxpayer;
- (b) a trustee of a trust estate, where the taxpayer or any relative of the taxpayer benefits or is capable of benefiting under the trust;
- (c) a partner of the taxpayer;
- (d) a company, where:
 - (i) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in

accordance with the directions, instructions or wishes of the taxpayer or of a relative of the taxpayer; or

- (ii) the taxpayer is, the persons who are associates of the taxpayer by virtue of paragraphs (a), (b) and (c) are, or the taxpayer and the persons who are associates of the taxpayer by virtue of those paragraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

(15) Where:

- (a) a taxpayer acquires a share in a company under a scheme for the acquisition of shares by employees; and
- (b) by reason of any conditions or restrictions (being conditions or restrictions applicable only to shares in the company acquired under such a scheme) attached to, or to the issue of, the share (including conditions or restrictions in relation to the payment of moneys in respect of the share) the right of the taxpayer to dispose of the share is restricted or the taxpayer is liable to be divested of his ownership of the share;

the acquisition of the share by the taxpayer shall be deemed for the purposes of this section (other than subsections (4A), (4B), (4C), (4D) and (4F)) to have taken place at the time when the right of the taxpayer to dispose of the share ceases to be so restricted, the time when the taxpayer ceases to be so liable to be divested of his ownership of the share or the time immediately before the taxpayer disposes of the share, whichever first happens.

(15A) A taxpayer may elect that subsection (15) is not to apply in relation to a share, being a share acquired by the taxpayer after 19 September 1985.

(15B) An election under subsection (15A) in relation to a share must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the share was acquired by the taxpayer, or within such further period as the Commissioner allows.

(15C) Where:

- (a) a taxpayer has made an election under subsection (15A) in relation to a share;

- (b) by virtue of subsection (5), an amount has been included, or would but for this subsection, be included, in the assessable income of the taxpayer of a year of income in respect of that share; and
- (c) by virtue of any conditions or restrictions mentioned in paragraph (15)(b) attached to, or to the issue of, the share, the taxpayer has been divested of ownership of the share;
- then, notwithstanding subsection (5), the assessable income of the taxpayer of the year of income referred to in paragraph (b) of this subsection shall be deemed not to have included, or not to include, as the case may be, the amount referred to in that paragraph.
- (16) Where a taxpayer who has a right to acquire a share in a company is to be taken to have acquired the right under a scheme for the acquisition of shares by employees by virtue of the operation of subsection (2), a reference in this section to the amount, if any, paid or payable by the taxpayer as consideration for the right shall be read as a reference to the amount, if any, paid or payable by the taxpayer as consideration in respect of the first acquisition of the right by him.
- (17) A reference in this section to the amount paid or payable by a person as consideration for a share or for a right to acquire a share includes a reference to any expenditure incurred by the person in the year of income or in any preceding year of income in connexion with the acquisition of the share or right other than expenditure allowed or allowable as a deduction from the assessable income of the person of any of those years of income.
- (18) For the purposes of this section, in determining the value of a share or of a right to acquire a share, the share or the right, and any share that may be acquired as a consequence of the exercise or operation of the right, shall be deemed not to be subject to any conditions or restrictions (being conditions or restrictions applicable only to shares in, or rights to acquire shares in, the company acquired under a scheme for the acquisition of shares by employees).
- (18A) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by way of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

Section 26AAD

- (18B) For the purposes of this section, the question whether a company is related to another company shall be determined in the same manner as the question whether a corporation is related to another corporation is determined for the purposes of the *Corporations Act 2001*.
- (18C) In this section:
- employee*, in relation to a company, includes a director of the company.
- permanent employee*, in relation to a company, means:
- (a) a full-time employee of the company; or
 - (b) a permanent part-time employee of the company; with at least 12 months service (whether continuous or non-continuous).
- (18D) For the purposes of the definition of *permanent employee* in subsection (18C), the period during which a person is engaged in service includes any period during which the person is, in accordance with the terms and conditions of that service:
- (a) absent on recreation leave, other than:
 - (i) long service leave, furlough, extended leave or leave of similar kind (however described); or
 - (ii) leave without pay or on reduced pay; or
 - (b) absent from work because of accident or illness.
- (18E) Nothing in section 170 prevents the amendment of an assessment at any time for the purposes of giving effect to paragraph (4A)(e).
- (19) Nothing in section 170 prevents the amendment of an assessment made in relation to a taxpayer if the amendment is made for the purpose of giving effect to subsection (8D) or (15C) and effects a reduction in the liability of the taxpayer.

26AAD The effect of 100% takeovers and restructures on the operation of section 26AAC

Treating acquisitions as continuations of existing shares etc.

- (1) To the extent that:
- (a) a taxpayer acquires:

- (i) shares in a company (the *new company*) that can reasonably be regarded as matching shares in another company (the *old company*) that the taxpayer had acquired under a scheme for the acquisition of shares by employees; or
- (ii) rights to acquire shares in a company (the *new company*) that can reasonably be regarded as matching rights in another company (the *old company*) that the taxpayer had acquired under a scheme for the acquisition of shares by employees; and

(b) the acquisition occurs in connection with a 100% takeover, or a restructure, of the old company; and

(c) as a result of the takeover or restructure, the taxpayer ceased to hold the shares or rights in the old company;

then, if the conditions in subsections (3) to (5) are met, the matching shares or rights are treated, for the purposes of section 26AAC, as if they were a continuation of the shares or rights in the old company.

Note: In determining to what extent something can reasonably be regarded as matching shares or rights in the old company, one of the factors to consider is the respective market values of that thing and of those shares or rights.

Treating acquisitions as disposals of existing shares etc.

- (2) However, to the extent that, in connection with the takeover or restructure, the taxpayer acquires anything that:
 - (a) can reasonably be regarded as matching any shares or rights in the old company that the taxpayer had acquired under a scheme for the acquisition of shares by employees; but
 - (b) is not a matching share or right to which subsection (1) applies;

the taxpayer is treated, for the purposes of section 26AAC, as having disposed of shares, or disposed of rights (other than by exercising them), that the taxpayer held, under a scheme for the acquisition of shares by employees, in the old company immediately before the takeover or restructure.

Conditions for the continuation of shares or rights

- (3) The first condition is that, immediately before the takeover or restructure, the taxpayer held shares, or rights to acquire shares, in

the old company under a scheme for the acquisition of shares by employees.

- (4) The second condition is that:
- (a) to the extent that the matching shares or rights are shares, they are ordinary shares; or
 - (b) to the extent that the matching shares or rights are rights, they are rights to acquire ordinary shares.
- (5) The third condition is that the matching shares or rights are subject to:
- (a) the same conditions or restrictions as; or
 - (b) conditions or restrictions that have the same effect as;
- the conditions or restrictions (if any) that attached to the shares or rights in the old company that they can reasonably be regarded as matching.

Apportionment rules

- (6) If:
- (a) subsection (1) applies to shares or rights that the taxpayer has acquired; and
 - (b) the taxpayer had paid or given consideration (the ***original consideration***) for an acquisition, under a scheme for the acquisition of shares by employees, of any of the shares or rights in the old company (the ***original shares or rights***);
- the taxpayer is treated as having paid or given, for any of the apportionable assets for the original shares or rights, consideration of an amount worked out by spreading the original consideration proportionately among all the apportionable assets according to their market values immediately after the takeover or restructure.
- (7) The ***apportionable assets*** for the original shares or rights are:
- (a) all matching shares or rights held by the taxpayer that are treated because of this section as a continuation of the original shares or rights; and
 - (b) anything else that the taxpayer acquired in connection with the takeover or restructure and that can reasonably be regarded as matching the original shares or rights; and
 - (c) in the case of a restructure—any shares or rights in the old company that the taxpayer held immediately before, and

continues to hold immediately after, the restructure and that can reasonably be regarded as matching the original shares or rights.

Definitions

(8) In this section:

100% takeover has the same meaning as in section 139GCB.

conditions or restrictions, in relation to shares or rights, means conditions or restrictions (if any) relating to:

- (a) the shares or rights, or shares acquired as a result of the exercise of the rights; or
- (b) the issue or disposal of the shares or rights, or shares acquired as a result of the exercise of the rights.

employee, in relation to a company, includes a director of the company.

holding company has the same meaning as in the *Corporations Act 2001*.

market value has the same meaning as in Subdivision F of Division 13A, as that Subdivision applies for the purposes of section 139DS.

Note: Subsection 139FA(4) alters the meaning of market value of a share or right for the purposes of section 139DS.

restructure has the same meaning as in section 139GCC.

subsidiary has the same meaning as in the *Corporations Act 2001*.

26AB Assessable income—premium for lease

(1A) For the purposes of assessments for the 1997-98 year of income and later years of income, this section applies only in relation to assignments of leases granted before 20 September 1985.

Note: The *Income Tax Assessment Act 1997* does not contain a rewritten version of this section.

For the 1998-99 year of income and later years of income, Parts 3-1 and 3-3 (about CGT) deal with the income tax treatment of premiums for:

- granting leases; and

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- assigning leases granted on or after 20 September 1985.

For the 1997-98 year of income, former Part IIIA of this Act (about CGT) dealt with the income tax treatment of such premiums.

- (1) In this section, **premium** means a consideration payable in one amount, or each amount of a consideration payable in more than one amount, where the consideration is:
 - (a) in the nature of a premium, fine or foregift payable for or in connexion with the grant or assignment of a lease; or
 - (b) for or in connexion with an assent to the grant or assignment of a lease;but does not include an amount in respect of goodwill or a licence.
- (2) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was not, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or the assignee or some other person wholly or partly for the purpose of gaining or producing assessable income, the assessable income of the taxpayer shall include the premium.
- (3) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or assignee or some other person partly for the purpose of gaining or producing assessable income and partly for other purposes, the assessable income of the taxpayer shall include such part of the premium as the Commissioner considers may reasonably be attributed to the intended use of the property for purposes other than gaining or producing assessable income.
- (4) Where, in a case referred to in subsection (2) or (3), the taxpayer satisfies the Commissioner that, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, he believed on reasonable grounds that the grantee or assignee intended a particular use of the property by the grantee or assignee or some other person for the purpose of gaining or producing assessable income, the Commissioner may apply this section on the basis that that intention existed.

- (5) This section does not apply in relation to:
- (b) a premium received in connexion with the assignment of a lease of land granted under a law of a State or Territory relating to mining;
 - (c) a premium received in connexion with the grant or assignment of a lease that was, for the purposes of former section 88B, a grant or assignment for mining purposes; or
 - (d) a premium received in connexion with the assignment from the Commonwealth or a State of a lease:
 - (i) granted in perpetuity or for a term not less than 99 years; or
 - (ii) with a right of purchase; or
 - (iii) effecting improvements to be used for residential purposes only.

26AF Assessable income to include value of benefits received from or in connection with former paragraph 23(ja) funds or former section 23FB funds

- (1) Where:
- (a) in a year of income and after 19 August 1980, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, a paragraph 23(ja) fund or a section 23FB fund;
 - (aa) if the fund is an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*)—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;
 - (b) the benefit is received or obtained otherwise than in accordance with approved terms and conditions applicable to the fund at the time when the benefit is received or obtained; and
 - (c) the Commissioner is satisfied that the taxpayer received or obtained the benefit:
 - (i) by reason that the taxpayer was, or had been, a member of the fund;

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- (ii) by reason that the taxpayer was, or had been, a dependant of a person who was, or had been, a member of the fund; or
- (iii) by reason that the taxpayer was, or had been, associated with a person who was, or had been, a member of the fund;

the assessable income of the taxpayer of the year of income shall include the amount or value of that benefit.

- (2) Where, in a year of income and after 19 August 1980, a taxpayer receives valuable consideration in respect of the transfer by the taxpayer to another person (whether by assignment, by declaration of trust or by any other means) of a right (whether vested or contingent) to receive a benefit from a fund, being a paragraph 23(ja) fund or a section 23FB fund and not being an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*), the assessable income of the taxpayer of the year of income shall include the amount or value of that consideration.

- (3) In this section:

approved terms and conditions, in relation to a fund, means:

- (a) in the case of a paragraph 23(ja) fund—terms and conditions approved by the Commissioner under subparagraph 23(ja)(ii) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*; or
- (b) in the case of a section 23FB fund—terms and conditions approved by the Commissioner under subsection 23FB(2) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*.

paragraph 23(ja) fund means a fund the income of which of any year of income is or has been exempt from tax by virtue of paragraph 23(ja) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987* or would, but for the provisions of section 121C as in force at any time before the commencement of section 21 of the *Taxation Laws Amendment Act 1985* and Division 9C, be, or have been, exempt from tax by virtue of that paragraph;

section 23FB fund means:

- (a) a fund the income of which of any year of income is or has been exempt from tax by virtue of section 23FB as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987* or would, but for the provisions of Division 9C, be, or have been, exempt from tax by virtue of that section; and
 - (b) a fund that was a section 79 fund for the purposes of this section as in force at any time before the commencement of the *Income Tax Assessment Amendment Act (No. 3) 1984*.
- (4) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*) in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:
- (a) the year of income ended before the proclaimed superannuation standards day and the income of the fund of the year of income would, but for the amendments made by the *Taxation Laws Amendment Act (No. 4) 1987*, have been exempt from tax under paragraph 23(ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;
 - (b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, the income of the fund of the year of income would have been exempt from tax under paragraph 23(ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;
- paragraph 23(ja) or section 23FB of this Act, as in force immediately before the commencement of section 1 of that Act, shall be taken to have continued to apply in relation to the fund in relation to the year of income of the fund.

26AFA Assessable income to include value of certain benefits received from or in connection with former section 23F funds

(1) Where:

- (a) in a year of income and on or after 7 December 1983, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, a section 23F fund;
- (aa) if the fund is an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*)—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;
- (b) the benefit:
 - (i) is not a benefit that the taxpayer has a right to receive from the fund; or
 - (ii) is an excessive benefit; and
- (c) the Commissioner is satisfied that the taxpayer received or obtained the benefit:
 - (i) by reason that the taxpayer was, or had been, a member of the fund;
 - (ii) by reason that the taxpayer was, or had been, a dependant of a person who was, or had been, a member of the fund;
 - (iii) by reason that the taxpayer was, or had been, associated with a person who was, or had been, a member of the fund; or
 - (iv) by reason that the taxpayer was, or had been, associated with a person who had made contributions to the fund, being contributions to which Subdivision AA of Division 3 applied;

the assessable income of the taxpayer of the year of income shall include the amount or value of that benefit.

(2) Where:

- (a) subsection (1) would, but for this subsection, apply to the amount or value of an excessive benefit received or obtained by a taxpayer out of, or attributable to assets of, a section 23F fund; and

- (b) the Commissioner, having regard to:
- (i) the nature of the fund;
 - (ii) the circumstances by reason of which the benefit is an excessive benefit; and
 - (iii) such other matters relating to the receiving or obtaining of the benefit by the taxpayer as the Commissioner considers relevant;
- is satisfied that it would be unreasonable for subsection (1) to apply to the whole or part of the benefit;
- that subsection does not apply to the benefit, or to that part of the benefit, as the case may be.
- (3) Where, in a year of income and on or after 7 December 1983, a taxpayer receives valuable consideration in respect of the transfer by the taxpayer to another person (whether by assignment, by declaration of trust or by any other means) of a right (whether vested or contingent) to receive a benefit from a fund, being a section 23F fund and not being an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*), the assessable income of the taxpayer of the year of income shall include the amount or value of that consideration.
- (4) In this section:
- dependant***, in relation to a taxpayer, includes the spouse and any child of the taxpayer.
- excessive benefit*** means a benefit of any kind that is excessive in amount or value having regard to the matters mentioned in subparagraphs 23F(2)(h)(i), (ii), (iii) and (iv) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*.
- section 23F fund*** means a fund to which section 23F (as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*) applies, or has applied, in relation to any year of income.
- (5) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act (as in force just before the

commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007* in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:

- (a) the year of income ended before the proclaimed superannuation standards day and section 23F of this Act, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*, would, but for the amendments made by that Act, have applied in relation to the fund in relation to the year of income;
- (b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, section 23F of this Act, as in force immediately before the commencement of section 1 of that Act, would, but for the amendments made by that Act, have applied in relation to the fund in relation to the year of income;

section 23F of this Act, as in force immediately before the commencement of section 1 of that Act, shall be taken to have continued to apply in relation to the fund in relation to the year of income of the fund.

26AG Certain film proceeds included in assessable income

(1) Where:

- (a) under a contract entered into on or after 1 October 1980, a taxpayer has expended, or is deemed by section 124ZAP to have expended, capital moneys in producing, or by way of contribution to the cost of producing, a film;
- (b) by reason of the moneys having been expended, the taxpayer became the owner of an interest in the copyright in the film; and
- (c) a deduction has been allowed, or is allowable, to the taxpayer under former section 124ZAF or under section 124ZAF in respect of some or all of those moneys;

this section applies, and shall be deemed always to have applied, in relation to the taxpayer in relation to a year of income (whether commencing before or after the commencement of this section), to:

- (d) any amount derived by the taxpayer in the year of income from sources in or out of Australia as consideration for the use of, or the right to use, the copyright or the film, to the

extent to which the amount derived is attributable to the interest referred to in paragraph (b); and

- (e) any amount (other than an amount to which paragraph (d) applies) receivable by the taxpayer from sources in or out of Australia as consideration in respect of the disposal, in the year of income, of the whole or a part of the interest referred to in paragraph (b).
- (2) The assessable income of a taxpayer of a year of income shall include amounts to which this section applies in relation to the taxpayer in relation to the year of income.
- (3) Where:
- (a) for any reason, including:
 - (i) the formation or dissolution of a partnership; or
 - (ii) a variation in the constitution of a partnership or in the interests of the partners;a change has occurred in the ownership of, or in the interests of persons in, a copyright in a film;
 - (b) the person, or one or more of the persons, who owned the copyright before the change has or have an interest in the copyright after the change; and
 - (c) any person (in this subsection referred to as the **relevant person**) who had an interest in the copyright before the change:
 - (i) did not have an interest in the copyright after the change; or
 - (ii) had a lesser interest in the copyright after the change;
- the following provisions have effect:
- (d) if the relevant person did not have an interest in the copyright after the change, the relevant person shall be deemed, for the purposes of subsection (1), to have disposed of the whole of his interest in the copyright at the time when the change occurred for an amount of consideration equal to:
 - (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the copyright for the purposes of the agreement, an amount greater than the value of the copyright at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change

- occurred, of the interest deemed to have been disposed of bears to the value of the copyright at the time when the change occurred; and
- (ii) in any other case—the value, at the time when the change occurred, of the interest disposed of;
- (e) if the relevant person had a lesser interest in the copyright after the change, the relevant person shall be deemed, for the purposes of subsection (1), to have disposed of a part of his interest in the copyright at the time when the change occurred for an amount of consideration equal to:
- (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the copyright for the purposes of the agreement, an amount greater than the value of the copyright at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the part of the interest deemed to have been disposed of bears to the value of the copyright at the time when the change occurred; and
 - (ii) in any other case—the value, at the time when the change occurred, of the part of the interest disposed of.
- (4) For the purposes of this section, where, in pursuance of a judgment of a court or otherwise, an amount is paid to a taxpayer in respect of an infringement, or an alleged infringement, of a copyright in a film, the taxpayer shall be deemed to have disposed of a part of his interest in the copyright, at the time of payment, in consideration of the payment of that amount.
- (5) Subject to subsections (3) and (6), a reference in this section to the consideration receivable by a taxpayer in respect of the disposal of the whole or a part of the taxpayer's interest in a copyright (which whole or part is in this subsection referred to as the *unit*) is a reference to:
- (a) where the unit is disposed of for a specified price—that price less:
 - (i) the expenses of the disposal; and
 - (ii) if the disposal is a taxable supply—an amount equal to the GST payable on the supply; or

(b) where the unit is disposed of together with other property and no separate price is allocated to the unit—such amount as the Commissioner determines.

(6) Where:

- (a) a taxpayer disposes of the whole or a part of the taxpayer's interest in a copyright (which whole or part is in this subsection referred to as the *unit*) to another person;
- (b) the Commissioner is satisfied, having regard to any connection between the taxpayer and that other person or to any other relevant circumstances, that the taxpayer and that other person were not dealing with each other at arm's length in relation to the disposal; and
- (c) there was no amount receivable by the taxpayer in respect of the disposal or the amount receivable by the taxpayer in respect of the disposal was less than the value of the unit at the time of the disposal;

the amount of the consideration receivable by the taxpayer in respect of the disposal shall be taken, for the purposes of this section, to be the amount that was the value of the unit at the time of the disposal.

(8) If:

- (a) a non-resident taxpayer derives, from sources outside Australia, income in respect of a film; and
- (b) but for this subsection, subsection (2) would include the amount in the taxpayer's assessable income of a year of income;

that subsection does not include in the taxpayer's assessable income so much of the amount as:

- (c) is attributable to the exhibition of the film in the country from sources in which the income was derived; and
- (d) is not exempt from income tax in the country from sources in which the income was derived.

(9) Where:

- (a) an amount (in this subsection referred to as the *relevant amount*) is derived by a partnership in a year of income; and
- (b) if the relevant amount were derived by a partner in the partnership, the relevant amount, or a part of the relevant amount, would, by virtue of paragraph (1)(d), be an amount

to which this section applies in relation to that partner in relation to the year of income;

the following provisions have effect:

- (c) the relevant amount shall not be taken into account, for the purposes of any provision of this Act, in calculating the net income of the partnership, or the partnership loss, of any year of income in accordance with section 90; and
- (d) for the purposes of the application of this Act in relation to a taxpayer being a partner in the partnership, an amount equal to:
 - (i) so much of the relevant amount as the partners have agreed is derived for the benefit of the taxpayer; or
 - (ii) if the partners have not agreed as mentioned in subparagraph (i)—so much of the relevant amount as bears to the relevant amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the relevant amount was derived by the partnership bears to that net income or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss;shall be taken to have been derived by the taxpayer.

(10) Where:

- (a) a partnership has disposed of the whole or a part of the copyright or of an interest in the copyright in a film;
- (b) an amount (in this subsection referred to as the *relevant amount*) is receivable by the partnership as consideration in respect of that disposal; and
- (c) if the relevant amount were receivable by a partner in the partnership, the relevant amount or a part of the relevant amount would, by virtue of paragraph (1)(e), be an amount to which this section applies in relation to that partner in relation to the year of income;

the following provisions have effect:

- (d) the relevant amount shall not be taken into account, for the purposes of any provision of this Act, in calculating the net income of the partnership, or the partnership loss, of any year of income in accordance with section 90;

- (e) for the purposes of the application of this Act in relation to a taxpayer being a partner in the partnership, an amount equal to:
 - (i) so much of the relevant amount as the partners have agreed is receivable for the benefit of the taxpayer; or
 - (ii) if the partners have not agreed as mentioned in subparagraph (i)—so much of the relevant amount as bears to the relevant amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the disposal mentioned in paragraph (a) occurred bears to that net income, or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss;
shall be taken to be receivable by the taxpayer;
 - (f) where the taxpayer had an interest in the copyright before the disposal and did not have an interest in the copyright after the disposal or had a lesser interest in the copyright after the disposal, the amount deemed to be receivable by the taxpayer shall be deemed to be receivable in respect of the disposal by the taxpayer of his interest in the copyright or of a part of his interest in the copyright, as the case may be;
 - (g) where the disposal is deemed to have occurred by virtue of subsection (4) or is a disposal to which paragraph (13)(a) applies, the amount deemed to be receivable by the taxpayer shall be deemed to be receivable, in respect of the disposal by the taxpayer of a part of his interest in the copyright.
- (11) In determining for the purposes of subsection (10) whether a partnership has disposed of the whole or part of a copyright or of an interest in a copyright and in determining the amount of consideration receivable by the partnership in respect of the disposal, subsections (4), (5), (6) and (13) apply as if the partnership were a taxpayer.
- (12) Where:
- (a) a taxpayer has disposed of the whole or a part of the taxpayer's interest in a copyright;
 - (b) by reason of that disposal, an amount would, but for subsection 124T(3), be included in the assessable income of the taxpayer of a year of income under section 124P or would

be applied, under section 124N or 124S, in reducing the residual value, for the purposes of Division 10B, of a unit of industrial property owned by the taxpayer; and

- (c) but for this subsection, this section would apply, in relation to a year of income, to the amount of the consideration receivable by the taxpayer in respect of the disposal;

the amount to which this section applies by virtue of the disposal is the amount of the consideration referred to in paragraph (c) reduced by the amount that would be included in the assessable income of the taxpayer, or would be applied under section 124N or 124S, as mentioned in paragraph (b).

- (13) In this section:

- (a) a reference to a disposal by a taxpayer of the whole or a part of the taxpayer's interest in a copyright in a film includes a reference to the assignment by the taxpayer of a right to receive amounts as consideration for the use of, or the right to use, the copyright or the film;
- (b) a reference to an amount derived by a taxpayer as consideration for the use of, or the right to use, a copyright in a film includes a reference to an amount derived as consideration for the granting of a licence in respect of copyright in the film that is to come into existence at a future time or upon the happening of a future event;
- (c) a reference to the value of property at a particular time shall, if there is insufficient evidence of the value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable;
- (d) a reference to the expenditure of capital moneys is a reference to the expenditure of moneys that is expenditure of a capital nature;
- (e) a reference to a taxpayer becoming the owner of an interest in copyright includes a reference to the taxpayer becoming the owner of the copyright; and
- (f) a reference to copyright, in relation to a film, is a reference to the copyright subsisting in the film by virtue of Part IV of the *Copyright Act 1968* and includes a reference to copyright subsisting in, or in relation to, the film or in any work comprised in the film, under the law of a country other than Australia.

26AH Bonuses and other amounts received in respect of certain short-term life assurance policies

- (1) In this section, unless the contrary intention appears:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

assurance year, in relation to an eligible policy, means the period of 12 months commencing on, or on any anniversary of, the date of commencement of risk of the policy.

date of commencement of risk, in relation to an eligible policy, means the date of commencement of the period in respect of which the first or only premium paid under the policy was paid or, if the first or only premium was not paid in respect of a period, the date on which that premium was paid.

eligible period, in relation to an eligible policy, means the period of 10 years commencing on the date of commencement of risk of the policy.

eligible policy means a life assurance policy in relation to which the date of commencement of risk is after 27 August 1982, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003.

eligible reckoning date, in relation to an eligible policy, means the date of commencement of an assurance year that, for the purposes of an application of subsection (13), is the premium increase year referred to in that subsection.

- (2) Where a paid-up life assurance policy is issued to a taxpayer in lieu of an eligible policy:
- (a) the paid-up policy shall, for the purposes of this section, be deemed to be a continuation of the eligible policy; and
 - (b) no amount shall be taken for the purposes of subsection (4) to have been re-invested or otherwise dealt with on behalf of the taxpayer or as he directs in connection with the issue of the paid-up policy to the taxpayer in lieu of the eligible policy.

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- (3) This section applies to any amount received after 27 August 1982 under an eligible policy.
- (4) For the purposes of this section, but subject to subsection (5), a taxpayer shall be taken to have received an amount under or in relation to an eligible policy although the amount is not actually paid to the taxpayer but is re-invested or otherwise dealt with on his behalf or as he directs.
- (5) Subsection (4) does not apply in relation to an amount in relation to an eligible policy if the amount is re-invested or otherwise dealt with on behalf of the taxpayer or as the taxpayer directs so as to increase the amount that might reasonably be expected to be received under the eligible policy on a surrender or maturity of the eligible policy.
- (6) Where, during the eligible period in relation to an eligible policy, a taxpayer receives an amount (in this subsection referred to as the *relevant amount*) under the policy as or by way of a bonus, being an amount that, but for this section, would not be included in the assessable income of the taxpayer of any year of income, the assessable income of the taxpayer of the year of income in which the relevant amount is received shall include:
 - (a) if the relevant amount is received during the first 8 years of the eligible period—an amount equal to the relevant amount;
 - (b) if the relevant amount is received during the ninth year of the eligible period—an amount equal to two-thirds of the relevant amount; or
 - (c) if the relevant amount is received during the tenth year of the eligible period—an amount equal to one-third of the relevant amount.
- (6A) If, during the year of income, an amount referred to in subsection (6) is received during the eligible period in relation to an eligible policy held by the trustee of a non-complying superannuation fund:
 - (a) subsection (6) does not apply to the amount; and
 - (b) the amount is included in the assessable income of the fund of the year of income.
- (7) Subsection (6) does not apply to any amount received by a taxpayer in a year of income under an eligible policy where:

- (a) the amount is received in consequence of:
 - (i) the death of the person on whose life the policy was effected; or
 - (ii) an accident, illness or other disability suffered by the person on whose life the policy was effected; or
 - (aa) the eligible policy is an RSA; or
 - (b) the eligible policy is held by the trustee of:
 - (i) a complying superannuation fund; or
 - (ii) a complying approved deposit fund; or
 - (iii) a pooled superannuation trust; or
 - (ba) the eligible policy is issued by a life assurance company and the company's liabilities under the policy are to be discharged out of:
 - (i) complying superannuation/FHSA assets within the meaning of the *Income Tax Assessment Act 1997*; or
 - (ii) segregated exempt assets within the meaning of that Act; or
 - (c) except where the policy was effected, purchased or taken on assignment with a view to it being forfeited, surrendered or otherwise terminated, or to it maturing, within 10 years—the amount was received by the taxpayer by reason of the forfeiture, surrender or other termination of the whole or a part of the policy in circumstances arising out of serious financial difficulties of the taxpayer.
- (8) Where:
- (a) subsection (6) would, but for this subsection, apply to an amount (in this subsection referred to as the **relevant amount**) received by a taxpayer by reason of the forfeiture, surrender or other termination of the whole or a part of an eligible policy; and
 - (b) the Commissioner, having regard to:
 - (i) the total amount of premiums paid under the eligible policy;
 - (ii) the total amounts received by the taxpayer or by any other person under the eligible policy and the total amounts of bonuses included in the amounts so received;

- (iii) the amount of the surrender value of the eligible policy at the time when the forfeiture, surrender or other termination occurred; and
- (iv) such other matters as the Commissioner considers relevant, is of the opinion that it would be unreasonable for subsection (6) to apply to the relevant amount or to a part of the relevant amount;

subsection (6) does not apply to the relevant amount, or to that part of the relevant amount, as the case may be.

(9) Where:

- (a) otherwise than as or by way of a bonus, a taxpayer receives an amount (in this subsection referred to as the **relevant amount**) under an eligible policy; and
- (b) the Commissioner is of the opinion that the relevant amount or a part of the relevant amount represents the whole or part of:
 - (i) a bonus that has accrued or has been declared in respect of the policy; or
 - (ii) a bonus that can reasonably be expected to accrue in respect of the policy;

the relevant amount or the part of the relevant amount, as the case may be, shall, for the purposes of subsection (6), be deemed to have been received by the taxpayer under the policy as or by way of a bonus.

(10) Where:

- (a) subsection (9) applies by reason that the Commissioner has formed an opinion under paragraph (9)(b) that the whole or a part of an amount received by a taxpayer represents the whole or a part of a bonus; and
- (b) the taxpayer subsequently receives an amount (in this subsection referred to as the **actual bonus**), being the whole or a part of the bonus, or of the part of the bonus, as the case may be, referred to in paragraph (a) of this subsection;

the following provisions have effect:

- (c) the operation of subsection (9) is not affected by the receipt of the actual bonus; and
- (d) no part of the actual bonus shall be included in the assessable income of the taxpayer.

- (11) Where, in relation to an eligible policy, a taxpayer receives an amount from the assurer, or from another person at the request of, or under an agreement with, the assurer, by way of an advance or loan in respect of which interest is not payable or in respect of which interest is payable at a rate less than the rate of interest that could reasonably be expected to be payable in respect of a loan of the same amount made on similar terms and conditions by the assurer or the other person, as the case may be, to a person with whom the assurer or that other person was dealing at arm's length, the amount shall, for the purposes of subsection (9), be deemed to be an amount to which paragraph (9)(a) applies.
- (12) Where an eligible policy, or any right to receive any benefits that have accrued, or will or may reasonably be expected to accrue, under an eligible policy, is sold or assigned in whole or in part by a taxpayer during the eligible period in relation to the policy:
- (a) the amount of any consideration received by the taxpayer in respect of that sale or assignment shall be deemed to be an amount to which paragraph (9)(a) applies; and
 - (b) subsections (9) and (10) apply in relation to that consideration as if "represents" were omitted from paragraphs (9)(b) and (10)(a) and "is attributable" to were substituted.
- (13) Where the amount of the premiums payable under an eligible policy in relation to an assurance year (in this subsection referred to as the *premium increase year*) exceeds by more than 25% the amount of the premiums payable under the policy in relation to the immediately preceding assurance year, the eligible period in relation to the policy shall, for the purposes of:
- (a) the application of subsection (6) in relation to any amount received under the policy after the date of commencement of the premium increase year and before the first subsequent eligible reckoning date (if any) in relation to the eligible policy; and
 - (b) the application of subsection (12) in relation to any sale or assignment of the policy after the date of commencement of the premium increase year and before the first subsequent eligible reckoning date (if any) in relation to the eligible policy;
- be reckoned from the date of commencement of the premium increase year.
-

- (14) This section has effect in relation to an eligible policy in relation to which the date of commencement of risk is on or before 7 December 1983 as if:
- (a) “10 years” were omitted from the definition of *eligible period* in subsection (1) and “4 years” were substituted;
 - (b) “8 years”, “ninth year” and “tenth year” were omitted from subsection (6) and “2 years”, “third year” and “fourth year” respectively were substituted; and
 - (c) “10 years” were omitted from paragraph (7)(c) and “4 years” were substituted.

26AJ Investment-related lottery winnings to be included in assessable income

- (1) If:
- (a) either:
 - (i) a loan benefit is provided to a taxpayer, or to another person, in respect of a year of income (in this subsection called the *current year of income*); or
 - (ii) an amount (other than loan principal) is paid or credited to a taxpayer, or to another person, during a year of income (in this subsection also called the *current year of income*); or
 - (iii) other property or services are provided to a taxpayer, or to another person, during a year of income (in this subsection also called the *current year of income*); and
 - (b) the making of a loan, the payment or crediting of the amount, or the provision of the property or services, as the case may be, is by way of winnings from:
 - (i) betting (including pool betting); or
 - (ii) a lottery or other form of gambling; or
 - (iii) a game with prizes; and
 - (c) the chance to participate in the betting, lottery, gambling or game (in this subsection called the *betting chance*) was provided:
 - (i) wholly or partly in respect of an investment held by the taxpayer in or with a third person (who may be an associate of the taxpayer) (in this subsection called the *investment body*); or

- (ii) wholly or partly in relation directly or indirectly to such an investment; and
- (d) the betting, lottery, gambling or game was organised by, or on behalf of:
 - (i) the investment body (either acting alone or together with one or more other persons); or
 - (ii) an associate of the investment body (either acting alone or together with one or more other persons); and
- (e) if the recipient of the loan benefit, amount or property or services, as the case may be, is a person other than the taxpayer—either:
 - (i) the other person is an associate of the taxpayer; or
 - (ii) the loan benefit, amount or property or services, as the case may be, is provided under an arrangement to which the taxpayer, or an associate of the taxpayer, is a party; and
- (f) no part of the value of the betting chance is included in the assessable income of the taxpayer of any year of income; and
- (g) the provision of the betting chance is neither:
 - (i) a fringe benefit; nor
 - (ii) a benefit that, apart from paragraph (g) of the definition of *fringe benefit* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit;

then:

- (h) if subparagraph (a)(i) applies—the taxpayer’s assessable income of the current year of income includes the amount (if any) by which the benchmark amount of interest in relation to the loan in respect of the current year of income exceeds the amount of interest that has accrued on the loan in respect of the current year of income; or
- (i) if subparagraph (a)(ii) applies—the taxpayer’s assessable income of the current year of income includes the amount paid or credited; or
- (j) if subparagraph (a)(iii) applies—the taxpayer’s assessable income of the current year of income includes the arm’s length value of the property or services, reduced by the recipient’s contribution (if any).

(2) If:

- (a) apart from this subsection, an amount (in this subsection called the **gross assessable amount**) is included in a taxpayer's assessable income of a year of income under paragraph (1) (h) in respect of a loan benefit; and
- (b) assuming that:
 - (i) the recipient of the loan benefit had, on the last day of the period (in this subsection called the **loan period**) during the year of income when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid unreimbursed interest (in this subsection called the **gross interest**), in respect of the loan, in respect of the loan period; and
 - (ii) the amount of the gross interest was equal to the benchmark amount of interest in relation to the loan in respect of the year of income;

a once-only deduction (in this subsection called the **gross deduction**) would, or would apart from section 82A, and Subdivisions F and GA of Division 3 of this Part, of this Act, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient in respect of the gross interest;

the gross assessable amount is reduced by:

- (c) if no interest accrued on the loan in respect of the loan period—the amount of the gross deduction; or
- (d) in any other case—the amount worked out using the formula:

Gross deduction – Reducing amount

where:

Gross deduction means the amount of the gross deduction.

Reducing amount means the amount (if any) that would, or that would apart from section 82A, and Subdivisions F and GA of Division 3 of this Part, of this Act, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient in respect of the interest that accrued on the loan in respect of the loan period if that interest had been incurred and paid by the recipient on the last day of the loan period.

- (3) If:
- (a) apart from this subsection, an amount (in this subsection called the **gross assessable amount**) is included in a taxpayer's assessable income of a year of income under paragraph (1)(j) in respect of the provision of property or services; and
 - (b) assuming that:
 - (i) the recipient of the property or services had, at the time the property or services were provided, incurred and paid unreimbursed expenditure in respect of the provision of the property or services; and
 - (ii) the expenditure was equal to the amount of the arm's length value of the property or services;a once-only deduction would, or would apart from section 82A, and Subdivisions F and GA of Division 3 of this Part, of this Act, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient in respect of a percentage (in this subsection called the **deductible percentage**) of the expenditure;
the gross assessable amount is reduced by the deductible percentage.
- (4) For the purposes of the application of this section to a taxpayer, if a person (in this subsection called the **provider**) makes a loan to another person (who may be the taxpayer) (in this subsection called the **recipient**):
- (a) the making of the loan is taken to constitute a loan benefit provided by the provider to the recipient; and
 - (b) that loan benefit is taken to be provided in respect of each year of income of the taxpayer during the whole or part of which the recipient is under an obligation to repay the whole or any part of the loan.
- (5) For the purposes of this section, if a person (in this subsection called the **provider**) makes a deferred interest loan (in this subsection called the **principal loan**) to another person (in this subsection called the **recipient**):
- (a) the provider is taken, at the end of:
 - (i) the period of 6 months commencing on the day on which the principal loan was made; and
 - (ii) each subsequent period of 6 months;

- (being in either case a period during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this subsection called the *deemed loan*) to the recipient; and
- (b) the amount of the deemed loan is equal to the amount by which the interest (in this subsection called the *accrued interest*) that has accrued on the principal loan in respect of that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period; and
 - (c) if any part of the accrued interest becomes payable or is paid after the time when the deemed loan is taken to have been made, the deemed loan is to be reduced accordingly; and
 - (d) the deemed loan is taken to have been made at a nil rate of interest.
- (6) For the purposes of this section, if no interest is payable in respect of a loan, a nil rate of interest is taken to be payable in respect of the loan.
- (7) For the purposes of this section, a person is taken to be under an obligation to pay or repay an amount even though the amount is not due for payment or repayment.
- (8) For the purposes of this section, if a person does anything that results in the creation of property in another person, the first-mentioned person is taken to have provided that property to the other person at the time when the property comes into existence.
- (9) For the purposes of this section, if:
- (a) a particular mode of application of money by a taxpayer in relation to another person (in this subsection called the *investment body*) would not, apart from this subsection, be an investment; and
 - (b) a chance to participate in:
 - (i) betting (including pool betting); or
 - (ii) a lottery or other form of gambling; or
 - (iii) a game with prizes;is provided to the taxpayer or a third person:
 - (iv) wholly or partly in respect of the mode of application of money by the taxpayer; or

- (v) wholly or partly in relation directly or indirectly to the mode of application of money by the taxpayer; and
- (c) if a cash payment had been provided by the investment body to the taxpayer instead of that chance, the payment would constitute, to any extent, a return on an investment held by the taxpayer in or with the investment body;
- the mode of application of money is taken to be an investment held by the taxpayer with the investment body.
- (10) If a ballot is held to determine the order in which loans are to be made by a Starr-Bowkett building society to its members, then the making of a loan in accordance with the ballot is not covered by paragraph (1)(b).
- (11) In this section:

arm's length value, in relation to property or services, means:

- (a) the amount that the recipient could reasonably have been expected to have been required to pay to obtain the property or services from the provider under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction; or
- (b) if such an amount cannot be practically determined—such amount as represents a reasonable valuation of the property or services.

arrangement means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

associate has the same meaning in relation to a person as that expression has in relation to a person in section 318.

benchmark amount of interest, in relation to a loan, in relation to a year of income, means the amount of interest that would have accrued on the loan in respect of the year of income if the interest was calculated on the daily balance of the loan at the benchmark interest rate in relation to the year of income.

benchmark interest rate, in relation to a year of income, means the predominant per cent per annum interest rate on new, variable interest rate housing loans to individuals for owner-occupation that is specified, for the June immediately preceding the financial year to which the year of income relates, in the “Interest Rates and Yields: Banks” table in the Statistical Directory of the *Reserve Bank of Australia Bulletin* dated July in that financial year.

deferred interest loan means a loan in respect of which interest is payable at a rate exceeding nil, other than:

- (a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or
- (b) a loan where:
 - (i) the interest is payable by instalments; and
 - (ii) the intervals between instalments do not exceed 6 months; and
 - (iii) the first instalment is due for payment within 6 months after the loan is made.

investment means any mode of application of money for the purpose of gaining a return.

loan includes:

- (a) an advance of money; and
- (b) the provision of credit or any other form of financial accommodation; and
- (c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether express or implied) to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit has the meaning given by subsection (4).

once-only deduction, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income.

person means any of the following:

- (a) a company;
- (b) a partnership;

- (c) a person in the capacity of trustee;
- (d) any other person.

provide:

- (a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise); and
- (b) in relation to services—includes allow, confer, give, grant or perform.

recipient's contribution, in relation to property or services, means the amount of any consideration paid to the provider by the recipient in respect of the provision of the property or services, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration.

return, in relation to an investment, includes interest, income or profit.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
 - (ii) the provision of, or the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

unreimbursed expenditure means expenditure no part of which has been reimbursed.

unreimbursed interest means interest no part of which has been reimbursed.

26BB Assessability of gain on disposal or redemption of traditional securities

(1) In this section:

acquire, in relation to a security, means acquire, on issue, purchase, transfer, assignment or otherwise, the security or the right to receive payment of the amount or amounts payable under the security.

connected entity has the same meaning as in the *Income Tax Assessment Act 1997*.

dispose, in relation to a security, means sell, transfer, assign or dispose of in any way the security or the right to receive payment of the amount or amounts payable under the security.

eligible return has the same meaning as in Division 16E.

periodic interest has the same meaning as in Division 16E.

security has the same meaning as in Division 16E.

traditional security, in relation to a taxpayer, means a security held by the taxpayer that:

(a) is or was acquired by the taxpayer after 10 May 1989;

(b) either:

(i) does not have an eligible return; or

(ii) has an eligible return, where:

(A) the precise amount of the eligible return is able to be ascertained at the time of issue of the security; and

(B) that amount is not greater than 1¹/₂ % of the amount calculated in accordance with the formula:

$$\text{Payments} \times \text{Term}$$

where:

Payments is the amount of the payment or of the sum of the payments (excluding any periodic interest) liable to be made under the security when held by any person; and

Term is the number (including any fraction) of years in the term of the security.

- (c) is not a prescribed security within the meaning of section 26C; and
 - (d) is not trading stock of the taxpayer.
- (2) Where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any gain on the disposal or redemption shall be included in the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.
- (3) Where the Commissioner, having regard to any connection between the parties to the transaction by which the taxpayer disposed of the traditional security or by which it was redeemed, or by which the taxpayer acquired the traditional security, is satisfied that the parties were not dealing with each other at arm's length in relation to the transaction, then, for the purposes of determining under subsection (2) the amount of any gain on the disposal or redemption, the consideration for the transaction shall be taken to be:
- (a) the amount that might reasonably be expected for the transaction if the parties were independent parties dealing at arm's length with each other; or
 - (b) where, for any reason it is not possible or practicable for the Commissioner to ascertain that amount—such amount as the Commissioner determines.
- (4) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:
- (a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:
 - (i) the issuer of the traditional security; or
 - (ii) a connected entity of the issuer of the traditional security; and
 - (b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:
 - (i) the issuer of the traditional security; or
 - (ii) the connected entity.

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- (5) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:
- (a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:
 - (i) the issuer of the traditional security; nor
 - (ii) a connected entity of the issuer of the traditional security; and
 - (b) in the case of a disposal—the disposal is to:
 - (i) the issuer of the traditional security; or
 - (ii) a connected entity of the issuer of the traditional security; and
 - (c) the traditional security was issued on the basis that it will or may be:
 - (i) disposed of to the issuer of the traditional security or to the connected entity; or
 - (ii) redeemed;in exchange for ordinary shares in the company.

26BC Securities lending arrangements

- (1) In this section:

convertible note:

- (a) in relation to a company—has the same meaning as in Division 3A; or
- (b) in relation to a unit trust—means a note issued by the trustee of the unit trust, being a note that, if the unit trust were a company, would be a convertible note issued by the company, and includes a note that would be a convertible note within the meaning of Division 3A if:
 - (i) references in that Division to a company were references to a unit trust, or to the trustee of the unit trust, as the context requires; and
 - (ii) references in that Division to shares were references to units.

debenture, in relation to a unit trust, means an instrument issued by the trustee of the unit trust, being an instrument that, if the unit trust were a company, would be a debenture issued by the company.

distribution includes:

- (a) interest; or
- (b) a dividend; or
- (c) a share issued by a company to a shareholder in the company where the share is issued:
 - (i) as a bonus share; or
 - (ii) in the circumstances mentioned in subsection 6BA(1);
or
- (d) an amount credited by the trustee of a unit trust to a unit holder as a unit holder; or
- (e) a unit issued by the trustee of a unit trust to which section 130-20 of the *Income Tax Assessment Act 1997* applies (apart from subsection (4) of that section).

eligible security means:

- (a) a share, bond, debenture, convertible note, right, option or similar financial instrument issued by a public company; or
- (b) a unit, bond, debenture, convertible note, right, option or similar financial instrument issued by the trustee of:
 - (i) a listed unit trust; or
 - (ii) a unit trust any of the units of which were offered to the public; or
- (c) a bond, debenture, right, option or similar financial instrument issued by a government or by an authority of a government.

government means:

- (a) the Commonwealth, a State or a Territory; or
- (b) the government of, or of a part of, a foreign country.

listed company means a company any of the shares of which are listed for quotation in the official list of a stock exchange in Australia or elsewhere.

listed unit trust means a unit trust any of the units of which are listed for official quotation in the official list of a stock exchange in Australia or elsewhere.

option:

- (a) in relation to a company—means an option to acquire shares in the company; or

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- (b) in relation to a unit trust—means an option to acquire units in the unit trust; or
- (c) in relation to a government or an authority of a government—means an option to acquire a bond, debenture or similar financial instrument issued by the government or by the authority.

public company means:

- (a) a listed company; or
- (b) a mutual life assurance company; or
- (c) a company in which a government or an authority of a government has a controlling interest; or
- (d) a company that is a 100% subsidiary of a company covered by paragraph (a), (b) or (c).

right:

- (a) in relation to a company—means a right to acquire shares in the company or to acquire an option; or
 - (b) in relation to a unit trust—means a right to acquire units in the unit trust or to acquire an option; or
 - (c) in relation to a government or an authority of a government—means a right to acquire a bond, debenture or similar financial instrument issued by the government or by the authority or to acquire an option.
- (2) If an eligible security is held by a person as trustee for another person who is absolutely entitled to the eligible security as against the trustee, this section applies as if the eligible security were vested in the other person and any acts of the trustee were the acts of that other person.
- (3) This section applies where:
- (a) under a written agreement of the kind known as a securities lending arrangement, being an agreement that was entered into after 9 May 1990:
 - (i) at a particular time (in this section called the **original disposal time**), a taxpayer (in this section called the **lender**) disposed of an eligible security (in this section called the **borrowed security**) to another taxpayer (in this section called the **borrower**); and

- (ii) at a later time (in this section called the ***re-acquisition time***), being less than 12 months after the original disposal time, the lender:
 - (A) re-acquired the borrowed security (which re-acquired security is in this section called the ***replacement security***) from the borrower; or
 - (B) acquired an identical security (which acquired security is in this section also called the ***replacement security***) from the borrower; and
 - (b) both the borrower and the lender were dealing with each other at arm's length in relation to each of the transactions mentioned in paragraph (a); and
 - (c) if any of the following events occurred during the period (in this section called the ***borrowing period***) commencing at the original disposal time and ending at the re-acquisition time:
 - (i) the making or payment of a distribution (whether in property or money) in respect of the borrowed security;
 - (ii) the issue, by the company, trustee, government or government authority concerned, of a right or option in respect of the borrowed security;
 - (iii) if the borrowed security is a right or option:
 - (A) the giving of a direction by the lender to the borrower to exercise the right or option; or
 - (B) the giving of a direction by the lender to the borrower to exercise an identical right or option;
- then (even if the event occurred after the borrowed security was disposed of by the borrower to a third party), the lender receives from the borrower, under the agreement:
- (iv) if subparagraph (i) applies:
 - (A) the distribution; or
 - (B) if the distribution is in property—identical property; or
 - (C) a payment (in this section called the ***compensatory payment***) equal to the value to the lender of the distribution; or
 - (v) if subparagraph (ii) applies:
 - (A) the right or option; or
 - (B) an identical right or option; or

- (C) a payment (in this section also called the *compensatory payment*) equal to the value to the lender of the right or option; or
- (vi) if subparagraph (iii) applies:
 - (A) the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option; or
 - (B) shares, units, bonds, debentures or financial instruments that are identical to those that resulted from, or that would have resulted from, exercising the right or option; or
 - (C) a payment (in this section also called the *compensatory payment*) equal to the value to the lender of the shares, units, bonds, debentures or financial instruments that resulted from, or would have resulted from, exercising the right or option; and
- (d) if the total consideration payable or to be given by the borrower under the agreement consists of:
 - (i) the transfer of, or the promise to transfer, the replacement security or replacement securities concerned; and
 - (ii) other consideration (in this paragraph called the *notifiable consideration*);the agreement contains:
 - (iii) if the notifiable consideration is wholly covered by one of the following categories:
 - (A) a fee;
 - (B) an adjustment for variations in the market value of eligible securities;
 - (C) other consideration;a statement specifying the category concerned and setting out such information as will enable the amount or value of the notifiable consideration to be readily ascertained; or
 - (iv) if the notifiable consideration is covered by 2 or more of the following categories:
 - (A) a fee;

- (B) an adjustment for variations in the market value of eligible securities;
 - (C) other consideration;
a statement dissecting the notifiable consideration into those categories in such a manner as will enable the amount or value of each category to be readily ascertained; and
 - (e) the lender does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the borrower under the agreement.
- (3A) For the purposes of paragraph (3)(c), if, apart from this subsection, either of the following events occurred after the commencement of the borrowing period:
- (a) the making or payment of a distribution (whether in property or money) in respect of the borrowed security;
 - (b) the issue, by the company, trustee, government or government authority concerned, of a right or option in respect of the borrowed security;
- (even if the event occurred after the borrowed security was disposed of by the borrower to a third party), the event is taken to have occurred during the borrowing period if, and only if, (assuming that the borrower had held the borrowed security at all times during the borrowing period) the entitlement to the distribution or issue would have been attributable to the borrower's holding of the borrowed security at a particular time during the borrowing period.
- (4) In determining:
- (a) whether an amount (other than a fee payable under the securities lending arrangement) is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or
 - (b) whether an amount is allowable as a deduction to the lender; in respect of either or both of the transactions covered by paragraph (3)(a), the lender is to be treated as if:
 - (c) neither of those transactions had been entered into; and
 - (d) the lender had held the borrowed security at all times during the borrowing period; and
-

- (e) if the replacement security is not the borrowed security—the replacement security were the borrowed security.
- (4A) If the lender receives a compensatory payment covered by subparagraph (3)(c)(v)(C), then, in determining whether an amount is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*, the lender is to be treated as if:
 - (a) the lender had held the borrowed security at all relevant times during the borrowing period; and
 - (b) the right or option had been issued directly to the lender in respect of the borrowed security; and
 - (c) the lender had disposed of the right or option immediately after its issue for a consideration equal to the compensatory payment.
- (4B) If the lender receives a compensatory payment covered by subparagraph (3)(c)(vi)(C), then, in determining whether an amount is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*, the lender is to be treated as if:
 - (a) the lender had held the right or option at all relevant times during the borrowing period; and
 - (b) the lender had exercised the right or option; and
 - (c) the lender had immediately disposed of the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option for a consideration equal to the compensatory payment.
- (5) In determining:
 - (a) whether an amount is included in the assessable income of the borrower under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or
 - (b) an amount (other than a fee payable under the securities lending arrangement) is allowable as a deduction to the borrower;in respect of either or both of the transactions covered by paragraph (3)(a):
 - (c) if the borrowed security was disposed of by the borrower to a third party:

- (i) the borrower is to be treated as if the borrower had acquired the borrowed security from the lender for a consideration equal to the market value of the borrowed security at the time of its acquisition; and
 - (ii) the borrower is to be treated as if the borrower had disposed of the replacement security to the lender for a consideration equal to the market value of the borrowed security at the time of its acquisition from the lender; or
 - (d) in any other case—the borrower is to be treated as if neither of the transactions referred to in paragraph (3)(a) had been entered into.
- (6) Any capital gain or capital loss from the disposal of the borrowed security by the lender is disregarded.
- (6A) If the lender acquired the borrowed security before 20 September 1985, the lender is taken (for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*) to have acquired the replacement security before that day.
- (6B) If the lender acquired the borrowed security on or after 20 September 1985, the first element of the cost base of the replacement security is the cost base of the borrowed security just before the acquisition of the replacement security. The reduced cost base of the replacement security is worked out similarly.
- (7) If:
- (a) the borrowed security was acquired on or after 20 September 1985; and
 - (b) a CGT event (other than one involving a transaction covered by subsection (3)) happens in relation to the replacement security at least 12 months after the lender acquired a paired security in relation to the replacement security (otherwise than under a transaction covered by subsection (3));
- section 114-10 of the *Income Tax Assessment Act 1997* (about the requirement for 12 months ownership) does not apply to the CGT event.
- (8) For the purposes of subsection (7):
- (a) if CGT event A1 happens (involving a transaction covered by subsection (3)) by the lender disposing of an eligible security to the borrower, that security is a paired security in relation to

the replacement security subsequently acquired or re-acquired by the lender; and

- (b) a security is a paired security in relation to a second security if the first security is a paired security in relation to a third security that is a paired security in relation to the second security (including a pairing with the second security by another application or other applications of this paragraph).
- (9) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower:
- (a) if the borrower disposes of the borrowed security to a third party:
 - (i) the first element of the cost base and reduced cost base of the borrowed security (in the hands of the borrower) is taken to be its market value when the borrower acquired it; and
 - (ii) when the borrower disposes of a replacement security to the lender, the capital proceeds from that CGT event are taken to be that market value; and
 - (b) if no third party is involved—the transactions referred to in paragraph (3)(a) are ignored.
- (9A) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower, the incidental costs to the borrower of the acquisition of an eligible security covered by subparagraph (3)(a)(ii)(B) include a compensatory payment incurred by the borrower (to the extent that the borrower has not deducted and cannot deduct it).
- (9B) For the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a right or option received by the lender as mentioned in subparagraph (3)(c)(v), the borrower and lender are to be treated as if the eligible security in respect of which the right or option was issued had been held by the lender at the time of the acquisition of the right or option.
- (9C) For the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a share, unit, bond, debenture or financial instrument received by the lender as mentioned in subparagraph (3)(c)(vi), the borrower and the lender are to be treated as if:

- (a) the share, unit, bond, debenture or financial instrument had been received as the result of the exercise of the borrowed security; and
 - (b) the borrowed security had been held by the lender at the time of the exercise; and
 - (c) the lender had exercised the borrowed security; and
 - (d) the lender had exercised the borrowed security at the time the direction concerned was given; and
 - (e) the amount of the contribution (if any) made by the lender to the borrower in respect of the carrying out of the direction were an amount paid as consideration by the lender in respect of the exercise.
- (9D) If a distribution covered by subparagraph (3)(c)(i) consists of one or more shares issued by a company to the borrower or to a third party in the circumstances mentioned in subsection 6BA(1), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a share (in this subsection called the **notional bonus share**) received by the lender in relation to the distribution in the circumstances mentioned in sub-subparagraph (3)(c)(iv)(A) or (B), the borrower and the lender are to be treated as if:
- (a) the company had issued the notional bonus share to the lender instead of the borrower or the third party, as the case requires; and
 - (b) the notional bonus share had been issued in the circumstances mentioned in subsection 6BA(1); and
 - (c) the notional bonus share had been issued in respect of the borrowed security; and
 - (d) the lender had held the borrowed security at the time the notional bonus share was issued.
- (9E) If a distribution covered by subparagraph (3)(c)(i) consists of one or more units issued by the trustee of a unit trust to the borrower or to a third party in the circumstances covered by section 130-20 of the *Income Tax Assessment Act 1997*, then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a unit (in this subsection called the **notional bonus unit**) received by the lender in relation to the distribution in the circumstances mentioned in sub-subparagraph (3)(c)(iv)(A) or (B), the borrower and the lender are to be treated as if:

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- (a) the trustee had issued the notional bonus unit to the lender instead of the borrower or the third party, as the case requires; and
 - (b) the notional bonus unit had been issued in the circumstances covered by section 130-20 of the *Income Tax Assessment Act 1997*; and
 - (c) the notional bonus unit had been issued in respect of the borrowed security; and
 - (d) the lender had held the borrowed security at the time the notional bonus unit was issued.
- (9F) If the lender receives a compensatory payment covered by subparagraph (3)(c)(v)(C), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the lender, the lender is to be treated as if:
- (a) the lender had held the borrowed security at all relevant times during the borrowing period; and
 - (b) the right or option had been issued directly to the lender in respect of the borrowed security; and
 - (c) the lender had disposed of the right or option immediately after its issue and had received capital proceeds of an amount equal to the compensatory payment.
- (9G) If the lender receives a compensatory payment covered by subparagraph (3)(c)(vi)(C), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the lender, the lender is to be treated as if:
- (a) the lender had held the right or option at all relevant times during the borrowing period; and
 - (b) the lender had exercised the right or option; and
 - (c) the lender had immediately disposed of the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option and had received capital proceeds of an amount equal to the compensatory payment.
- (11A) If:
- (a) the lender receives from the borrower a distribution or identical property covered by subparagraph (3)(c)(iv); and
 - (b) assuming that the borrowed security had continued to be held by the lender, an amount (in this subsection called the ***otherwise assessable amount***) would have been included in

the lender's assessable income of a year of income in respect of the distribution concerned;

the lender's assessable income of the year of income includes an amount equal to the otherwise assessable amount.

(11B) If:

- (a) the lender receives from the borrower a compensatory payment covered by sub-subparagraph (3)(c)(iv)(C); and
- (b) assuming that the borrowed security had continued to be held by the lender, an amount (in this subsection called the *otherwise assessable amount*) would have been included in the lender's assessable income of a year of income in respect of the distribution concerned;

the lender's assessable income of the year of income includes an amount equal to the otherwise assessable amount.

(12) Where:

- (a) a taxpayer has entered into a transaction of a kind referred to in subparagraph (3)(a)(i); and
- (b) at the time of making an assessment in respect of income of the taxpayer of the year of income in which the transaction occurred, the Commissioner is of the opinion that, at a later time, circumstances will exist because of which this section will apply in connection with that transaction;

the Commissioner may apply the provisions of this section as if those circumstances existed at the time of making the assessment.

(13) Where:

- (a) in the making of an assessment, this section has been applied on the basis that a circumstance that did not exist at the time of making the assessment would exist at a later time; and
- (b) after the making of the assessment, the Commissioner becomes satisfied that the circumstance will not exist;

then, in spite of anything in section 170, the Commissioner may amend the assessment at any time for the purpose of ensuring that this section is to be taken always to have applied on the basis that the circumstance did not exist.

26C Disposal of certain securities

(1) Where:

- (a) a taxpayer disposes of a prescribed security by sale, gift, conversion or otherwise and the value of the security on the day of the disposal exceeds the cost of the security to the taxpayer; or
- (b) a prescribed security owned by a taxpayer is redeemed and the amount received by the taxpayer upon the redemption exceeds the cost of the security to the taxpayer;

an amount equal to the excess shall be included in the assessable income of the taxpayer.

(2) For the purposes of this section:

- (a) where a prescribed security is disposed of to a person by sale, gift or otherwise, that person shall be deemed to have purchased it at a cost equal to its value on the day of the disposal; and
- (b) where a person who owns a prescribed security dies:
 - (i) that person shall be deemed to have sold the security on the day of his death; and
 - (ii) the person upon whom the security devolves by reason of the death shall be deemed to have purchased it at a cost equal to its value on the day of the death.

(4) In this section:

prescribed security means:

- (a) a seasonal security as defined by, section 4 of the *Loan (Short-term Borrowings) Act 1959*; or
- (b) any stock or other security issued by the Commonwealth that does not bear interest;

and includes an interest in any such seasonal security, stock or other security.

stock means Commonwealth Government Inscribed Stock or Australian Consolidated Inscribed Stock.

26E Income from RSAs

- (1) All benefits provided in respect of, and amounts that are paid from, an RSA (including amounts taken to be paid from an RSA under subsection (2)) are taken to have an Australian source.
- (2) If the premiums of an insurance policy are paid from an RSA, any amounts paid by the insurer under the policy are taken to be paid by the RSA provider as a benefit of the RSA.

27 Interest on loans raised in Australia by governments outside Australia

- (1) The interest on loans raised in Australia, after 31 December 1923, by the government of any country or dominion out of Australia, or by any authority constituted by or under any law of any such country or dominion, and received directly or indirectly by a resident, shall be deemed to be derived by him from a source in Australia, and shall be included in his assessable income.
- (2) For the purposes of this section, a loan shall be deemed to have been raised in Australia if subscriptions to the loan were invited in Australia by public advertisement, by the issue of a prospectus, or otherwise.

Subdivision AA—Non-superannuation annuities etc.

27H Assessable income to include annuities and superannuation pensions

- (1) Subject to Division 54 of the *Income Tax Assessment Act 1997*, the assessable income of a taxpayer of a year of income shall include:
 - (a) the amount of any annuity derived by the taxpayer during the year of income excluding, in the case of an annuity that has been purchased, any amount that, in accordance with the succeeding provisions of this section, is the deductible amount in relation to the annuity in relation to the year of income; and
 - (b) the amount of any payment made to the taxpayer during the year of income as a supplement to an annuity, whether the payment is made voluntarily, by agreement or by compulsion

of law and whether or not the payment is one of a series of recurrent payments.

Note: Division 54 of the *Income Tax Assessment Act 1997* provides a tax exemption for certain payments under structured settlements and structured orders.

- (2) Subject to subsections (3) and (3A), the deductible amount in relation to an annuity derived by a taxpayer during a year of income is the amount (if any) ascertained in accordance with the formula $\frac{A(B - C)}{D}$, where:

A is the relevant share in relation to the annuity in relation to the taxpayer in relation to the year of income.

B is the amount of the undeducted purchase price of the annuity.

C is:

- (a) if there is a residual capital value in relation to the annuity and that residual capital value is specified in the agreement by virtue of which the annuity is payable or is capable of being ascertained from the terms of that agreement at the time when the annuity is first derived—that residual capital value; or
- (b) in any other case—nil; and

D is the relevant number in relation to the annuity.

- (3) Subject to subsection (3A), where the Commissioner is of the opinion that the deductible amount ascertained in accordance with subsection (2) is inappropriate having regard to:
- (a) the terms and conditions applying to the annuity; and
 - (b) such other matters as the Commissioner considers relevant;
- the deductible amount in relation to the annuity derived by the taxpayer during the year of income is so much of the annuity as, in the opinion of the Commissioner, represents the undeducted purchase price having regard to:
- (c) the terms and conditions applying to the annuity;
 - (d) any certificate or certificates of an actuary or actuaries stating the extent to which, in the opinion of the actuary or actuaries, the amount of the annuity derived by the taxpayer during the year of income represents the undeducted purchase price; and

- (e) such other matters as the Commissioner considers relevant.
- (3A) For the purposes of this section, where the annuity derived by a taxpayer during a year of income is part of an annuity of which a part has been commuted in the year of income or a preceding year of income, the deductible amount ascertained under subsection (2) or (3) shall be reduced by such amount as, in the opinion of the Commissioner, is appropriate having regard to:
 - (c) any deductible amount ascertained under this section in relation to the annuity in relation to a preceding year of income; and
 - (d) such other matters as the Commissioner considers relevant.
- (4) In this section:

actuary means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

agreement means any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

annuity means an annuity, a pension paid from a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) or a pension paid from a scheme mentioned in paragraph 290-5(c) of that Act, but does not include:

- (a) an annuity that is a qualifying security for the purposes of Division 16E; or
- (b) a superannuation income stream (within the meaning of the *Income Tax Assessment Act 1997*).

life expectation factor, in relation to a person in relation to an annuity, means the number of years in the complete expectation of life of the person as ascertained by reference to the prescribed Life Tables at the time at the beginning of the period to which the first payment of the annuity relates.

purchase price means:

- (a) in relation to a pension—the sum of:
 - (i) contributions made by any person to a foreign superannuation fund to obtain the pension; and

- (ii) so much as the Commissioner considers reasonable of contributions made by any person to a foreign superannuation fund to obtain superannuation benefits including the pension; and
- (b) in relation to an annuity other than a pension—the sum of:
 - (i) payments made solely to purchase the annuity; and
 - (ii) so much as the Commissioner considers reasonable of payments made to purchase the annuity and to obtain other benefits.

relevant number, in relation to an annuity in relation to a year of income, means:

- (a) where the annuity is payable for a term of years certain—the number of years in the term;
- (b) where the annuity is payable during the lifetime of a person and not thereafter—the life expectation factor of the person; and
- (c) in any other case—the number that the Commissioner considers appropriate having regard to the number of years in the total period during which the annuity will be, or may reasonably be expected to be, payable.

relevant share, in relation to an annuity derived by a taxpayer during a year of income, means:

- (a) in a case where the annuity derived by the taxpayer is a share of an annuity (which annuity is in this paragraph referred to as the **total annuity**) payable to the taxpayer and another person or other persons—the fraction ascertained by dividing the number of whole dollars in the amount of the annuity derived by the taxpayer during the year of income by the number of whole dollars in the amount of the total annuity derived during the year of income by the taxpayer and the other person or persons; or
- (b) in any other case—the number 1.

residual capital value, in relation to an annuity, means the capital amount payable on the termination of the annuity.

undeducted purchase price, in relation to an annuity, has the meaning given by section 27A immediately before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*.

- (5) In the definition of *purchase price* in subsection (4):
- (a) a reference to contributions made by any person to a foreign superannuation fund to obtain a pension does not include a reference to contributions made to a foreign superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer; and
 - (b) a reference to payments made to purchase, or solely to purchase, an annuity (other than a pension) does not include a reference to payments made by an employer, or by another person under an agreement to which the employer is a party, to purchase, or solely to purchase, the annuity for, or for dependants of, an employee of the employer.
- (6) For the purposes of subsection (5), in determining whether a person is an employer of another person, treat the holding of an office by the other person as employment of that person.

Subdivision D—Dividends

43A Subdivision has effect subject to provisions of Division 216 of the *Income Tax Assessment Act 1997*

This Subdivision has effect subject to the provisions of Division 216 of the *Income Tax Assessment Act 1997* (which describes cum dividend sales in which a distribution to a member of a corporate tax entity is treated as having been made to someone else).

43B Application of Subdivision to non-share dividends

- (1) This Subdivision:
- (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.
- (2) Subsection (1) does not apply to section 47A.

- (3) Paragraph (1)(c) does not apply to subsection 44(1).
- (4) Subsection (1) has effect subject to the special provision that is made for non-share dividends in subsection 44(1).

44 Dividends

- (1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) includes:
 - (a) if the shareholder is a resident:
 - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source; and
 - (ii) all non-share dividends paid to the shareholder by the company; and
 - (b) if the shareholder is a non-resident:
 - (i) dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia; and
 - (ii) non-share dividends paid to the shareholder by the company to the extent to which they are derived from sources in Australia; and
 - (c) if the shareholder is a non-resident carrying on business in Australia at or through a permanent establishment of the shareholder in Australia, and the company is a resident:
 - (i) dividends (other than non-share dividends) that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia; and
 - (ii) non-share dividends that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are derived from sources outside Australia.

This subsection does not apply to a dividend (or non-share dividend) to the extent to which another provision of this Act that expressly deals with dividends includes some or all of the dividend (or non-share dividend) in, or excludes some or all of the dividend (or non-share dividend) from, the shareholder's assessable income.

Note 1: Some of the other provisions of this Act that expressly deal with dividends are sections 23AJ, 23AI, 23AK and 128D.

Note 2: An amount declared to be conduit foreign income is not included in assessable income under paragraph (1)(b) or (c): see section 802-15 of the *Income Tax Assessment Act 1997*.

(1B) Where:

(a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share capital account of the company; or

(b) a dividend paid by a company is a repayment by the company of an amount paid-up on a share;

the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.

(2) Subsections (3) and (4) apply to a demerger dividend unless the head entity elects in writing, within one month after it decides which of its shareholders will receive ownership interests in the demerged entity under the demerger, that those subsections do not apply to the total demerger dividend for all shareholders.

(3) This section applies to the demerger dividend as if it had not been paid out of profits.

(4) A demerger dividend is not assessable income or exempt income.

(5) However, subsections (3) and (4) do not apply to a demerger dividend unless, just after the demerger, CGT assets owned by the demerged entity or a demerger subsidiary representing at least 50% by market value of all the CGT assets (or a reasonable approximation of market value) owned by the demerged entity and its demerger subsidiaries are used, directly or indirectly, in one or more businesses carried on by one or more of those entities.

(6) In applying subsection (5), disregard any assets that are ownership interests in a demerger subsidiary unless they are used in a business referred to in that subsection.

(7) In this section:

permanent establishment of a person:

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- (a) has the same meaning as in a double tax agreement (as defined in Part X) that relates to a foreign country and affects the person; or
- (b) has the meaning given by subsection 6(1), if there is no such agreement.

45 Streaming of bonus shares and unfranked dividends

Application of section

- (1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends to its shareholders in such a way that:
 - (a) the shares are received by some shareholders but not all shareholders; and
 - (b) some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.
- (2) The value of the share at the time that the shareholder is provided with the share is taken, for the purposes of this Act, to be a dividend that is unfrankable (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*) and that is paid by the company, out of profits of the company, to the shareholder at that time.
- (3) A dividend is *minimally franked* if it is not franked, or is franked to less than 10%, in accordance with section 202-5 or 208-60 of the *Income Tax Assessment Act 1997*.

45A Streaming of dividends and capital benefits

Application of section

- (1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of capital benefits and the payment of dividends to its shareholders in such a way that:
 - (a) the capital benefits are, or apart from this section would be, received by shareholders (the *advantaged shareholders*) who would, in the year of income in which the capital benefits are

provided, derive a greater benefit from the capital benefits than other shareholders; and

- (b) it is reasonable to assume that the other shareholders (the *disadvantaged shareholders*) have received, or will receive, dividends.

However, it does not apply if section 45 applies in relation to the streaming or in the circumstances set out in subsection (5).

Commissioner to determine that section 45C applies

- (2) The Commissioner may make, in writing, a determination that section 45C applies in relation to the whole, or a part, of the capital benefits. A determination does not form part of an assessment.

Note: Subsection (6) limits the determination to a part of the capital benefit in certain cases.

Meaning of provision of capital benefit

- (3) A reference to the *provision of a capital benefit* to a shareholder in a company is a reference to any of the following:
 - (a) the provision to the shareholder of shares in the company;
 - (b) the distribution to the shareholder of share capital or share premium;
 - (c) something that is done in relation to a share that has the effect of increasing the value of a share (which may or may not be the same share) held by the shareholder.
- (3A) For the purposes of this section, a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return.

Meaning of greater benefit from capital benefits

- (4) The circumstances in which a shareholder would, in a year of income, derive a *greater benefit* from capital benefits than another shareholder include, but are not limited to, any of the following circumstances existing in relation to the first shareholder and not in relation to the other shareholder:
 - (a) some or all of the shares in the company held by the shareholder were acquired, or are taken to have been acquired, before 20 September 1985;
 - (b) the shareholder is a non-resident;

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- (c) the cost base (for the purposes of Part IIIA) of the relevant share is not substantially less than the value of the applicable capital benefit;
- (d) the shareholder has a net capital loss for the year of income in which this capital benefit is provided;
- (e) the shareholder is a private company who would not have been entitled to a rebate under former section 46F if the shareholder had received the dividend that was paid to the disadvantaged shareholder;
- (f) the shareholder has income tax losses.

Certain capital benefits not covered

- (5) This section does not apply where the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, fully franked dividends.

Determination limited in certain cases

- (6) If the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, partly franked dividends, the Commissioner may only make a determination under subsection (2) in relation to so much of the capital benefit as the Commissioner considers relates to the unfranked part of the dividend.

45B Schemes to provide certain benefits

Purpose of section

- (1) The purpose of this section is to ensure that relevant amounts are treated as dividends for taxation purposes if:
 - (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of a demerger; or
 - (b) certain payments, allocations and distributions are made in substitution for dividends.

Application of section

- (2) This section applies if:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company; and
- (b) under the scheme, a taxpayer (the *relevant taxpayer*), who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit; and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling a taxpayer (the *relevant taxpayer*) to obtain a tax benefit.

Commissioner to determine that section 45BA or 45C applies

- (3) The Commissioner may make, in writing, a determination that:
 - (a) section 45BA applies in relation to the whole, or a part, of the demerger benefit; or
 - (b) section 45C applies in relation to the whole, or a part, of the capital benefit.

A determination does not form part of an assessment.

Note: If section 45BA applies in relation to the whole, or a part, of a demerger benefit, this benefit may be a capital benefit.

Meaning of provided with a demerger benefit

- (4) A person is *provided with a demerger benefit* if in relation to a demerger:
 - (a) a company provides the person with ownership interests in that or another company; or
 - (b) something is done in relation to an ownership interest owned by the person that has the effect of increasing the value of an ownership interest (which may or may not be the same ownership interest) owned by the person.

Meaning of provided with a capital benefit

- (5) A reference to a person being *provided with a capital benefit* is a reference to any of the following:
 - (a) the provision of ownership interests in a company to the person;
 - (b) the distribution to the person of share capital or share premium;

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- (c) something that is done in relation to an ownership interest that has the effect of increasing the value of an ownership interest (which may or may not be the same interest) that is held by the person.
- (6) However, a person is not *provided with a capital benefit* to the extent that the provision of interests, the distribution or the thing done referred to in subsection (5) involves the person receiving a demerger dividend.
- (7) For the purposes of this section, a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return.

Meaning of relevant circumstances of scheme

- (8) The *relevant circumstances* of a scheme include:
 - (a) the extent to which the demerger benefit or capital benefit is attributable to capital or the extent to which the demerger benefit or capital benefit is attributable to profits (realised and unrealised) of the company or of an associate (within the meaning in section 318) of the company;
 - (b) the pattern of distributions of dividends, bonus shares and returns of capital or share premium by the company or by an associate (within the meaning in section 318) of the company;
 - (c) whether the relevant taxpayer has capital losses that, apart from the scheme, would be carried forward to a later year of income;
 - (d) whether some or all of the ownership interests in the company or in an associate (within the meaning in section 318) of the company held by the relevant taxpayer were acquired, or are taken to have been acquired, by the relevant taxpayer before 20 September 1985;
 - (e) whether the relevant taxpayer is a non-resident;
 - (f) whether the cost base (for the purposes of the *Income Tax Assessment Act 1997*) of the relevant ownership interest is not substantially less than the value of the applicable demerger benefit or capital benefit;
 - (h) if the scheme involves the distribution of share capital or share premium—whether the interest held by the relevant taxpayer after the distribution is the same as the interest

- would have been if an equivalent dividend had been paid instead of the distribution of share capital or share premium;
- (i) if the scheme involves the provision of ownership interests and the later disposal of those interests, or an increase in the value of ownership interests and the later disposal of those interests:
 - (i) the period for which the ownership interests are held by the holder of the interests; and
 - (ii) when the arrangement for the disposal of the ownership interests was entered into;
 - (j) for a demerger only:
 - (i) whether the profits of the demerging entity and demerged entity are attributable to transactions between the entity and an associate (within the meaning in section 318) of the entity; and
 - (ii) whether the assets of the demerging entity and demerged entity were acquired under transactions between the entity and an associate (within the meaning in section 318) of the entity;
 - (k) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

*Meaning of **obtaining a tax benefit***

- (9) A relevant taxpayer **obtains a tax benefit** if an amount of tax payable, or any other amount payable under this Act, by the relevant taxpayer would, apart from this section, be less than the amount that would have been payable, or would be payable at a later time than it would have been payable, if the demerger benefit had been an assessable dividend or the capital benefit had been a dividend.

Expressions to have same meanings as in Part IIIAA

- (10) Expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

45BA Effect of determinations under section 45B for demerger benefits

- (1) If the Commissioner makes a determination under subsection 45B(3), the amount of the demerger benefit, or the part of the

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benefit, is taken not to be a demerger dividend for the purposes of this Act for the owner of the ownership interest or the relevant taxpayer at the time when the owner or relevant taxpayer is provided with the demerger benefit.

- (2) The amount of the demerger benefit is:
- (a) if the benefit is the provision of an ownership interest—the market value of the interest at the time that it is provided; or
 - (b) if the benefit is an increase in the value of an ownership interest—the increase in the market value of the interest as a result of the change; or
 - (c) if the benefit is a distribution to the shareholder of share capital or share premium—the amount debited to the share capital account or share premium account of the company in connection with the provision of the benefit.

45C Effect of determinations under sections 45A and 45B for capital benefits

- (1) If the Commissioner makes a determination under subsection 45A(2) or 45B(3), the amount of the capital benefit, or the part of the benefit, is taken, for the purposes of this Act, to be an unfranked dividend that is paid by the company to the shareholder or relevant taxpayer at the time that the shareholder or relevant taxpayer is provided with the capital benefit.
- (2) The dividend is taken to have been paid out of profits of the company.
- (3) If the Commissioner has made a determination under section 45B in respect of the whole or a part of a capital benefit and the Commissioner makes a further written determination that the capital benefit, or the part of the capital benefit, was paid under a scheme for which a purpose, other than an incidental purpose, was to avoid franking debits arising in relation to the distribution from the company:
- (a) on the day on which notice of the determination is served in writing on the company, a class C franking debit of the company arises in respect of the capital benefit; and
 - (b) the amount of the franking debit is the amount that, if the company had paid a dividend of an amount equal to the amount of the capital benefit, or the part of the capital

benefit, at the time when it was provided and had fully franked the dividend, would have been the franked amount of the dividend.

- (4) The amount of the capital benefit is:
- (a) if the benefit is the provision of an ownership interest—the market value of the interest at the time that it is provided; or
 - (b) if the benefit is an increase in the market value of an ownership interest—the increase in the market value of the interest as a result of the change; or
 - (c) if the benefit is a distribution to the shareholder of share capital or share premium—the amount debited to the share capital account or share premium account of the company in connection with the provision of the benefit.
- (4A) For the purposes of this section:
- (a) a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return; and
 - (b) the debit to the company's non-share capital account, in respect of the non-share distribution, is taken to be a debit to the company's share capital account.

Franking debit to be reduced by any franking debit under former section 160AQCB, 160AQCNA or 160AQCNB

- (5) If:
- (a) a franking debit of the company arises under paragraph (3)(b) in respect of a capital benefit; and
 - (b) a franking debit of the company arises under former section 160AQCB, 160AQCNA or 160AQCNB in respect of the same capital benefit;
- the amount of the franking debit arising under paragraph (3)(b) is reduced by the amount of the franking debit arising under that former section.

Expressions to have same meanings as in Part IIIAA

- (6) Expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

45D Determinations under sections 45A, 45B and 45C

Notice by Commissioner of determination

- (1) If the Commissioner makes a determination under section 45A, 45B or 45C, the Commissioner must give a copy of the determination to the company concerned (which, in the case of a demerger benefit referred to in section 45B, is the head entity of the demerger group). The notice may be included in a notice of assessment.

Notice by company of determination

- (1A) That company must, in the case of a determination under section 45A or 45B, give a copy of the notice to:
- (a) the advantaged shareholder referred to in section 45A; or
 - (b) the relevant taxpayer referred to in section 45B.

Publication in national newspaper of determination in relation to listed public company

- (2) If the Commissioner makes a determination referred to in paragraph (1)(b), in respect of a dividend paid by a listed public company within the meaning of the *Income Tax Assessment Act 1997*, the Commissioner is taken to have served notice in writing of the determination on the advantaged shareholder if the Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

Evidence of determination

- (3) The production of:
- (a) a notice of a determination; or
 - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;
- is conclusive evidence of:
- (c) the due making of the determination; and

- (d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

- (4) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

46FA Deduction for dividends on-paid to non-resident owner

Allowable deduction

- (1) An amount is allowable as a deduction from the assessable income of a company (the **resident company**) if:
- (a) the resident company is paid a dividend (the **original dividend**) that:
 - (i) is paid by a company that is a resident; and
 - (ii) is a non-portfolio dividend; and
 - (iii) is not a fully-franked dividend; and
 - (b) the resident company is not a group company in relation to the company that paid the original dividend in relation to the year of income in which the dividend is paid; and
 - (ba) neither the resident company, nor the company that pays the dividend, is a prescribed dual resident; and
 - (c) ignoring the amendments made by Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*, but for subsection 46AB(1) or 46AC(2) or subparagraph 46F(2)(a)(i) of this Act as in force just before the commencement of those amendments, the resident company would have been entitled to a rebate under section 46 of this Act as so in force in respect of the unfranked amount of the original dividend; and
 - (d) the resident company pays a dividend (the **flow-on dividend**) to a company that is not a resident (the **non-resident company**); and
 - (e) the flow-on dividend is not a fully-franked dividend; and
 - (f) the resident company declares that the unfranked amount of the flow-on dividend is an on-payment of the unfranked

amount of the original dividend to the extent of a specified percentage (not exceeding 100%); and

- (g) when the original dividend is paid, when the declaration is made and when the flow-on dividend is paid, the resident company is:
- (i) a resident; and
 - (ii) wholly owned by the non-resident company.

The deduction is from assessable income of the year of income in which the flow-on dividend is paid. The amount of the deduction is equal to the flow-on amount worked out using subsection (2).

- (2) The *flow-on amount* is:

$$\text{Percentage specified under paragraph (1)(f)} \times \text{Unfranked amount of the flow-on dividend}$$

Flow-on declarations

- (3) The declaration under paragraph (1)(f) (the *flow-on declaration*) must be made:
- (a) in writing; and
 - (b) before the flow-on dividend is paid.

The declaration cannot be revoked or varied.

- (4) The flow-on declaration is effective only to the extent to which the flow-on amount does not exceed the surplus in the resident company's unfranked non-portfolio dividend account immediately before the declaration is made.

Note: See section 46FB for the unfranked non-portfolio dividend account.

Unfranked amount of flow-on dividend unfrankable

- (5) Part 3-6 of the *Income Tax Assessment Act 1997* (the imputation system) applies to the unfranked amount of the flow-on dividend as if it were an unfrankable distribution within the meaning of section 202-45 of that Act if a deduction is allowed to the resident company in relation to the flow-on dividend.

Wholly owned by non-resident company

- (6) The resident company is wholly owned by the non-resident company if all the shares in the resident company are held by and beneficially owned by the non-resident company.

- (7) However, the company is not wholly owned by the non-resident company if a person is in a position to affect rights, in relation to the resident company, of the non-resident company.
- (8) The resident company is also not wholly owned by the non-resident company if at some future time a person will be in a position to affect rights as described in subsection (7).

A person in a position to affect rights

- (9) A person is in a position to affect rights of a company in relation to another company if the person has a right, power or option:
 - (a) to acquire those rights from one or other of those companies;
or
 - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (10) It does not matter whether the person has the right, power or option because of the constitution of one or other of those companies, any agreement or otherwise.

Definitions

- (11) In this section:

fully-franked dividend means a dividend whose franking percentage (within the meaning of section 203-35 of the *Income Tax Assessment Act 1997*) is 100%.

group company has the same meaning as in former section 160AFE as in force immediately before 1 July 2002.

non-portfolio dividend has the same meaning as in section 317.

non-resident company means a company that is not a resident.

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income Tax Assessment Act 1997*) means the amount of the dividend less the franked part.

46FB Unfranked non-portfolio dividend account

Company may establish account

- (1) A company may establish an unfranked non-portfolio dividend account.

Account surplus

- (2) An unfranked non-portfolio dividend account surplus exists for a company at a particular time if the company's total unfranked non-portfolio dividend credits arising before that time exceed its total unfranked non-portfolio dividend debits arising before that time.
- (3) The amount of the surplus is equal to the amount of the excess.

Credits

- (4) An unfranked non-portfolio dividend credit arises for a company if:
- (a) the company is paid an unfranked non-portfolio dividend; and
 - (b) the company is not a group company in relation to the company that paid the dividend in relation to the year of income in which the dividend is paid; and
 - (c) ignoring the amendments made by Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*, but for subsection 46AB(1) or 46AC(2) or subparagraph 46F(2)(a)(i) of this Act as in force just before the commencement of those amendments, the company would have been entitled to a rebate under section 46 of this Act as so in force in respect of the unfranked amount of the dividend.

The amount of the credit is the unfranked amount of the dividend. The credit arises when the dividend is paid to the company.

Debits

- (5) An unfranked non-portfolio dividend debit arises for a company if the company makes a declaration under paragraph 46FA(1)(f) in relation to a dividend paid on a particular day. The amount of the

debit is the flow-on amount under subsection 46FA(2). The debit arises when the declaration is made.

Definitions

(6) In this section:

group company has the same meaning as in former section 160AFE as in force immediately before 1 July 2002.

non-portfolio dividend has the same meaning as in section 317.

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income Tax Assessment Act 1997*) means the amount of the dividend less the franked part.

47 Distributions by liquidator

- (1) Distributions to shareholders of a company by a liquidator in the course of winding-up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up share capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it.
- (1A) A reference in subsection (1) to income derived by a company includes a reference to:
- (a) an amount (except a net capital gain) included in the company's assessable income for a year of income; or
 - (b) a net capital gain that would be included in the company's assessable income for a year of income if the *Income Tax Assessment Act 1997* required a net capital gain to be worked out as follows:

Method statement

- Step 1. Work out each capital gain (except a capital gain that is disregarded) that the company made during that year of income. Do so *without indexing* any amount used to work out the cost base of a CGT asset.
- Step 2. Total the capital gain or gains worked out under Step 1. The result is the net capital gain for that year of income.

- (2) Those distributions shall, to the extent to which they are made out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

(2A) Where:

- (a) the business of a company has been, or is in the course of being, discontinued otherwise than in the course of a winding up of the company under any law relating to companies;
- (b) in connexion with the discontinuance, any moneys of the company have been or other property of the company has been, on or after 19 October 1967, distributed, otherwise than by the company, to shareholders of the company; and
- (c) the moneys or other property so distributed are not, for the purposes of this Act, dividends;

the distribution shall, subject to subsection (2B), be deemed to be, for the purposes of this section, a distribution to the shareholders by a liquidator in the course of winding up the company.

(2B) Where:

- (a) subsection (2A) would, but for this subsection, apply in relation to any moneys or other property of a company distributed to shareholders of the company; and
- (b) the company does not cease to exist within a period of 3 years after the distribution, or within such further period as the Commissioner allows;

subsection (2A) shall not apply, and shall be deemed never to have applied, in relation to those moneys or that other property, and those moneys or that other property so distributed shall, for the purposes of this Act, be deemed to be dividends paid by the company to the shareholders out of profits derived by it.

- (3) For the purposes of this section, *paid-up share capital* includes capital which has been paid up in money or by other valuable consideration and which has been cancelled and has not been repaid by the company to the shareholders.

47A Distribution benefits—CFCs

- (1) Subject to subsection (2), if:
- (a) a company (in this section called the *first company*) has profits immediately before a distribution time for a distribution benefit in relation to the first company; and
 - (b) the distribution time occurred after 3 June 1990; and
 - (c) the first company is a CFC at the distribution time; and
 - (d) the first company is a resident of an unlisted country at the distribution time;

so much of the distribution payment in relation to the distribution time as would not otherwise be a dividend and does not exceed the amount of those profits is taken, for the purposes of this Act, to be a dividend paid by the first company:

- (e) to the recipient of the benefit as a shareholder in the first company; and
 - (f) out of profits derived by the first company; and
 - (g) at the distribution time.
- (2) If:
- (a) any of the following subparagraphs applies:
 - (i) by virtue of subsection (1), the whole or a part of the distribution payment is included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44;
 - (ii) by virtue of subsection (1), the whole or a part of the distribution payment would, apart from section 23AI or 23AJ, be included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44; and
 - (b) both of the following subparagraphs apply:
 - (i) the taxpayer's return of income for the year of income was not prepared on the basis that the distribution payment had the consequence specified in subsection (1);

- (ii) the taxpayer has not notified the Commissioner, in writing, within 12 months after the end of the year of income, that the distribution payment had the consequence specified in subsection (1);

that subsection has effect in relation to the taxpayer and in relation to that distribution payment as if the reference in that subsection to the purposes of this Act were a reference to the purposes of this Act (other than section 365 of this Act and Division 770 of the *Income Tax Assessment Act 1997*).

- (3) Subject to subsections (9) and (12), a reference in this section to a distribution benefit in relation to the first company is a reference to an eligible benefit where the following conditions are satisfied:
 - (a) the eligible benefit was provided to:
 - (i) an associated entity in relation to the first company; or
 - (ii) another entity that, immediately after the time of the provision of the eligible benefit, was an associated entity in relation to the first company;
 - (b) the eligible benefit was provided by:
 - (i) the first company; or
 - (ii) an entity (in this subsection called the *arranger*) other than the first company under an arrangement between:
 - (A) the first company; and
 - (B) the arranger or another entity;
 - (c) if subparagraph (b)(ii) applies—the first company made, or entered into an undertaking to make, one or more transfers of property or services to the arranger or to another entity (which transfers are in this section called the *arrangement transfers*) that are attributable, in whole or in part, to the provision of the eligible benefit.
- (4) Where the first company entered into an undertaking to make one or more arrangement transfers, the time of the arrangement transfers is the time the undertaking was entered into.
- (5) Where, at a particular time, an entity (in this subsection called the *provider*) waives or releases the obligation of another entity (in this subsection called the *recipient*) to pay or repay to the provider an amount:
 - (a) the waiver or release is taken to constitute an eligible benefit provided at that time by the provider to the recipient; and

- (b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:
 - (i) if the eligible benefit was provided by the first company—the time of the provision of the eligible benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount the payment or repayment of which is waived or released; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.
- (6) For the purposes of subsection (5), an entity is taken to be under an obligation to pay or repay an amount even if the amount is not due for payment or repayment.
- (7) Where, at a particular time, an entity (in this subsection called the *provider*) makes a loan to another entity (in this subsection called the *recipient*), where:
 - (a) the parties to the loan are not at arm's length with each other in relation to the loan; or
 - (b) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly (through one or more interposed companies, partnerships or trusts), the payment of a dividend that is, or would be, non-assessable non-exempt income under section 23AJ (in whole or in part); or
 - (c) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly, the provision of an eligible benefit by the recipient, being an eligible benefit that is a distribution benefit in relation to any company;the following provisions have effect:
 - (d) the making of the loan is taken to constitute an eligible benefit provided by the provider to the recipient at that time;

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- (e) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:
 - (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
 - (f) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount of the loan; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.
- (8) Where, at a particular time:
- (a) an entity (in this subsection called the *provider*) acquires from a company (in this subsection called the *recipient*):
 - (i) a share in the recipient;
 - (ii) a right to acquire a share in the recipient;
 - (iii) an option to acquire a share in the recipient; or
 - (b) an entity (in this subsection also called the *provider*) acquires from the trustee of a unit trust (in this subsection also called the *recipient*):
 - (i) a unit in the recipient;
 - (ii) a right to acquire a unit in the recipient;
 - (iii) an option to acquire a unit in the recipient;
- the following provisions have effect:
- (c) the acquisition is taken to constitute an eligible benefit provided by the provider to the recipient at that time;
 - (d) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:
 - (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

- (e) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount or market value of the consideration paid or given by the first company in respect of the acquisition; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit;

(f) if:

- (i) the eligible benefit is a distribution benefit in relation to the first company; and
- (ii) the provider transferred property or services to the recipient in respect of the acquisition;

in determining the profits of the company immediately before the distribution time, or the first distribution time, as the case requires, for the distribution benefit, the following assumptions are to be made:

- (iii) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services to an entity other than the recipient; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services;
- (iv) if subparagraph (iii) does not apply—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of equivalent property or services to an entity other than the recipient or the entity who provided the eligible benefit; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services.

- (9) An eligible benefit that is covered by subsection (8) and provided at a particular time is not a distribution benefit in relation to the

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first company if, at that time, there is no entity (other than the provider referred to in that subsection) who is:

- (a) either:
 - (i) the holder of an eligible equity interest in the first company; or
 - (ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and
 - (b) the holder of an eligible equity interest in the recipient referred to in that subsection.
- (10) Where:
- (a) an entity (in this subsection called the *provider*) transfers property or services to another entity (in this subsection called the *recipient*); and
 - (b) the property or services are transferred:
 - (i) for no consideration; or
 - (ii) for a consideration less than the market value of the property or services; and
 - (c) in the case of a transfer of services—the services do not consist of the making of a loan; and
 - (d) in any case—the property or services are not transferred by way of consideration for the acquisition from a company of:
 - (i) a share in the company; or
 - (ii) a right to acquire a share in the company; or
 - (iii) an option to acquire a share in the company; and
 - (e) in any case—the property or services are not transferred in respect of the acquisition from the trustee of a unit trust of:
 - (i) a unit in the unit trust; or
 - (ii) a right to acquire a unit in the unit trust; or
 - (iii) an option to acquire a unit in the unit trust; and
 - (f) in the case of a transfer of property—the property does not consist of a payment in respect of a call on a share in a company;
- the following provisions have effect:
- (g) the transfer is taken to constitute an eligible benefit provided by the provider to the recipient at that time;
 - (h) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

- (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (j) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
- (i) if the benefit was provided by the first company—the amount by which the amount or market value of the property or services exceeds the consideration (including nil consideration) mentioned in paragraph (b); or
 - (ii) if subparagraph (i) does not apply and there is only one arrangement transfer—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit; or
 - (iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the amount worked out in relation to the arrangement transfer using the following formula:

$$\text{Total Excess} \times \frac{\text{Arrangement transfer}}{\text{Total arrangement transfers}}$$

where:

Total Excess means so much of the total amount or market value of all the arrangement transfers as is attributable to the provision of the eligible benefit.

Arrangement transfer means the amount or market value of the arrangement transfer concerned.

Total arrangement transfers means the total amount or market value of all of the arrangement transfers.

- (k) if the eligible benefit is a distribution benefit in relation to the first company—in determining the profits of the company immediately before a distribution time for the distribution benefit, the following assumptions are to be made:
- (i) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services to an entity other than the recipient; and

- (B) received, in respect of that disposal, consideration equal to the market value of the property or services;
 - (ii) if subparagraph (i) does not apply and there is only one arrangement transfer—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services covered by the arrangement transfer to an entity other than the entity who provided the eligible benefit; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services;
 - (iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the assumption that, immediately before each distribution time, the company had:
 - (A) disposed of the property or services covered by the arrangement transfer concerned to an entity other than the entity who provided the eligible benefit; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services.
- (10A) Subsection (10) does not apply to a transfer that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.
- (11) Where, at a particular time, an entity (in this subsection called the *provider*) makes a payment to another entity, being a company (in this subsection called the *recipient*), in respect of a call on a share in the recipient:
 - (a) the making of the payment is taken to constitute an eligible benefit provided by the provider to the recipient at that time; and
 - (b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:
 - (i) if the benefit was provided by the first company—the time of the provision of the benefit; or

- (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
 - (c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount of the payment; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.
- (12) An eligible benefit that is covered by subsection (11) and provided at a particular time is not a distribution benefit in relation to the first company if, at that time, there is no entity (other than the provider referred to in that subsection) who is:
- (a) either:
 - (i) the holder of an eligible equity interest in the first company; or
 - (ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and
 - (b) the holder of an eligible equity interest in the recipient referred to in that subsection.
- (13) If:
- (a) apart from this subsection, a particular eligible benefit that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and
 - (b) at a later time, there is an entity (other than the provider referred to in subsection (8) or (11), as the case may be) who is:
 - (i) either:
 - (A) the holder of an eligible equity interest in the first company; or
 - (B) an associate of an entity who is the holder of an eligible equity interest in the first company; and
 - (ii) the holder of an eligible equity interest in the recipient referred to in whichever of subsections (8) and (11) is applicable; and

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- (ba) if the eligible benefit consists of the acquisition of a share or unit—at that later time, the share or unit has not been redeemed or bought back by the recipient mentioned in subsection (8) for a consideration equal to or greater than the arm's length value of the share or unit;

the following provisions have effect:

- (c) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to that eligible benefit;
- (d) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

(14) If:

- (a) apart from this subsection, a particular eligible benefit (in this subsection called the *first eligible benefit*) that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and
- (b) the recipient referred to in whichever of subsections (8) and (11) is applicable provides an eligible benefit (in this subsection called the *second eligible benefit*) to:
 - (i) the first company; or
 - (ii) the provider referred to in whichever of those subsections is applicable; or
 - (iii) an associated entity in relation to:
 - (A) the first company; or
 - (B) that provider; and
- (c) the provision of the first eligible benefit facilitated, directly or indirectly, the provision of the second eligible benefit; and
- (ca) if the second eligible benefit is covered by subsection (8) or (11):
 - (i) the second eligible benefit is provided on or after 13 September 1990; or
 - (ii) both:
 - (A) the second eligible benefit was provided before 13 September 1990; and
 - (B) the Commissioner is of the opinion that the provision of the second eligible benefit had, or would be likely to have, the effect of enabling any taxpayer to avoid tax;

the following provisions have effect:

- (d) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to the first eligible benefit;
 - (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.
- (15) In determining whether a company has profits at a particular time, it is to be assumed that the accounts of the company had been drawn up immediately before that time.
- (16) For the purposes of this section, where:
- (a) the first company has profits (in this subsection called the *original profits*) immediately before a distribution time for a distribution benefit in relation to the first company; and
 - (b) by virtue of subsection (1), an amount (in this subsection called the *original assessable amount*) is included in the assessable income of a taxpayer (in this subsection called the *original taxpayer*) of a year of income (in this subsection called the *original year of income*) under section 44 in respect of the distribution payment in relation to the distribution time; and
 - (c) any of the following subparagraphs applies:
 - (i) the original taxpayer is:
 - (A) a resident at any time during the original year of income; and
 - (B) a company or a natural person (other than a company or a natural person in the capacity of a trustee);
 - (ii) the original taxpayer is the trustee of a corporate unit trust in relation to the original year of income;
 - (iii) the original taxpayer is the trustee of a public trading trust in relation to the original year of income;
 - (iv) the original taxpayer is the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the original year of income;

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- (v) the original taxpayer is the trustee of a resident trust estate (within the meaning of Division 6) in relation to the year of income who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of the trust estate;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the original assessable amount.

(17) For the purposes of this section, where:

- (a) the first company has profits (in this subsection called the *original profits*) immediately before a distribution time for a distribution benefit in relation to the first company; and
- (b) by virtue of subsection (1), an amount (in this subsection called the *original assessable amount*) is included in the assessable income of a taxpayer (in this subsection called the *original taxpayer*) of a year of income (in this subsection called the *original year of income*) under section 44 in respect of the distribution payment in relation to the distribution time; and
- (c) all of the following conditions are satisfied:
 - (i) the original taxpayer is the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of the trust estate of the original year of income;
 - (ii) the beneficiary who was entitled to that share was a resident at any time during the original year of income;
 - (iii) the whole or a part (which whole or part is in this subsection called the *beneficiary's portion of the original assessable amount*) of the share of the net income is attributable to the original assessable amount;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the beneficiary's portion of the original assessable amount.

(18) For the purposes of this section, where:

- (a) the first company has profits (in this subsection called the *original profits*) immediately before a distribution time for a distribution benefit in relation to the first company; and

- (b) by virtue of subsection (1), an amount (in this subsection called the *original assessable amount*) is included in the assessable income of a taxpayer (in this subsection called the *original taxpayer*) of a year of income (in this subsection called the *original year of income*) under section 44 in respect of the distribution payment in relation to the distribution time; and
- (c) the original taxpayer is the trustee of a trust estate or a partnership; and
- (d) the following conditions are satisfied in relation to another taxpayer (in this subsection called the *actual taxpayer*):
 - (i) an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the *assessment year of income*) under subsection 92(1) or section 97 or 100;
 - (ii) the actual taxpayer is:
 - (A) a resident at any time during the assessment year of income, being a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of a corporate unit trust in relation to the assessment year of income; or
 - (C) the trustee of a public trading trust in relation to the assessment year of income; or
 - (D) the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the assessment year of income; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of a trust estate; or
 - (F) the trustee of a trust estate who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of a trust estate; or
 - (G) the trustee of a trust estate where trustee beneficiary non-disclosure tax is payable under

Division 6D on the whole or part of the net income of the trust estate;

- (iii) if sub-subparagraph (ii)(A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the *actual taxpayer's portion of the original assessable amount*) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;
- (iv) if sub-subparagraph (ii)(E) applies:
 - (A) the beneficiary who was entitled to the share concerned was a resident at any time during the assessment year of income; and
 - (B) the whole or a part (which whole or part is in this subsection also called the *actual taxpayer's portion of the original assessable amount*) of the share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;
- (v) if sub-subparagraph (ii)(F) applies:
 - (A) the trust estate was a resident trust estate (within the meaning of Division 6) in relation to the assessment year of income; and
 - (B) the whole or a part (which whole or part is in this subsection also called the *actual taxpayer's portion of the original assessable amount*) of the part of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;
- (vi) if sub-subparagraph (ii)(G) applies:
 - (A) the trust estate was a resident trust estate (within the meaning of Division 6) in relation to the assessment year of income; and
 - (B) the whole or a part (which whole or part is in this subsection also called the *actual taxpayer's portion of the original assessable amount*) of the whole or the part of the share of the net income is attributable (either directly or

indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the actual taxpayer's portion of the original assessable amount.

(18A) An assessment may be made of a taxpayer on the assumption that subsection (2) will not be applicable in relation to a particular distribution payment made during a year of income of the taxpayer.

(18B) Where:

- (a) the assessment mentioned in subsection (18A) is made; and
- (b) after the making of the assessment, the Commissioner becomes aware that subsection (2) was applicable in relation to the distribution payment concerned;

then, in spite of anything in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that the assessment is made as if subsection (18A) of this section were disregarded.

(19) The provisions of section 102AAJ apply for the purposes of this section in like manner as they apply for the purposes of Division 6AAA.

(20) For the purposes of this section, the question whether a company is a resident of an unlisted country is to be determined in the same manner in which that question is determined for the purposes of Part X.

(21) In this section:

arm's length value, in relation to the redemption or buy-back of a share in a company or a unit in a unit trust, means the amount that the company or trustee could reasonably be expected to have been required to pay to obtain the redemption or buy-back of the share or unit under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

associate has the same meaning as in Part X.

associated entity, in relation to a company, means either of the following entities:

- (a) a shareholder in the company;
- (b) an entity who is an associate of a shareholder in the company.

CFC has the same meaning as in Part X.

distribution benefit has the meaning given by subsection (3) of this section.

eligible equity interest:

- (a) in relation to a company, means any of the following:
 - (i) a share, or an interest in a share, in the company;
 - (ii) a right to acquire a share, or an interest in a share, in the company;
 - (iii) an option to acquire a share, or an interest in a share, in the company; or
- (b) in relation to a unit trust, means any of the following:
 - (i) a unit, or an interest in a unit, in the unit trust;
 - (ii) a right to acquire a unit, or an interest in a unit, in the unit trust;
 - (iii) an option to acquire a unit, or an interest in a unit, in the unit trust; or

entity has the same meaning as in Part X.

loan includes:

- (a) an advance of money; and
- (b) the provision of credit or any other form of financial accommodation; and

- (c) the payment of an amount for, on account of, on behalf or at the request of an entity where there is an obligation (whether expressed or implied) to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

property has the same meaning as in Division 6AAA.

services has the same meaning as in Division 6AAA.

statutory accounting period has the same meaning as in Part X.

transfer has the same meaning as in Division 6AAA.

Division 3—Deductions

Subdivision A—General

51AAA Deductions not allowable in certain circumstances

- (1) Where:
- (a) an amount is included in the assessable income of a taxpayer of a year of income by section 102-5 of the *Income Tax Assessment Act 1997* (about net capital gains) or subsection 124ZZB(1) of this Act (about notional capital gains of PDFs);
 - (b) a deduction would, but for this section, be allowable under a provision listed in the table in subsection (2) to the taxpayer; and
 - (c) if the amount had not been included in the assessable income the deduction would be not be allowable;
- the deduction is not allowable.
- (2) The table lists provisions allowing deductions that are affected by subsection (1). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Deduction provisions affected by net capital gains limit		
Item	Provision	Description
1	Subdivision A of Division 3 of Part III	General
2	section 8-1	General deductions
3	Division 25	Some expenses you can deduct
4	Division 30	Gifts or contributions
5	Division 34	Non-compulsory uniforms
6	Division 36	Tax losses of earlier income years
7	Subdivision 40-F	Facilities to conserve or convey water
8	Subdivision 40-F	Establishing grapevines
9	Subdivision 40-G	Landcare operations

Deduction provisions affected by net capital gains limit		
Item	Provision	Description
10	Subdivision 40-G	Mains electricity supply
11	Subdivision 40-G	Telephone lines
12	Division 165	Income tax consequences of changing ownership or control of a company
13	Subdivision 170-A	Transfer of tax losses within wholly-owned groups of companies

51AD Deductions not allowable in respect of property used under certain leveraged arrangements

(1) In this section:

arrangement includes:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

associate has the same meaning in relation to a person as that expression has in relation to a person in section 318.

construction includes manufacture.

control means effectively control.

goods includes whatever is capable of being owned or used.

hire-purchase agreement means a hire purchase agreement to which Division 240 of the *Income Tax Assessment Act 1997* applies.

lease, in relation to property, includes:

- (a) any arrangement under which a right to use the property is granted by the owner to another person; and
- (b) any arrangement under which a right to use the property, being a right derived directly or indirectly from a right

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referred to in paragraph (a), is granted by a person to another person;

but does not include a hire-purchase agreement.

owner, in relation to property, includes a person who has taken, and holds, the property on hire under a hire-purchase agreement.

person includes a person in the capacity of a trustee.

prescribed time means one o'clock in the afternoon, by standard time in the Australian Capital Territory, on 24 June 1982.

Note: This section applies to deductions under Division 40 (Capital allowances) and Division 43 (Capital works) of the *Income Tax Assessment Act 1997* as if you were the owner of an asset you hold (under that Division) instead of any other person: see section 40-135 of that Act.

(1A) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:

- (a) starts on or after 1 July 2007; and
- (b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.

(1B) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:

- (a) the tax preferred use starts on or after 1 July 2007; and
- (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
- (c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.

(1C) This section does not apply to property on or after 1 July 2007 if:

- (a) Division 16D applied to the property immediately before 1 July 2007; or
- (b) this section did not apply to the property immediately before 1 July 2007 and Division 16D would apply to the property on or after 1 July 2007 but for subsection 159GH(2).

For the purposes of applying paragraph (b), disregard the operation of section 159GL.

- (1D) Subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D) do not apply to property acquired by a taxpayer if:
- (a) the property is acquired by the taxpayer on or after 1 July 2007; and
 - (b) the property is not acquired under a legally enforceable arrangement entered into before 1 July 2007.
- (2) In this section, a reference to the acquisition of property by a person is a reference to:
- (a) the person becoming the owner of the property; or
 - (b) the construction of the property for the person by another person or other persons on premises of the first-mentioned person.
- (3) In this section, a reference to property being held for use includes a reference to property that is installed ready for use and held in reserve.
- (3B) For the purpose of this section, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this section applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.
- (4) Subject to subsections (1A), (1B), (1C), (1D) and (8), this section applies, in relation to a taxpayer, to property acquired or constructed by the taxpayer, being property acquired by the taxpayer under a contract entered into after the prescribed time or property constructed by the taxpayer, construction having commenced after that time, if:
- (a) at a time when the property is owned by the taxpayer, a person (which person is in this section referred to as the **end-user**) holds rights as lessee under a lease of the property, and:
 - (i) in a case where the end-user is not a resident of Australia—while the lease is in force, the property is, or is to be, used by a person other than the taxpayer wholly or principally outside Australia;
 - (ii) while the lease is in force, the property is, or is to be, used by a person other than the taxpayer otherwise than wholly and exclusively for the purpose of producing assessable income; or

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- (iii) in a case where the property was acquired by the taxpayer—the property was, prior to its acquisition by the taxpayer, owned, and used or held for use, by the end-user; or
 - (b) in a case to which paragraph (a) does not apply:
 - (i) at a time when the property is owned by the taxpayer, the property is, or is to be, used (whether or not by the taxpayer) wholly or partly in or in connection with the production, supply, carriage, transmission or delivery of goods or the provision of services; and
 - (ii) a person other than the taxpayer (which person is in this section also referred to as the *end-user*) controls, will control, or is or will be able to control, directly or indirectly, that use of the property, and:
 - (A) in a case where the end-user is not a resident of Australia—that use of the property takes place, or is to take place, wholly or principally outside Australia;
 - (B) in a case where some or all of the goods are, or are to be, produced for the end-user or supplied, carried, transmitted or delivered to or for the end-user, or some or all of the services are, or are to be, provided to or for the end-user—any of those goods or services are, or are to be, used by the end-user otherwise than wholly and exclusively for the purpose of producing assessable income;
 - (C) in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (i), the end-user derives, or is to derive, no income or income that is wholly or partly exempt from income tax; or
 - (D) in a case where the property was acquired by the taxpayer—the property was, prior to its acquisition by the taxpayer, owned, and used or held for use, by the end-user.
- (5) In subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D), a reference to the end-user is a reference to the end-user, any of the end-users (where there are 2 or more end-users), any associate of

the end-user or of any of those end-users, or any 2 or more such persons.

- (6) For the purposes of subsection (4), property shall be taken not to have been, prior to its acquisition by the taxpayer, owned, and used or held for use, by a person if:
- (a) the property was first used or held for use by the person at a time within 6 months before the acquisition of the property by the taxpayer; and
 - (b) at that time there was in existence an arrangement that the property would be sold to another person and leased by that person to the first-mentioned person.
- (7) Where:
- (a) the end-user consists of all or any of the partners in a partnership; and
 - (b) a condition of paragraph (4)(a) or (b), as the case may be, is satisfied in relation to any of the partners in the partnership; that condition shall be taken to be satisfied in relation to all the partners in the partnership.
- (8) This section does not apply to property, in relation to a taxpayer, unless the whole or a predominant part of the cost of the acquisition or construction, as the case may be, of the property by the taxpayer is financed directly or indirectly by a debt or debts (which debt is, or debts are, referred to in this subsection as the **non-recourse debt**) and the rights of the creditor or creditors as against the taxpayer in the event of default in the repayment of principal or payment of interest:
- (a) are limited wholly or predominantly to any or all of the following:
 - (i) rights (including the right to moneys payable) in relation to any or all of the following:
 - (A) the property or the use of the property;
 - (B) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the property;
 - (C) the loss or disposal of the whole or a part of the property or of the taxpayer's interest in the property;

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- (ii) rights in respect of a mortgage or other security over the property;
 - (iii) rights arising out of any arrangement relating to the financial obligations of the end-user of the property towards the taxpayer, being financial obligations in relation to the property;
 - (b) are in the opinion of the Commissioner capable of being so limited, having regard to either or both of the following:
 - (i) the assets of the taxpayer;
 - (ii) any arrangement to which the taxpayer is a party; or
 - (c) where paragraphs (a) and (b) do not apply—are limited by reason that not all of the assets of the taxpayer (not being assets that are security for debts of the taxpayer other than the non-recourse debt) would be available for the purpose of the discharge of the whole of the non-recourse debt (including the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of that debt.
- (9) Where:
- (a) property has been financed by a debt or debts as mentioned in subsection (8); and
 - (b) the rights of the creditor or creditors as against the taxpayer are, or are capable of being, limited as mentioned in that subsection;
- the Commissioner may treat those rights as not being, or capable of being, so limited if he is of the opinion, having regard to the circumstances in which the debt was, or debts were, incurred and any other matters that he thinks relevant, that it would be reasonable to do so.
- (10) Subject to subsections (11), (12), (13) and (15), where this section has applied to property, in relation to a taxpayer, at any time, the taxpayer shall be deemed not to have occupied or used the property, or held the property for use, at that time, for the purpose of producing assessable income or in carrying on a business for that purpose.
- (11) Where this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of subparagraph (4)(a)(ii) or sub-subparagraph (4)(b)(ii)(B), and for any part of that time the end-user held, occupied or used the
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property referred to in that subparagraph, or held it for use, or used any goods or services referred to in that sub-subparagraph, as the case may be, partly for the purpose of producing assessable income, the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

- (12) Where this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of sub-subparagraph (4)(b)(ii)(C), and for any part of that time the end-user derived assessable income in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (4)(b)(i), the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

- (13) Where:

- (a) this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of subparagraph (4)(a)(ii) or sub-subparagraph (4)(b)(ii)(B) or (C);
- (b) the end-user referred to in that subparagraph or sub-subparagraph, as the case may be, consisted of all or any of the partners in a partnership; and
- (c) for any part of that time one or more of the partners in the partnership was a person in respect of whom, but for the operation of subsection (7), that subparagraph or sub-subparagraph, as the case may be, would not have applied;

the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

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- (14) In considering, for the purposes of subsection (13), the extent to which the taxpayer shall be deemed to have held, occupied or used property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, the Commissioner shall have regard:
- (a) to the interest or interests of the partner or partners referred to in paragraph (13)(c) in the net income, or the partnership loss, of the partnership of the year of income corresponding to the year of income referred to in paragraph (13)(a);
 - (b) the extent to which, for any part of the time referred to in paragraph (13)(a), a partner or partners other than the partner or partners referred to in paragraph (13)(c) held, occupied or used the property, or held it for use, or used the goods or services referred to in sub-subparagraph (4)(b)(ii)(B), as the case may be, for the purpose of producing assessable income; and
 - (c) the extent to which, for any part of the time referred to in paragraph (13)(a), a partner or partners other than the partner or partners referred to in paragraph (13)(c) derived assessable income in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (4)(b)(i).
- (15) Notwithstanding anything contained in subsections (10), (11) and (13), at any time when this section applies to property by reason of subparagraph (4)(a)(ii), the property shall be deemed not to be held, occupied or used, or held for use, by the taxpayer for the purpose of producing assessable income, or in carrying on a business for that purpose, if, at that time:
- (a) 2 or more end-users hold rights as lessees under the lease of the property;
 - (b) one or more of the end-users (which end-user is, or end-users are, referred to in this subsection as the *exempt end-user*) is a company, or are companies, the income of which is ordinarily exempt from income tax;
 - (c) the property is, or is to be, used wholly or principally in or in connection with the conduct of operations or transactions of a kind that the exempt end-user ordinarily engages in;
 - (d) the exempt end-user controls, will control, or is or will be able to control, directly or indirectly, that use of the property; and

- (e) in relation to those operations or transactions, the exempt end-user derives, or is to derive, no income or income that is exempt from income tax.
- (16) Where a taxpayer has incurred expenditure for repairs to property to which this section applies or has applied in relation to the taxpayer and, but for this section, a deduction would be allowable under section 25-10 (Repairs) of the *Income Tax Assessment Act 1997* in respect of that expenditure, so much of the expenditure as the Commissioner considers appropriate shall be deemed not to be allowable, having regard to:
- (a) the period for which the taxpayer owned the property before the repairs were commenced and any part of that period during which this section applies or applied to the property in relation to the taxpayer; and
 - (b) in a case to which subsection (11), (12) or (13) of this section applies or applied—the extent to which, for the time during the part of the period referred to in paragraph (a), the taxpayer was deemed to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.
- (17) Where a taxpayer has incurred expenditure in borrowing money to finance the acquisition or construction of property to which this section applies or has applied in relation to the taxpayer and a deduction has been allowed, or would but for this section be allowable, under section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997* in relation to that expenditure, so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be, having regard to:
- (a) the period for which the money was borrowed or, by the operation of subsection 25-25(6) of that Act, is deemed to have been borrowed and any part of that period during which this section applies, applied or, in the opinion of the Commissioner, will apply to the property; and
 - (b) in a case to which subsection (11), (12), or (13) of this section applies or applied—the extent to which, for the time during the part of the period referred to in paragraph (a), the taxpayer is, or in the opinion of the Commissioner will be, deemed to have held, occupied or used the property, or held

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it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.

- (18) Where a taxpayer has incurred expenditure for the preparation, registration and stamping of a lease, or of an assignment or surrender of a lease, of property to which this section applies or has applied in relation to the taxpayer and a deduction has been allowed, or would but for this section be allowable, under section 25-20 (Lease document expenses) of the *Income Tax Assessment Act 1997* in respect of that expenditure, so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be, having regard to:
- (a) the period of the lease and any part of that period during which this section applies, applied or, in the opinion of the Commissioner, will apply to the property; and
 - (b) in a case to which subsection (11), (12) or (13) of this section applies or applied—the extent to which, for the time during the part of the period mentioned in paragraph (a), the taxpayer is, or in the opinion of the Commissioner will be, deemed to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.
- (19) Where:
- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the *relevant year of income*), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as *the relevant year of income*);
 - (b) a deduction was taken into account in calculating that net income or partnership loss;
 - (c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the *relevant deduction*) would not have been taken into account for the purpose of that calculation if this section applied in relation to particular property acquired or constructed by the partnership;

- (d) this section does not apply in relation to the property by reason only that the property was acquired by the partnership under a contract entered into at or before the prescribed time or was constructed by the partnership, construction having commenced at or before that time; and
- (e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer after the prescribed time;

there shall be included in the assessable income of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant deduction the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss.

(20) Where:

- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the *relevant year of income*), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as *the relevant year of income*);
- (b) a deduction was taken into account in calculating that net income or partnership loss;
- (c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the *relevant deduction*) would not have been taken into account for the purpose of that calculation if this section applied in relation to particular property acquired or constructed by the partnership;
- (d) this section does not apply in relation to the property by reason only that the property was acquired by the partnership under a contract entered into at or before the prescribed time or was constructed by the partnership, construction having commenced at or before that time;
- (e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer before the prescribed time; and

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- (f) after the prescribed time, the taxpayer made or agreed to make a contribution or contributions (which contribution is or contributions are in this subsection referred to as the **additional contribution**) to the capital of the partnership in addition to any contribution or contributions to the capital of the partnership that, under a contract or contracts entered into at or before that time, he had made or agreed to make; and
- (g) by reason of making or agreeing to make the additional contribution, the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss, is greater than it would otherwise have been;

there shall be included in the assessable income of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula $A(B - C)$, where:

A is the amount of the relevant deduction.

B is the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss; and

C is the fraction that would be **B** if another partner, and not the taxpayer, had made or agreed to make the additional contribution.

- (21) For the purposes of determining if this section applies to property, the income of a prescribed excluded STB (within the meaning of Division 1AB) is taken to be exempt.

51AEA Meal entertainment—election under section 37AA of *Fringe Benefits Tax Assessment Act 1986* to use 50/50 split method

- (1) If a meal entertainment fringe benefit arises for a taxpayer for an FBT year and the taxpayer elects that Division 9A of Part III of the *Fringe Benefits Tax Assessment Act 1986* applies to the taxpayer for the FBT year, and has not elected that Subdivision C of that Division applies:
 - (a) for each expense incurred in the FBT year by the taxpayer in providing meal entertainment, a deduction equal to 50% of

that expense is allowable to the taxpayer for the year of income in which it is incurred; and

- (b) no other deduction under any provision of this Act is allowable to the taxpayer for the expense.
- (2) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AEB Meal entertainment—election under section 37CA of *Fringe Benefits Tax Assessment Act 1986* to use the 12 week register method

- (1) If a taxpayer has made an election under section 37CA of the *Fringe Benefits Tax Assessment Act 1986*:
- (a) for each expense incurred in the FBT year by the taxpayer in providing meal entertainment, a deduction equal to the amount worked out using the following formula is allowable to the taxpayer for the year of income in which it is incurred:

Amount of expense × Register percentage

- (b) no other deduction under any provision of this Act is allowable to the taxpayer for the expense.
- (2) The **register percentage** is the percentage worked out using the formula:
- $$\frac{\text{Total deductions for register meal entertainment}}{\text{Total register meal entertainment expenses}} \times 100\%$$

where:

Total deductions for register meal entertainment means the total of deductions that would (but for this section and section 51AEA) be allowable to the taxpayer for expenses incurred by the taxpayer in providing meal entertainment in the 12 week period covered by the register kept by the employer under Subdivision C of Division 9A of the *Fringe Benefits Tax Assessment Act 1986*.

Total register meal entertainment expenses means the total of expenses incurred by the taxpayer in providing meal entertainment during that 12 week period.

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- (3) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AEC Entertainment facility—election under section 152B of *Fringe Benefits Tax Assessment Act 1986* to use 50/50 split method

- (1) If a taxpayer has made an election under section 152B of the *Fringe Benefits Tax Assessment Act 1986*:
- (a) for each entertainment facility leasing expense incurred in the FBT year by the taxpayer, a deduction equal to 50% of that expense is allowable to the taxpayer for the year of income in which it is incurred; and
 - (b) no other deduction under any provision of this Act is allowable to the taxpayer for entertainment facility leasing expenses incurred in the FBT year.
- (2) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AF Car expenses incurred by employee

- (1) Where:
- (a) during a particular period, an employer provides a car for the exclusive use of a person who is, or of persons any of whom is, an employee of the employer or a relative of such an employee; and
 - (b) at any time during that period, the employee or a relative of the employee is entitled to use the car for private purposes;
- a deduction is not allowable under this Act in respect of a car expense that relates to the car and:
- (c) is incurred by the employee during that period; or
 - (d) is incurred by the employee and is wholly or partly attributable to that period.

- (2) In this section:

car has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*, but does not include a car covered by section 28-165 of that Act.

car expense has the meaning given by section 28-13 of the *Income Tax Assessment Act 1997*, but does not include a car expense covered by section 28-165 of that Act.

employee means a person who receives, or is entitled to receive, work and income support related withholding payments and benefits.

employer means a person who pays or is liable to pay work and income support related withholding payments and benefits, and includes:

- (a) in the case of an unincorporate body of persons other than a partnership—the manager or other principal officer of that body; and
- (b) in the case of a partnership—each partner; and
- (c) an Australian government agency as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

51AGA No deduction to employee for certain car parking expenses

No deduction

- (1) A deduction is not allowable to an employee under this Act in respect of expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day if:
 - (a) on that day, the employee has a primary place of employment; and
 - (b) on that day, the car is parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment; and
 - (c) the expenditure is in respect of the provision of the parking facilities to which that parking relates; and
 - (d) on that day, the car was used in connection with travel by the employee between:
 - (i) the place of residence of the employee; and
 - (ii) that primary place of employment; and
 - (e) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section; and
 - (f) the day is on or after 1 July 1993.

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Definitions

(2) In this section:

car has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

daylight period has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

employee has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

place of residence has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

primary place of employment has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AH Deductions not allowable where expenses incurred by employee are reimbursed

(1) Where:

(a) either of the following subparagraphs applies:

(i) a person makes a payment in discharge, in whole or in part, of an obligation of the taxpayer to pay an amount to a third person in respect of an amount of a loss or outgoing incurred by the taxpayer;

(ii) a person reimburses the taxpayer, in whole or in part, in respect of an amount of a loss or outgoing incurred by the taxpayer;

(b) the payment or reimbursement, as the case may be, constitutes:

(i) a fringe benefit; or

(ii) a benefit that, but for paragraph (g) of the definition of *fringe benefit* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit; and

(c) in the case of a reimbursement—the amount of the reimbursement is not included in the taxpayer's assessable income under section 15-70 of the *Income Tax Assessment Act 1997*;

the amount of the deduction that, but for this section, has been allowed or would be allowable in respect of the loss or outgoing shall be:

- (d) if it would be concluded that the amount of the payment or reimbursement would have been the same even if the loss or outgoing were not incurred in producing assessable income of the taxpayer—calculated as if the loss or outgoing were reduced by the amount of the payment or reimbursement; or
 - (e) in any other case—reduced by the amount of the payment or reimbursement.
- (2) Expressions (other than “fringe benefit”) used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.
 - (3) This section does not apply to deductions under Division 40 of the *Income Tax Assessment Act 1997* (about capital allowances).

51AJ Deductions not allowable for private component of contributions for fringe benefits etc.

- (1) Where:
 - (a) any of the following benefits is provided in respect of the employment of an employee of an employer:
 - (i) an airline transport benefit;
 - (ii) a board benefit;
 - (iii) a loan benefit;
 - (iv) a property benefit;
 - (v) a residual benefit;
 - (b) the benefit is:
 - (i) a fringe benefit; or
 - (ii) a benefit that, but for paragraph (g) of the definition of *fringe benefit* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit;
 - (c) in the case of a loan benefit—the taxpayer, being the recipient or the employee, incurs interest (in this section called the *recipients interest*) in respect of the loan;
 - (d) in the case of a benefit other than a loan benefit—the taxpayer, being the recipient or the employee, incurs

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consideration (in this section called the *recipients contribution*) to the provider or to the employer in respect of the provision of the recipients transport, the recipients meal, the recipients property or the recipients benefit, as the case may be;

- (e) it would be concluded that, in calculating the amount of the recipients interest, or the amount of the recipients contribution, as the case may be, the provider or the employer made an allowance for a particular level of application or use of the benefit in producing assessable income of the taxpayer; and
- (f) it would be concluded that the amount of the recipients interest, or the amount of the recipients contribution, as the case may be, would have been greater if it had been calculated without making that allowance;

the following provisions have effect:

- (g) if the extent of the application or use of the benefit concerned in producing assessable income of the taxpayer is equal to, or less than, that level—a deduction is not allowable to the taxpayer under this Act in respect of the recipients interest or the recipients contribution;
- (h) if the extent of the application or use of the benefit concerned in producing assessable income of the taxpayer exceeds that level—the amount of the deduction that, but for this section, has been allowed or would be allowable to the taxpayer under this Act in respect of the recipients interest or the recipients contribution shall not exceed the amount calculated in accordance with the formula:

$$D - A$$

where:

D is the amount of the deduction that, but for this section, would have been allowable to the taxpayer under this Act in respect of the amount of the recipients interest or the amount of the recipients contribution if it had been calculated without making that allowance; and

A is the amount of that allowance.

- (2) Expressions (other than “recipients contribution” and “fringe benefit”) used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.

51AK Agreements for the provision of non-deductible non-cash business benefits

- (1) Subject to this section, where:
 - (a) under an agreement:
 - (i) a taxpayer incurs expenditure; and
 - (ii) a non-cash business benefit is provided to the taxpayer or another person; and
 - (b) that benefit is not exclusively for use or application for the purpose of producing assessable income of the taxpayer; the taxpayer shall be treated, for the purposes of this Act, as if so much of the expenditure as does not exceed the arm's length value of the benefit had been incurred by the taxpayer exclusively in respect of that benefit.
- (2) This section does not apply so as to treat particular expenditure, or the cost of particular property, to be a particular amount for a particular purpose if there is another provision of this Act that deems that expenditure, or the cost of that property, to be a lesser amount for that purpose.
- (3) A reference in this section to producing assessable income includes a reference to:
 - (a) gaining assessable income; or
 - (b) carrying on a business for the purpose of gaining or producing assessable income.
- (4) Expressions used in this section and in section 21A have the same respective meanings in this section as they have in that section.
- (5) In this section:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

expenditure includes a loss or outgoing.

52 Loss on property acquired for profit-making

- (1AA) This section does not apply to a loss arising in the 1997-98 year of income or a later year of income from the carrying on or carrying

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out of a profit-making undertaking or scheme, even if the undertaking or scheme was entered into, or began to be carried on or carried out, before the 1997-98 year of income.

Note: Section 25-40 (Loss from profit-making scheme) of the *Income Tax Assessment Act 1997* deals with such a loss.

(1A) This section does not apply in respect of the sale of property acquired on or after 20 September 1985.

(1) Any loss incurred by the taxpayer in the year of income upon the sale of any property or from the carrying on or carrying out of any undertaking or scheme, the profit (if any) from which sale, undertaking or scheme would have been included in his assessable income, shall be an allowable deduction:

Provided that, in respect of property acquired by the taxpayer after the date of the commencement of this proviso, no deduction shall be allowable under this section (except where the Commissioner, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme, otherwise directs) unless the taxpayer, not later than the date upon which he lodges his first return under this Act after having acquired the property, notifies the Commissioner that the property has been acquired by him for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme.

(2) Where:

- (a) a taxpayer sells property (in this subsection referred to as the **relevant property**) that is deemed by subsection 25A(5) or (8) to have been acquired by the taxpayer for the purpose of profit-making by sale;
- (b) the Commissioner is satisfied that the relevant property has not been held or used by the taxpayer in a manner inconsistent with such a purpose; and
- (c) the Commissioner, having regard to:
 - (i) the amount of the consideration paid by the person who transferred the relevant property or, in a case to which subsection 25A(8) applies, the property referred to in paragraph 25A(8)(b), to the taxpayer in respect of the purchase of the property so transferred; and

- (ii) such other matters as the Commissioner considers relevant;
considers that it is appropriate that a loss be deemed to be incurred by the taxpayer upon the sale of the relevant property;
the taxpayer shall be deemed, for the purposes of this section, to have incurred a loss upon the sale of the relevant property of such amount as the Commissioner considers appropriate.
- (3) Except as provided by subsection (2), a deduction is not allowable to a taxpayer under this section in respect of a loss incurred upon a sale of property to which paragraph (2)(a) applies.
- (4) Where:
- (a) a loss is incurred by a taxpayer upon the sale of property (in this subsection referred to as the **relevant property**); and
 - (b) the taxpayer is deemed to have acquired the relevant property for the purpose of profit-making by sale by virtue of the application of subsection 25A(6) in accordance with subparagraph (b)(ii) of that subsection;
- the deduction that would, but for this subsection, be allowable to the taxpayer under subsection (1) in respect of the loss shall be reduced by such amount (if any) as the Commissioner considers reasonable having regard to the extent to which the relevant property is attributable to the interest in property that was acquired by the taxpayer for the purpose of profit-making by sale as mentioned in that subparagraph.
- (5) A deduction is not allowable to a taxpayer under subsection (1) in respect of a loss incurred by the taxpayer upon the sale of property if:
- (a) the sale is a transfer in the prescribed manner by the taxpayer for the purposes of section 25A; or
 - (b) the property is deemed by subsection 25A(2) to have been acquired by the taxpayer for the purposes of profit-making by sale and was not actually acquired by the taxpayer for that purpose.

52A Certain amounts disregarded in ascertaining taxable income

- (1) Notwithstanding section 8-1 of the *Income Tax Assessment Act 1997*, losses or outgoings consisting of expenditure incurred by a

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taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property as trading stock of the taxpayer shall, if the Commissioner considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the whole of those losses or outgoings, be allowable as a deduction to the taxpayer to the extent only that the Commissioner considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of those losses or outgoings.

(2) Where:

- (a) expenditure incurred by a taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property that was purchased or acquired in the carrying on or carrying out of any profit-making undertaking or scheme would, but for this subsection, be taken into account for the purpose of ascertaining whether any profit arose, or any loss was incurred, from the carrying on or carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and
- (b) the Commissioner considers that it would be unreasonable that the whole of that expenditure be taken into account for those purposes;

that expenditure shall be taken into account for those purposes to the extent only that the Commissioner considers that it is reasonable in the circumstances that the expenditure be taken into account for those purposes.

(2A) Where:

- (a) prescribed property that was acquired by a taxpayer after 24 September 1978 and before the commencement of this subsection or is acquired after the commencement of this subsection was or is treated or used by the taxpayer as an asset of a business carried on by the taxpayer;
- (b) but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of that property; and
- (c) the Commissioner considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the value of the property to the extent to which, but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of the property;

a deduction shall be allowable to the taxpayer in respect of the value of the property to the extent only that the Commissioner considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of that value.

(2B) Where:

(a) the value of any prescribed property that:

- (i) was acquired by a taxpayer after 24 September 1978 and before the commencement of this subsection or is acquired after the commencement of this subsection; and
- (ii) was or is used by the taxpayer in the carrying on or carrying out of any profit-making undertaking or scheme;

would, but for this subsection, be taken into account for the purpose of ascertaining whether or not any profit arose, or any loss was incurred, from the carrying on or the carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and

(b) the Commissioner considers that it would be unreasonable that the value of the property be taken into account for those purposes to the extent to which the value would, but for this subsection, be taken into account for those purposes;

the value of the property shall be taken into account for those purposes to the extent only that the Commissioner considers that it is reasonable in the circumstances that that value be taken into account for those purposes.

(3) In forming an opinion for the purposes of subsection (1) or (2A) as to the extent to which it is reasonable that a deduction be allowable to a taxpayer in respect of expenditure incurred in the purchase or acquisition of prescribed property or in respect of the value of prescribed property, as the case may be, or in forming an opinion for the purposes of subsection (2) or (2B) as to the extent to which it is reasonable that expenditure incurred by a taxpayer in the purchase or acquisition of prescribed property should be taken into account for the purposes referred to in subsection (2) or that the value of prescribed property should be taken into account for the purposes referred to in subsection (2B), as the case may be:

(a) if the taxpayer expended moneys in purchasing or acquiring the prescribed property—the Commissioner shall have regard

to the circumstances in which, and the person or persons from whom, the taxpayer obtained moneys:

- (i) that were expended by the taxpayer in purchasing or acquiring the prescribed property; or
 - (ii) that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property;
- (b) if the taxpayer borrowed from another person (in this paragraph referred to as the *lender*) moneys that were expended by the taxpayer in purchasing or acquiring the prescribed property or moneys that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property—the Commissioner shall have regard to:
- (i) the circumstances in which, and the terms and conditions on which, the taxpayer borrowed those moneys from the lender; and
 - (ii) whether, in the opinion of the Commissioner, the taxpayer and the lender were dealing with each other at arm's length in connexion with the borrowing of those moneys by the taxpayer;
- (c) if, either before or after the purchase or acquisition of the prescribed property by the taxpayer, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, as a result of which there has been, or there could reasonably be expected to be, a substantial reduction in the value of the prescribed property—the Commissioner shall have regard to that agreement, arrangement or understanding;
- (d) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction, operation, undertaking, scheme or arrangement, had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of

that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

- (e) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;
- (f) if:
 - (i) the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, money was to be paid, or other property was to be transferred or made available by a person other than the taxpayer, whether before or after the purchase or acquisition of the prescribed property, to the taxpayer, to the taxpayer and a person or persons other than the taxpayer or to a person or persons other than the taxpayer;
 - (ii) the Commissioner is satisfied that the amount of money so to be paid, or the value of the property so to be transferred or made available, as the case may be, was to be not less than, or not substantially less than, the amount expended by the taxpayer in the purchase or acquisition of the prescribed property;

the Commissioner shall have regard to the fact that the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of such a transaction, operation, undertaking, scheme or arrangement;

- (g) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, other prescribed property was to be issued or allotted by a company (whether

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to the taxpayer or any other person or persons) and it could reasonably be expected that, as a result of the issue or allotment of that other prescribed property, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

- (h) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, rights in respect of the prescribed property or in respect of other prescribed property (whether that other prescribed property had been issued or allotted before the time of the purchase or acquisition by the taxpayer of the first-mentioned prescribed property or was to be issued or allotted at a later time) were to be withdrawn or varied and it could reasonably be expected that, as a result of a withdrawal or variation of those rights, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement; and
- (j) the Commissioner shall have regard to any other matters that he considers relevant.

(4) In this section, *prescribed property* means any chose in action.

(4A) In the preceding provisions of this section, references to the value of any prescribed property shall, unless the contrary intention appears, be read as including references to part of the value of that prescribed property.

(5) For the purposes of this section:

- (a) a person to whom prescribed property is issued or allotted by a company shall be taken to have acquired that prescribed property;
- (b) a person upon whom prescribed property devolves by reason of the death of a person shall be taken to have acquired that prescribed property; and
- (c) a person in whom prescribed property vests by the operation of any trust or the exercise of any power under a trust shall be taken to have acquired that prescribed property.

- (6) The reference in paragraph (3)(b) to terms and conditions shall be read as including a reference to implied terms and conditions and to terms and conditions that are not enforceable by legal proceedings whether or not they were intended to be so enforceable.
- (7) Where, by virtue of the application of the preceding provisions of this section, the amount (in this subsection referred to as the *relevant amount*) of the deduction that is allowable to a taxpayer in respect of losses or outgoings incurred by the taxpayer in the purchase or acquisition of prescribed property is less than the amount of those losses and outgoings, the cost of that prescribed property shall, for the purposes of the application of Divisions 70 (Trading stock) and 385 (Primary production) of the *Income Tax Assessment Act 1997* in relation to that property in relation to the taxpayer, be taken to be an amount that is the same as the relevant amount.
- (8) References in this section to expenditure incurred by a taxpayer in the purchase or acquisition of any prescribed property shall, in the case of prescribed property being a share or stock in the capital of a company, be read as including references to any payment made or other consideration given by the taxpayer to the company in respect of the prescribed property, whether as a payment of unpaid capital in respect of the prescribed property or otherwise and whether on application for or allotment of the prescribed property, to meet calls or otherwise.
- (9) Subsection (8) applies to a non-share equity interest in the same way as it applies to a share.

63 Bad debts

Where a debt in respect of the whole or a part of a payment that has, or will, become liable to be made under a qualifying security within the meaning of Division 16E is written off as a bad debt by a taxpayer during a year of income, then, for the purposes of paragraph 25-35(1)(a) of the *Income Tax Assessment Act 1997*, there is taken to have been included in the taxpayer's assessable income of a year of income so much of the debt as equals the amount (if any) ascertained in accordance with the formula $A - B$, where:

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A is the amount (if any) or the sum of the amounts (if any) included in the assessable income of the taxpayer of any year or years of income under section 159GQ that is or are attributable to the payment or to the part of the payment, as the case requires; and

B is the amount (if any) or the sum of the amounts (if any) allowable as a deduction or deductions from the assessable income of the taxpayer of any year or years of income under section 159GQ that is or are attributable to the payment or to the part of the payment, as the case requires.

63D Bad debts etc. of money-lenders not allowable deductions where attributable to listed country or unlisted country branches

- (1) Subject to section 63F, if:
- (a) apart from this section and section 63F, a deduction would be allowable to a taxpayer:
 - (i) under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of a debt as bad; or
 - (ii) under section 63E of this Act in respect of a debt/equity swap in relation to a debt; and
 - (b) the debt was created or acquired in the ordinary course of a money-lending business of the taxpayer who carries on that business; and
 - (c) during any part or parts (the **foreign country branch period**) of the period since the debt was so created or acquired (the **debt holding period**), it is the case that, if income had been derived by the taxpayer in respect of the debt, the income would not, because of section 23AH of this Act, have been included in the assessable income of the taxpayer;

then only a proportion of the deduction is allowable, being the proportion calculated using the formula:

$$\frac{\text{Debt holding period} - \text{Foreign country branch period}}{\text{Eligible debt term}}$$

where:

debt holding period means the number of days in the debt holding period.

eligible debt term means:

- (a) where the debt was acquired from a person other than an associate, within the meaning of section 318 of this Act—the number of days in the debt holding period; or
- (b) in any other case—the number of days in the period beginning on the day on which the debt was created (whether by the taxpayer or another person) and ending at the end of the day on which it was written off.

foreign country branch period means the number of days in the foreign country branch period.

- (2) Where a debt that is written off, or in respect of which there is a debt/equity swap (within the meaning of section 63E), was acquired from another person, the creation, and any previous acquisition, of the debt is to be disregarded for the purposes of applying subsection (1), other than paragraph (b) of the definition of *eligible debt term* in subsection (1).
- (3) Where a part of a debt is written off as bad, this section applies as if the part were an entire debt that is written off as bad.

63E Debt/equity swaps

Meaning of debt/equity swap

- (1) For the purposes of this section, a *debt/equity swap* occurs if:
 - (a) under an arrangement (defined in subsection (6)), a taxpayer discharges, releases or otherwise extinguishes the whole or part of a debt owed to the taxpayer in return for the issue by the debtor to the taxpayer of shares (other than redeemable preference shares), or units, in the debtor; and
 - (b) the debtor is:
 - (i) a company; or
 - (ii) a trading trust (within the meaning of section 102N), or a public unit trust (within the meaning of section 102P), in relation to the year of income in which the units are issued; and
 - (c) the debt either:
 - (i) has been brought to account by the taxpayer as assessable income of any year of income; or

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- (ii) is in respect of money lent in the ordinary course of the business of the lending of money by the taxpayer who carries on that business.

Meaning of equity value and swap loss

- (2) For the purposes of this section:
 - (a) the **equity value** of the shares or units is the greater of:
 - (i) their market value at the time of their issue to the taxpayer; and
 - (ii) their value shown in the accounts of the taxpayer as at the time of their issue to the taxpayer; and
 - (b) a **swap loss** occurs if the amount of the whole or the part of the debt that is extinguished is greater than the equity value of the shares or units.

Swap loss is deductible etc.

- (3) If a debt/equity swap occurs:
 - (a) subject to section 63F, any swap loss is allowable as a deduction from the taxpayer's assessable income of the year of income in which the shares or units are issued; and
 - (b) no amount is allowable as a deduction from the assessable income of the taxpayer of any year of income under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of the debt as bad in connection with the debt/equity swap; and
 - (c) for the purposes of any application of Subdivision 20-A of the *Income Tax Assessment Act 1997* in relation to the issue of the shares or units to the taxpayer, the amount received in respect of the issue is taken to be the same as the equity value of the shares or units.

Effect of debt/equity swap on later equity disposal etc.

- (4) If a debt/equity swap occurs and the taxpayer later disposes of any of the shares or units or they are cancelled or redeemed:
 - (a) except in accordance with paragraph (b), no amount is included in, or allowable as a deduction from, the taxpayer's assessable income of any year of income under this Act in respect of the later disposal, cancellation or redemption; and

- (b) if the consideration received or receivable by the taxpayer in respect of the disposal, cancellation or redemption is different from the equity value of the shares or units:
 - (i) if the consideration is greater—the difference is included in the taxpayer's assessable income of the year of income in which the disposal, cancellation or redemption occurs; or
 - (ii) if it is less—the difference is allowable as a deduction from that assessable income.

Consideration of a nil amount

- (5) For the purposes of subsection (4), if no consideration is received or receivable by the taxpayer in respect of the disposal, cancellation or redemption, then consideration of a nil amount is taken to have been so received or receivable.
- (5A) Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* apply to an allowable deduction under this section in respect of the whole or part of a debt that is extinguished, in the same way as they apply to a debt (or part of a debt) that is written off as bad.

Meaning of arrangement

- (6) In this section:
arrangement means any agreement, arrangement, understanding, promise, undertaking or scheme, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings.

63F Limit on deductions where debt write offs and debt/equity swaps occur

Situations where limit is to be applied

- (1) If:
 - (a) apart from this section, a deduction (**the current deduction**) would be allowable to a taxpayer:
 - (i) under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of a debt as bad; or

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- (ii) under section 63E of this Act in respect of a debt/equity swap relating to the whole or part of a debt; and
- (b) a deduction (*a previous deduction*) was allowed or allowable to the taxpayer under any of those sections, under former section 51 of this Act or under section 63 in respect of any number of occurrences of either or both of the following:
 - (i) a previous writing off as bad of the whole or part of a debt (*a previous debt*) that was the same as, or included, the debt mentioned in subparagraph (a)(i) or (ii);
 - (ii) a previous debt/equity swap relating to a part of a debt (*a previous debt*) that was the same as, or included, the debt mentioned in subparagraph (a)(i) or (ii); and
- (c) the current deduction or at least one previous deduction is a deduction allowable under section 63E of this Act in respect of a debt/equity swap;

then the current deduction is only allowable to the extent that it does not exceed the limit worked out under subsection (2).

Calculation of limit

(2) The limit is worked out as follows:

- Step 1:* Take the amount of the previous debt in respect of the earliest or only writing off or debt/equity swap to which paragraph (1)(b) applies.
- Step 2:* Reduce the amount by the previous deduction in respect of that writing off or debt/equity swap.
- Step 3:* If one or more of the following events occur after the writing off or debt/equity swap, progressively reduce the balance of the amount in the way set out below and in the order in which the events occur:

Event	How balance reduced
A writing off or debt/equity swap in respect of which there is a previous deduction.	Reduce the balance by the amount of that previous deduction. If the reduced balance is higher than the level of the debt owing after the event, further reduce the balance to that lower level.

Any other event (e.g. a repayment) that reduces the amount of debt owing, being an event that occurs before the writing off or debt/equity swap in respect of the current deduction.

If the balance at the time of the event is higher than the level of the debt owing after the event occurs, reduce the balance to that lower level

The limit is the resulting balance.

63G Bad debts etc. of trust not allowable in certain circumstances

If:

- (a) a deduction is allowable from a trust's assessable income of any year of income:
 - (i) under former section 51 of this Act, under section 63 of this Act or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of a debt as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of the extinguishment of the whole or part of a debt; and
- (b) the debt was incurred as well as written off or extinguished on the last day of the year of income;

the deduction is not allowable.

Schedule 2F may also prevent a taxpayer deducting an amount in respect of a debt in other circumstances.

65 Payments to associated persons and relatives

- (1B) Where, by virtue of section 26-35 (Reduction of deduction for amounts paid to related entities) of the *Income Tax Assessment Act 1997*, an amount is not allowable as a deduction in calculating in accordance with section 90 of this Act the net income, or a partnership loss, of a partnership in which a company, being a private company in relation to the year of income of the company to which the individual interest of the company in the net income of the partnership or in the partnership loss relates, is a partner:
 - (a) the company shall, for the purposes of this Act other than Division 11A, be deemed to have paid, on the last day of that year of income, a dividend of an amount ascertained in accordance with subsection (1C); and

- (b) subsection 26-35(4) of the *Income Tax Assessment Act 1997* does not apply in relation to so much of the amount that is not so allowable as a deduction as is equal to the amount of the dividend that the company is to be so deemed to have paid.
- (1C) For the purposes of subsection (1B), the amount of the dividend that the company is to be deemed to have paid is:
- (a) where the effect of the disallowance of the deduction has been to increase the net income of the partnership—an amount equal to the difference between the amount of the individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the net income of the partnership if the deduction had been allowed;
 - (b) where the effect of the disallowance of the deduction has been to reduce the partnership loss—an amount equal to the difference between the amount of the individual interest of the company in the partnership loss and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed;
 - (c) where there is net income of the partnership and the amount of the deduction that was disallowed is equal to that net income—an amount equal to the individual interest of the company in the net income of the partnership;
 - (d) where there is net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the sum of the amount of the individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed; and
 - (e) where there is no net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed.

70B Deduction for loss on disposal or redemption of traditional securities

- (1) Expressions used in this section that are also used in section 26BB have the same meanings in this section as in section 26BB.
- (2) Where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any loss on the disposal or redemption is allowable as a deduction from the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.
 - (2A) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of traditional securities that are:
 - (a) segregated exempt assets (for the purposes of the *Income Tax Assessment Act 1997*) of a life assurance company; or
 - (b) segregated current pension assets (as defined in the *Income Tax Assessment Act 1997*) of a complying superannuation fund.
 - (2B) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:
 - (a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:
 - (i) the issuer of the traditional security; or
 - (ii) a connected entity of the issuer of the traditional security; and
 - (b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:
 - (i) the issuer of the traditional security; or
 - (ii) the connected entity.
 - (2C) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:
 - (a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:
 - (i) the issuer of the traditional security; nor
 - (ii) a connected entity of the issuer of the traditional security; and

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- (b) in the case of a disposal—the disposal is to:
 - (i) the issuer of the traditional security; or
 - (ii) a connected entity of the issuer of the traditional security; and
 - (c) the traditional security was issued on the basis that it will or may be:
 - (i) disposed of to the issuer of the traditional security or to the connected entity; or
 - (ii) redeemed;in exchange for ordinary shares in the company.
- (3) Where the Commissioner, having regard to any connection between the parties to the transaction by which the taxpayer disposed of the traditional security or by which it was redeemed, or by which the taxpayer acquired the traditional security, is satisfied that the parties were not dealing with each other at arm's length in relation to the transaction, then, for the purposes of determining under subsection (2) the amount of any loss on the disposal or redemption, the consideration for the transaction shall be taken to be:
- (a) the amount that might reasonably be expected for the transaction if the parties were independent parties dealing at arm's length with each other; or
 - (b) where, for any reason it is not possible or practicable for the Commissioner to ascertain that amount—such amount as the Commissioner determines.
- (4) If:
- (a) a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed; and
 - (b) there is a loss on the disposal or redemption; and
 - (c) in the case of a disposal or redemption of a marketable security:
 - (i) the taxpayer did not acquire the security in the ordinary course of trading on a securities market; and
 - (ii) at the time the taxpayer acquired the security, it was not open to the taxpayer to acquire an identical security in the ordinary course of trading on a securities market; and

- (d) in the case of a disposal of a marketable security—the disposal did not take place in the ordinary course of trading on a securities market; and
 - (e) having regard to:
 - (i) the financial position of the issuer of the security; and
 - (ii) perceptions of the financial position of the issuer of the security; and
 - (iii) other relevant matters;it would be concluded that the disposal or redemption took place for the reason, or for reasons that included the reason, that there was an apprehension or belief that the issuer was, or would be likely to be, unable or unwilling to discharge all liability to pay amounts under the security;
- a deduction is not allowable to the taxpayer under this section in respect of so much of the amount of the loss as is a loss of capital or a loss of a capital nature.
- (5) A reference in this section to the disposal by a taxpayer of a security, or to the redemption of a security of a taxpayer, does not include a reference to the waiver or release by the taxpayer of:
 - (a) the whole or a part of the debt the subject of the security; or
 - (b) any other right of the taxpayer under the security.
 - (6) Subsection (5) does not, by implication, affect the meaning of an expression used in:
 - (a) a provision of this Act other than this section; or
 - (b) any other law of the Commonwealth.
 - (7) In this section:

issuer, in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the amount or amounts.

marketable security means a traditional security that is covered by paragraph (a) of the definition of **security** in subsection 159GP(1).

securities market means a market, exchange or other place at which, or a facility by means of which, offers to sell, purchase or exchange marketable securities are regularly made or accepted.

73A Expenditure on scientific research

- (1A) This section has effect subject to Division 245 of Schedule 2C.
- (1) The following payments made, and expenditure incurred, during the year of income (other than any amount which is allowable as a deduction under any other section of this Act) by a person carrying on a business for the purpose of gaining or producing assessable income shall be allowable deductions:
- (a) Payments to:
 - (i) an approved research institute for scientific research related to that business; or
 - (ii) an approved research institute, the object of which is the undertaking of scientific research related to the class of business to which that business belongs; and
 - (b) Expenditure of a capital nature on scientific research related to that business (except to the extent that it is expenditure on plant, machinery, land or buildings or on alterations, additions or extensions to buildings or in the acquisition of rights in or arising out of scientific research).
- (2) Where, on or after the first day of the year of income ending on 30 June 1946, a taxpayer carrying on a business for the purpose of gaining or producing assessable income incurs expenditure of a capital nature in the construction or acquisition of a building, or part of a building, or in making any alteration or addition to a building, in which scientific research related to that business is to be carried on by him or on his behalf, and the building, part of a building, alteration or addition, as the case may be, is of use for scientific research purposes only, an amount equal to one-third of that expenditure shall be an allowable deduction:
- (a) from the assessable income of the year of income in which the building, part of a building, alteration or addition is first used by or on behalf of the taxpayer for such scientific research; and
 - (b) from the assessable income of each of the 2 years of income next succeeding that year of income, if he continues to carry on that business during the year in which that assessable income was derived.
- (2A) Subsection (2) does not apply to expenditure incurred by a taxpayer in the construction of a building or part of a building, in

the making of an alteration or addition to a building or in the acquisition of a building or part of a building unless:

- (a) either of the following subparagraphs applies:
 - (i) that construction or making commenced, or that acquisition occurred, before 21 November 1987;
 - (ii) any contract in respect of that construction, making or acquisition was entered into before 21 November 1987; and
 - (b) if the expenditure was incurred after 20 November 1987—the taxpayer intended, on 20 November 1987, that:
 - (i) scientific research, being research related to a business carried on by the taxpayer for the purpose of gaining or producing assessable income, would be carried on by or on behalf of the taxpayer in the building; and
 - (ii) the building, part of the building, alteration or addition, as the case may be, would be of use for scientific research purposes only.
- (3) Where any expenditure or payment to which this section refers is incurred or made outside Australia and the business in relation to which it is so incurred or made is carried on partly in and partly out of Australia, the deduction allowable under this section shall be such part of the amount which would otherwise be allowable as the Commissioner considers reasonable in the circumstances.
- (4) Where any expenditure has been allowed or is allowable as a deduction under subsection (2) and:
- (a) the taxpayer sells, transfers or otherwise disposes of the building or any part thereof; or
 - (b) the building or any part thereof is destroyed;
- the termination value of the building or part shall, to the extent of the expenditure so allowed or allowable as a deduction, be included in the assessable income of the year of income in which the disposal or destruction occurs:
- Provided that where the Commissioner is of opinion that part only, or no part, of that termination value relates to the disposal or destruction of any property which was acquired or created by that expenditure, that part only, or no part, as the case may be, of the termination value shall be taken into account for the purposes of this subsection.

(4A) If:

- (a) a person has purchased from another person a building, or part of a building, where the vendor had incurred capital expenditure of a kind in respect of which deductions are or have been allowable under subsection (2); and
- (b) it would be concluded that, having regard to any connection between the vendor and the purchaser or to any other relevant circumstances, those persons were not dealing with each other at arm's length; and
- (c) the purchase price is greater or lesser than the market value of the building, or the part of the building, at the time of the purchase;

the purchase price is, for all purposes of the application of this Act in relation to the vendor, taken to have been the amount of the market value of the property at the time of the purchase.

(5) If the purchase of the building is a creditable acquisition by the vendor, references in subsection (4A) to the purchase price are taken to be references to that price reduced by the amount of the net input tax credit to which the purchaser is entitled for the acquisition.

(6) In this section:

an approved research institute means the Commonwealth Scientific and Industrial Research Organization, or any university, college, institute, association or organization which is approved in writing for the purposes of this section by that Organization, by the Chief Executive Officer of the NHMRC or by the Research Secretary, as an institution, association or organization for undertaking scientific research which is or may prove to be of value to Australia.

NHMRC means the National Health and Medical Research Council established by section 5B of the *National Health and Medical Research Council Act 1992*.

Research Secretary means the Secretary of the Department that administers the *Education Research Act 1970*.

scientific research means any activities in the fields of natural or applied science for the extension of knowledge.

termination value has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

- (7) An approval for the purposes of subsection (6) may:
- (a) operate as from a date, whether before or after the date of the approval, specified in the instrument of approval; and
 - (b) be withdrawn at any time.
- (8) In this section, any reference to scientific research related to a business or class of business shall be read as including a reference to:
- (i) any scientific research which may lead to or facilitate an extension, or an improvement in the technical efficiency, of that business, or, as the case may be, of businesses of that class; and
 - (ii) any scientific research of a medical nature which is of special relation to the welfare of workers employed in that business or, as the case may be, in businesses of that class.
- (9) This section does not apply in relation to payments made, or expenditure incurred, after 30 June 1995.

73AA Section 73A roll-over relief in the case of certain CGT roll-overs

Roll-over relief where CGT roll-over relief allowed

- (1) This section applies to the disposal of a building, or part of a building, by a taxpayer (in this section called the *transferor*) to another taxpayer (in this section called the *transferee*) if:
- (b) subject to subsection (7), deductions have been allowed or are allowable under subsection 73A(2) to the transferor in respect of the building or the part of the building; and
 - (c) the disposal involves a CGT event; and
 - (d) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A of the <i>Income Tax Assessment Act 1997</i> for the CGT event.

CGT roll-overs that qualify transferor for relief		
Item	Type of CGT roll-over	Conditions
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the building or part is partnership property, and there is a roll-over under Subdivision 122-B of the <i>Income Tax Assessment Act 1997</i> for the disposal by the partners of the CGT assets consisting of their interests in the building or part.
3	Marriage or relationship breakdown	There is a roll-over under Subdivision 126-A of the <i>Income Tax Assessment Act 1997</i> for the CGT event.
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B of the <i>Income Tax Assessment Act 1997</i> for the CGT event.

No balancing charges

- (2) Subsection 73A(4) (which deals with balancing charges) does not apply to the disposal of the building or the part of the building by the transferor.

Transferee to inherit certain characteristics from transferor

- (3) Section 73A applies as if:
- (a) the transferee had acquired the building or the part of the building for a consideration equal to the cost of the building or the part of the building to the transferor; and
 - (b) deductions were not allowable to the transferee under subsection 73A(2) in respect of:
 - (i) so much of the cost of the building or the part of the building to the transferor as was allowed or allowable as a deduction to the transferor under that subsection in respect of the building or the part of the building; or
 - (ii) if there have been 2 or more prior successive applications of this section—so much of the cost of the building or the part of the building to the transferor as was allowed or allowable as a deduction to the prior successive transferors under that subsection in respect of the building or the part of the building; and

- (c) deductions were not allowable to the transferor under subsection 73A(2) in respect of the building or the part of the building for the year of income in which the disposal took place or for a subsequent year of income.

Subsection 73A(2A)—special rules

- (4) If subsection 73A(2A) applies to the transferor and in relation to the building or the part of the building, that subsection applies in relation to the transferee and in relation to the building or the part of the building.

Disposal by transferee where no roll-over relief—inheritance of deductions

- (5) If:
 - (a) after the disposal of the building or the part of the building to the transferee, the building or the part of the building is lost or destroyed or the transferee disposes of the building or the part of the building; and
 - (b) in the case of a disposal by the transferee—this section does not apply to the disposal;

then, for the purposes of the application of subsection 73A(4) in relation to the loss, destruction or disposal, the total of:

- (c) the deductions allowed or allowable to the transferor under subsection 73A(2) in relation to the building or the part of the building; and
- (d) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under subsection 73A(2) in relation to the building or the part of the building;

are taken to have been deductions allowed or allowable to the transferee under subsection 73A(2) in relation to the building or the part of the building.

Meaning of cost

- (6) A reference in this section to the cost of a building or of a part of a building to the transferor is a reference to expenditure of a capital nature incurred by the transferor in the construction or acquisition of the building or the part of the building, or in making any alteration or addition to the building or to the part of the building.

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Second or subsequent application of section—paragraph (1)(b) does not apply

- (7) If, apart from this subsection, this section has applied to the disposal of the building or the part of the building to the transferee, then, in working out whether this section applies to a subsequent disposal of the building or the part of the building by:
- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.

73B Certain expenditure on research and development activities

Object of this section

- (1AAA) The object of this section is to provide a tax incentive, in the form of a deduction, to encourage research and development activities in Australia and make eligible companies more internationally competitive by:
- (a) encouraging the development by eligible companies of innovative products, processes and services; and
 - (b) increasing investment by eligible companies in defined research and development activities; and
 - (c) promoting the technological advancement of eligible companies through a focus on innovation or high technical risk in defined research and development activities; and
 - (d) encouraging the use by eligible companies of strategic research and development planning; and
 - (e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

Relationship with sections 73C and 73CA

- (1AA) This section has effect subject to sections 73C and 73CA.

What is core technology

- (1AB) For the purposes of this section, technology is core technology in relation to particular research and development activities if:
- (a) the purpose of the activities was or is:
 - (i) to obtain new knowledge based on that technology; or
 - (ii) to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or
 - (b) the activities were or are an extension, continuation, development or completion of the activities that produced that technology.

Definitions

- (1) In this section, unless the contrary intention appears:

accelerated expenditure, in relation to an eligible company, means:

- (a) contracted expenditure of the company; or
- (b) expenditure incurred by the company in respect of research and development activities comprised or included in a project in relation to which the company and another company or companies are jointly registered under section 39P of the *Industry Research and Development Act 1986*.

advance R and D expenditure means research and development expenditure that is contracted expenditure in respect of which the following conditions are satisfied:

- (a) the expenditure is incurred after 20 November 1987 under an agreement (whenever entered into);
- (b) the eligible service period in relation to the expenditure ends more than 13 months after the day on which the expenditure is incurred;
- (c) the amount of the expenditure is equal to or greater than \$1,000; and
- (d) the expenditure is not expenditure that is required to be incurred by a law, or by an order of a court, of the Commonwealth, a State or a Territory.

aggregate research and development amount, in relation to an eligible company in relation to a year of income, means the sum of:

- (a) the research and development expenditure incurred by the company during the year of income; and
- (aa) the deductions allowed for core technology expenditure under subsections (12) and (12A) in the company's assessment in respect of income of the year of income; and
- (b) one-third of the total qualifying plant expenditure of the company in relation to the year of income, where that expenditure was incurred in respect of plant:
 - (i) acquired, or constructed, under a contract entered into at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
 - (ii) that the company commenced to construct at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; and
- (ba) four-fifths of the deductible amount, or of the sum of the deductible amounts, of qualifying expenditure in relation to the company in respect of a unit or units of post-23 July 1996 pilot plant in relation to the year of income, where:
 - (i) the unit or units were acquired, or constructed, under a contract or contracts entered into by the company at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
 - (ii) the company commenced to construct the unit or units at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; and
- (baa) the amount of any notional Division 40 deduction (as defined in section 73BC) taken into account in working out a deduction allowed or allowable to the company under section 73BA in respect of the year of income, or that would have been so allowed or allowable if the company had not chosen a tax offset under section 73BI; and
- (bb) the amount of any notional Division 42 deduction (as defined in section 73BJ) taken into account in working out a deduction allowed or allowable to the company under section 73BH in respect of the year of income; and
- (d) the amount of any deduction that has been allowed, or is allowable, under Division 43 of the *Income Tax Assessment Act 1997*, in the assessment of the company in respect of

income of the year of income because of the use by the company of a building for the purpose of carrying on research and development activities; and

(e) interest expenditure;

but does not include expenditure on overseas research and development activities that is not certified expenditure.

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

annual leave means leave covered by section 83-10 of the *Income Tax Assessment Act 1997* (see subsection (1) of that section).

approved research institute has the same meaning as in section 73A.

associate has the same meaning as in section 318.

Australian-centred research and development activities means:

- (a) Australian research and development activities that are covered by paragraph (a) of the definition of **research and development activities**; or
- (b) Australian research and development activities covered by all of the following:
 - (i) the activities are not covered by paragraph (a) of the definition of **research and development activities**;
 - (ii) the activities are carried on for a purpose directly related to the carrying on of other Australian research and development activities that are of the kind referred to in paragraph (a) of that definition;
 - (iii) that purpose is the sole or dominant purpose for which the activities are carried on.

Australian research and development activities means research and development activities that are carried on in Australia or in an external Territory.

Board means Innovation Australia, established by the *Industry Research and Development Act 1986*.

building includes a part of a building.

certified expenditure means expenditure that was incurred by an eligible company on overseas research and development activities in respect of which the Board gave a provisional certificate under section 39ED of the *Industry Research and Development Act 1986* before the expenditure was incurred.

consideration receivable means termination value within the meaning of section 40-300 of the *Income Tax Assessment Act 1997* as if that definition applied to property rather than plant.

contracted expenditure means expenditure incurred by an eligible company:

- (a) on or after 1 July 1985—to the Coal Research Trust Account;
- (b) during the period commencing on 1 July 1985 and ending on 30 June 1988—to an approved research institute; or
- (c) on or after 20 November 1987—to a body (not being an associate of the eligible company) that was, or is taken to have been, registered under section 39F of the *Industry Research and Development Act 1986* when the expenditure was incurred as a research agency in respect of the class of research and development activities on which the expenditure was incurred;

in consideration for that Trust Account funding the performance of, or that institute or agency performing, on or after the date concerned, or during the period concerned, as the case may be, research and development activities on behalf of the company.

contributions to superannuation funds, in relation to an eligible company, means expenditure that would, apart from subsection (20), be allowable as a deduction to the company under section 290-60 of the *Income Tax Assessment Act 1997*.

core technology, in relation to research and development activities, means technology that is core technology in relation to those activities as provided by subsection (1AB).

core technology adjustment amount, in relation to an eligible company in relation to a year of income in which the company disposed of particular core technology, means the total amount of core technology expenditure incurred by the company before or during the year of income in respect of that core technology, reduced by the sum of the deductions that have been allowed to the

company under subsection (12A) in previous years of income in relation to that expenditure.

core technology expenditure, in relation to an eligible company, means expenditure incurred by the company after 7 September 1989 in acquiring, or in acquiring the right to use, technology for the purposes of research and development activities carried on by or on behalf of the company, being technology that is core technology in relation to those activities.

eligible company means a body corporate incorporated under a law of the Commonwealth or of a State or Territory.

eligible feedstock expenditure has the meaning given by subsection (1A).

eligible service period, in relation to an amount of expenditure under an agreement, means so much of the service period in relation to the expenditure as occurs after the expenditure is incurred.

excluded plant expenditure means:

- (a) expenditure incurred by an eligible company in:
 - (i) the acquisition, or the construction, under a contract entered into at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
 - (ii) the construction by the company, being construction that commenced at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001;of a unit of plant or pilot plant; and
- (b) any other expenditure incurred by an eligible company in the acquisition or construction, or that otherwise forms part of the cost, of a section 73BA depreciating asset (as defined by section 73BB) or a unit of section 73BH plant (as defined by section 73BI).

expenditure on foreign owned R&D by an eligible company for a year of income has the meaning given by subsections (14C) and (14D).

feedstock expenditure, in relation to an eligible company, means expenditure incurred by the company in acquiring or producing materials or goods to be the subject of processing or transformation

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by the company in research and development activities, and includes expenditure incurred by the company on any energy input directly into the processing or transformation.

feedstock input, in relation to an eligible company in relation to a year of income, means the company's feedstock expenditure in respect of materials or goods that were the subject of processing or transformation by the company in research and development activities during the year of income.

feedstock output, in relation to an eligible company in relation to a year of income, means the sum of the amounts worked out under paragraphs (a) and (b) in relation to any products that were obtained by the company during the year of income from the processing or transformation of materials or goods the acquisition or production of which was feedstock expenditure of the company:

- (a) if any of those products were sold by the company during the year of income by a transaction or transactions entered into at arm's length with the buyer or buyers—the amount or amounts received or receivable by the company from the sale or sales;
- (b) if any of those products were not sold by the company during the year of income or were sold by the company otherwise than by a transaction or transactions entered into at arm's length with the buyer or buyers—the amount or amounts (if any) that would have been received by the company by selling those products at the end of the year of income by a transaction or transactions entered into at arm's length with the buyer or buyers.

foreign company means a body corporate that:

- (a) is incorporated under a law of a foreign country; and
- (b) is a resident of a foreign country for the purposes of a double tax agreement (as defined in Part X) that relates to that foreign country.

ineligible pilot plant amount, in relation to a unit of pilot plant to which subsection (6) applies, means the difference between the amount that would, apart from the operation of subsection (6), be the cost of the unit and \$10,000,000.

interest expenditure, in relation to an eligible company in relation to a year of income, means interest, or an amount in the nature of

interest, incurred by the company during the year of income in the financing of research and development activities.

knowledge means any knowledge or other information, whether or not the possessor of the knowledge or information has legally enforceable rights in relation to it.

long service leave means leave covered by Subdivision 83-B of the *Income Tax Assessment Act 1997* (see section 83-70 of that Act).

non-associate, in relation to an eligible company, means a person who is not an associate of the company.

overseas research and development activities means research and development activities that are carried on outside Australia and the external Territories.

pilot plant means an experimental model of other plant for use in research and development activities or for use in commercial production, being a model that is not for use in commercial production but that has the intended essential characteristics of the other plant of which it is a model.

plant means:

- (a) things that are plant within the meaning of section 45-40 of the *Income Tax Assessment Act 1997*; or
- (b) things to which section 45-40 of that Act would apply if the carrying on of research and development activities were the carrying on of a business for the purpose of producing assessable income; or
- (c) pilot plant other than post-23 July 1996 pilot plant.

plant expenditure, in relation to an eligible company, means expenditure incurred by the company in:

- (a) the acquisition, or the construction, under a contract entered into on or after 1 July 1985, of a unit of plant other than post-23 July 1996 pilot plant; or
- (b) the construction by the company, being construction that commenced on or after 1 July 1985, of a unit of plant other than post-23 July 1996 pilot plant;

being a unit of plant for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities at least for an initial period.

post-23 July 1996 pilot plant means pilot plant referred to in subsection (4C).

research and development activities means:

- (a) systematic, investigative and experimental activities that involve innovation or high levels of technical risk and are carried on for the purpose of:
 - (i) acquiring new knowledge (whether or not that knowledge will have a specific practical application); or
 - (ii) creating new or improved materials, products, devices, processes or services; or
- (b) other activities that are carried on for a purpose directly related to the carrying on of activities of the kind referred to in paragraph (a).

research and development expenditure, in relation to an eligible company in relation to a year of income, means expenditure (other than core technology expenditure, interest expenditure, feedstock expenditure, excluded plant expenditure or expenditure incurred in the acquisition or construction of a building or of an extension, alteration or improvement to a building) incurred by the company during the year of income, being:

- (a) contracted expenditure of the company;
- (b) salary expenditure of the company, being expenditure incurred on or after 1 July 1985; or
- (c) other expenditure incurred on or after 1 July 1985 directly in respect of research and development activities carried on by or on behalf of the company on or after 1 July 1985;

and includes any eligible feedstock expenditure that the company has in respect of the year of income in respect of related research and development activities.

residual feedstock expenditure, in relation to an eligible company in relation to a year of income in relation to related research and development activities, means the lesser of:

- (a) the company's feedstock input in respect of the year of income in relation to those activities; or
- (b) the company's feedstock output in respect of the year of income in relation to those activities.

salary expenditure, in relation to an eligible company in relation to a year of income, means the sum of:

- (a) the expenditure, not being expenditure referred to in paragraph (b), incurred by the company during the year of income by way of salaries, wages, allowances, bonuses, overtime payments or penalty rate payments for officers or employees of the company, being expenditure incurred directly in respect of research and development activities carried on by or on behalf of the company on or after 1 July 1985;
- (b) in relation to each officer or employee of the company who was engaged at any time during the year of income in research and development activities carried on by or on behalf of the company—so much of the expenditure incurred by the company during the year of income in respect of annual leave, sick leave or long service leave for that officer or employee or contributions to superannuation funds in respect of that officer or employee as bears to that amount the same proportion as the proportion of the year of income during which that officer or employee was engaged in research and development activities carried on by or on behalf of the company bears to the proportion of the year of income during which that officer or employee was engaged in any activities carried on by or on behalf of the company; and
- (c) so much of the expenditure incurred by the company during the year of income on pay-roll tax and premiums for workers' compensation insurance as the Commissioner considers reasonable having regard to:
 - (i) the amount of the expenditure incurred by the company during the year of income to which paragraph (a) or (b) applies;
 - (ii) the total expenditure incurred by the company during the year of income in respect of salaries, wages, allowances, bonuses, overtime payments, penalty rate payments, annual leave, sick leave and long service leave in respect of all officers and employees of the company; and
 - (iii) such other matters as the Commissioner considers relevant.

service period, in relation to an amount of expenditure under an agreement, means the period during which the thing done under the agreement in return for the amount of expenditure is done.

sick leave means any period of leave in excess of 14 consecutive days, being leave, however described, granted by an employer (whether voluntarily, by agreement or in accordance with a law) to an employee in respect of the physical or mental incapacity of the employee.

technology means knowledge or anything produced by the application of knowledge.

written-down value has the meaning given by subsections (4A) and (4B).

What is eligible feedstock expenditure

- (1A) For the purposes of this section, an eligible company has eligible feedstock expenditure in respect of a year of income in relation to related research and development activities if the company's feedstock input in respect of the year of income in relation to those activities exceeded the company's feedstock output in respect of the year of income in relation to those activities, and the amount of the excess constitutes the company's eligible feedstock expenditure in respect of the year of income in relation to those activities.

Limit on what is contracted expenditure

- (1B) Expenditure referred to in paragraph (c) of the definition of **contracted expenditure** in subsection (1) does not constitute contracted expenditure for the purposes of this section unless, when the expenditure was incurred, the eligible company that incurred the expenditure was capable of utilising, or had formulated a plan to utilise, any results of the research and development activities directly in connection with a business that that company carried on or proposed to carry on.
- (1BA) Subsection (1B) does not apply to expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)).

*What use of plant counts for definition of **plant expenditure***

- (1C) For the purposes of the application of the definition of **plant expenditure** in subsection (1), or for the purposes of the application of paragraph (31)(a), in relation to an eligible company, a unit of plant is not to be taken not to be for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because the company has, on or after 21 November 1987, entered into an agreement with another person (whether or not an eligible company) for that person to use the unit of plant exclusively for the purpose of the carrying on by or on behalf of that person of research and development activities (whether or not the same as the first-mentioned activities).

Disregarding transfer of property connected with security

- (2) For the purpose of this section, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this section applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

Limits on what are research and development activities

- (2A) For the purposes of the definition of **research and development activities** in subsection (1), activities carried on by or on behalf of an eligible company by way of the development of computer software shall not be taken to be systematic, investigative and experimental activities unless the computer software is developed for the purpose, or for purposes that include the purpose, of sale, rent, licence, hire or lease to 2 or more non-associates of the company (counting a non-associate of the company and the associates of such a non-associate together as one person).
- (2B) For the purposes of the definition of **research and development activities** in subsection (1):
- (a) activities are not taken to involve innovation unless they involve an appreciable element of novelty; and
 - (b) activities are not taken to involve high levels of technical risk unless:
 - (i) the probability of obtaining the technical or scientific outcome of the activities cannot be known or

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determined in advance on the basis of current knowledge or experience; and

- (ii) the uncertainty of obtaining the outcome can be removed only through a program of systematic, investigative and experimental activities in which scientific method has been applied, in a systematic progression of work (based on principles of physical, biological, chemical, medical, engineering or computer sciences) from hypothesis to experiment, observation and evaluation, followed by logical conclusions.

(2BA) Activities are not covered by the definition of **research and development activities** in subsection (1) unless they are carried on in accordance with a plan that complies with any guidelines formulated by the Board under section 39KA of the *Industry Research and Development Act 1986* that are in force at the time.

- (2C) For the purposes of this section, the following activities are taken not to be systematic, investigative and experimental activities:
- (a) market research, market testing or market development, or sales promotion (including consumer surveys);
 - (b) quality control;
 - (c) prospecting, exploring or drilling for minerals or natural gas for the purpose of discovering deposits, determining more precisely the location of deposits or determining the size or quality of deposits;
 - (d) the making of cosmetic modifications or stylistic changes to products, processes or production methods;
 - (e) management studies or efficiency surveys;
 - (f) research in social sciences, arts or humanities;
 - (g) the making of donations;
 - (h) pre-production activities such as demonstration of commercial viability, tooling-up and trial runs;
 - (i) routine collection of information, except as part of the research and development process;
 - (j) preparation for teaching;
 - (k) commercial, legal and administrative aspects of patenting, licensing or other activities;
 - (l) activities associated with complying with statutory requirements or standards, such as the maintenance of

national standards, the calibration of secondary standards and routine testing and analysis of materials, components, products, processes, soils, atmospheres and other things;

- (m) specialised routine medical care;
- (n) any activity related to the reproduction of a commercial product or process by a physical examination of an existing system or from plans, blueprints, detailed specifications or publically available information.

Expenditure by eligible company as trustee not counted

- (3) A reference in this section to the incurring of expenditure by an eligible company does not include a reference to expenditure incurred by the company in the capacity of a trustee or nominee other than expenditure incurred by the company on or after 1 July 1988 in the capacity of a trustee of a public trading trust for the purposes of Division 6C in relation to the year of income in which the expenditure was incurred.

Partnerships

- (3A) Where expenditure (whether incurred wholly, or only partly, on research and development activities) has, on or after 21 November 1987, been incurred by a partnership in which, when the expenditure was incurred:
 - (a) at least one partner was an eligible company; and
 - (b) either:
 - (i) each other partner was:
 - (A) an eligible company; or
 - (B) a body corporate that was, or is taken to have been, registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred; or
 - (ii) the partnership was designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program;
- the following paragraphs have effect:
- (c) each partner is to be taken for the purposes of this section, sections 73C and 73CA of this Act, and Subdivision 20-A of

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the *Income Tax Assessment Act 1997*, to have incurred so much (if any) of the expenditure as was incurred out of money contributed by the partner (otherwise than by way of loan), whether in the year of income in which the expenditure was incurred or a previous year of income;

- (d) if the partnership has, whether before or after the commencement of this subsection, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the expenditure, each partner is to be taken for the purposes of this section, sections 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have received, or become entitled to receive, so much (if any) of the recoupment or grant as is calculated in accordance with the formula:

$$\frac{\text{amount of recoupment or grant} \times \text{partner's contribution}}{\text{total contribution}}$$

where:

partner's contribution means the total contribution made (otherwise than by way of loan) by the partner to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

total contribution means the total of the contributions made (otherwise than by way of loan) by all the partners to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

- (da) if the partnership is not designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program—subsection 73CA(2A) does not apply in relation to the expenditure that a partner is so taken to have incurred;
- (e) any expenditure that a partner is to be so taken to have incurred, and any recoupment or grant that a partner is to be so taken to have received or become entitled to receive, is not to be taken into account in determining the net income of the partnership or any partnership loss, as the case may be, of the year of income; and
- (f) subject to paragraphs (c), (d), (da) and (e), this section, sections 73C and 73CA of this Act, and Subdivision 20-A of

the *Income Tax Assessment Act 1997*, apply in relation to each such partner that is an eligible company as if that partner, and not the partnership, were, or had been, carrying on the relevant project and activities, but so apply with such modifications to those sections as are appropriate having regard to the partner's interest in the partnership.

- (3B) In determining whether a relationship between persons for the purpose of engaging in research and development activities constitutes a partnership for the purposes of this Act, the engaging by those persons in those activities is to be taken to constitute carrying on a business with a view to profit.

Definition of qualifying plant expenditure

- (4) Subject to subsection (5), if, during a year of income:
- (a) an eligible company commences to use a unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and
 - (b) the eligible company has incurred an amount of plant expenditure in respect of the unit;

that amount is, in relation to the unit, taken to be an amount of qualifying plant expenditure in relation to the company in relation to the year of income and each of the 2 succeeding years of income.

Definitions of written-down value

- (4A) The **written-down value** of a unit of plant other than post-23 July 1996 pilot plant:
- (a) that is owned by a company; and
 - (b) in relation to which a deduction has been allowed under this section from the company's assessable income;

is the amount worked out using the formula:

$$\text{Cost} - \left(\frac{\text{Cost} \times \text{Number of deductible years}}{3} \right)$$

where:

cost means the cost of the unit.

number of deductible years means the number of years of income in respect of which a deduction has been allowed from the

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company's assessable income under this section in relation to the unit.

- (4B) The **written-down value** of a unit of post-23 July 1996 pilot plant:
- (a) that is owned by a company; and
 - (b) in relation to which a deduction has been allowed under this section from the company's assessable income;

is the amount worked out using the formula:

Qualifying expenditure – Notional deductions

where:

qualifying expenditure means the amount of the qualifying pilot plant expenditure in relation to the company in respect of the unit.

notional deductions means the total amount of the deductions (if any) that would have been allowed or allowable under this section from the company's assessable income of any year of income in respect of the unit if, in calculating the amount of any such deduction, any provision for an amount to be multiplied by a number greater than one had not been included.

Definition of qualifying pilot plant expenditure

- (4C) If:
- (a) an eligible company incurs expenditure in the acquisition, or the construction, under a contract entered into after 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996, of a unit of pilot plant; and
 - (b) the unit of pilot plant was acquired or constructed for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities;

the expenditure is qualifying pilot plant expenditure in relation to the company in respect of the unit of pilot plant.

Deductible amount of qualifying expenditure on post-23 July 1996 pilot plant

- (4D) If the amount that, apart from paragraph (ba) of the definition of **aggregate research and development amount** in subsection 73B(1), would be the aggregate research and development amount in relation to an eligible company in relation to a year of income

does not exceed \$20,000, the deductible amount of qualifying expenditure in relation to the company in respect of a unit of post-23 July 1996 pilot plant in respect of the year of income is the annual deduction percentage of the qualifying pilot plant expenditure in relation to the company in respect of the unit of pilot plant.

(4E) If the amount that, apart from paragraph (ba) of the definition of *aggregate research and development amount* in subsection 73B(1), would be the aggregate research and development amount in relation to an eligible company in relation to a year of income exceeds \$20,000, the deductible amount of qualifying expenditure in relation to the company in respect of a unit of post-23 July 1996 pilot plant in respect of the year of income is the annual deduction percentage of the qualifying pilot plant expenditure in relation to the company in respect of the unit of pilot plant, multiplied by 1.25.

(4F) The annual deduction percentage for a unit of post-23 July 1996 pilot plant is worked out in relation to a company under subsection (4G) or (4H), as the case requires.

(4G) If:

- (a) the qualifying pilot plant expenditure in relation to an eligible company in respect of a unit of post-23 July 1996 pilot plant does not exceed \$300 or such higher amount as is prescribed; or
- (b) the useful life of the unit of post-23 July 1996 pilot plant is less than 3 years;

the annual deduction percentage for the unit is 100%.

(4H) If subsection (4G) does not apply in respect of a unit of post-23 July 1996 pilot plant, the annual deduction percentage for the unit is two-thirds of the percentage worked out using the following table:

Table of percentages		
Item	Years in useful life	Percentage
1	3 to fewer than 5	60%
2	5 to fewer than $6\frac{2}{3}$	40%
3	$6\frac{2}{3}$ to fewer than 10	30%

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Table of percentages		
Item	Years in useful life	Percentage
4	10 to fewer than 13	25%
5	13 to fewer than 30	20%
6	30 or more	10%

- (4J) The useful life of a unit of post-23 July 1996 pilot plant owned by an eligible company (the *relevant unit*) is the period that would be the effective life of the relevant unit under Subdivision 40-B of the *Income Tax Assessment Act 1997* if:
- (a) the company could deduct amounts for the decline in value of the relevant unit under Division 40 of that Act; and
 - (b) any reference in Division 40 of that Act to using an asset for a taxable purpose included a reference to the use of the relevant unit by or on behalf of the company exclusively for carrying on research and development activities.

Limit on qualifying plant expenditure

- (5) If:
- (a) apart from this subsection, there would be an amount of qualifying plant expenditure in relation to a unit of plant owned by an eligible company in relation to a year of income; and
 - (b) at any time during the year of income, the company ceases to use that unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities;

there is no amount of qualifying plant expenditure in relation to that unit of plant in relation to the year of income or any succeeding year of income.

- (5AA) Subject to subsection (5AB), an eligible company is not to be taken for the purposes of paragraph (5)(b) to have ceased during a year of income to use a unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because on or after 21 November 1987 and during the whole or a part of the year of income another person (whether or not an eligible company) used the unit of plant, with the consent of the company, exclusively for the purpose of the carrying on by or on behalf of that other person of research and

development activities (whether or not the same as the activities for which the unit of plant has been used by the company).

- (5AB) Subsection (5AA) does not apply in relation to a unit of plant owned by an eligible company in relation to a year of income unless the only reason for any failure of the company to use the unit of plant during the whole or a part of the year of income for the purpose of the carrying on by or on behalf of the company of research and development activities was the use made of the unit of plant during the year of income by another person as mentioned in that subsection.

Expenditure on building does not count for this section

- (5A) This section does not apply to expenditure incurred by an eligible company in the acquisition or construction of a building or of an extension, alteration or improvement to a building.

Cost of plant before 19 August 1992

- (6) If:
- (a) the cost of a unit of pilot plant to an eligible company exceeds \$10 million; and
 - (b) any of the following applies:
 - (i) the unit was acquired by the eligible company under a contract entered into before 19 August 1992;
 - (ii) the construction of the unit commenced before 19 August 1992;
 - (iii) a contract for the construction of the unit was entered into before 19 August 1992;

the cost of the unit of plant is taken, for the purposes of this section, to be \$10 million.

No deduction for expenditure on activities for another person

- (9) A deduction is not allowable under this section (except subsection (14C)) in respect of expenditure incurred by an eligible company for the purpose of carrying on research and development activities on behalf of any other person, and expenditure of that kind shall be disregarded for the purposes of the application of this section (except subsections (14C) and (14D)) to the company.

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- (9A) Subsection (9) does not apply in relation to expenditure incurred on or after 21 November 1987 on behalf of a partnership by a partner in the partnership in that partner's capacity as such a partner.

No deduction for unregistered company

- (10) A deduction is not allowable under this section to an eligible company for a year of income in respect of expenditure in relation to research and development activities unless:
- (a) the company is registered, in relation to the year of income and in relation to those activities, under section 39J of the *Industry Research and Development Act 1986*; or
 - (b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.

Advance R and D expenditure

- (11) For the purposes of this section:
- (a) subject to paragraph (b), advance R and D expenditure of an eligible company shall be taken to be incurred in equal proportions throughout its eligible service period; and
 - (b) where advance R and D expenditure of an eligible company is accelerated expenditure and its eligible service period occurs in 2 or more years of income—any part of that expenditure that would otherwise be taken by paragraph (a) to be incurred in the second or a later year of income shall instead be taken to be incurred in equal proportions throughout the part of the eligible service period occurring in the year of income preceding that second or later year of income.

Deductions for core technology expenditure

- (12) Subject to this section, where an eligible company incurs core technology expenditure during a year of income under a contract entered into before 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996, the amount of that expenditure is allowable as a deduction from the assessable income of the company of the year of income.

(12A) Subject to this section, if:

- (a) an eligible company has, before or during the year of income, incurred core technology expenditure in respect of particular core technology (the *relevant core technology*) under a contract entered into at or after the time referred to in subsection (12); and
- (b) during the year of income the company incurs research and development expenditure that is related to the relevant core technology;

there is allowable as a deduction from the company's assessable income of the year of income so much of the amount worked out using the formula in subsection (12B) in respect of that core technology expenditure as does not exceed one-third of the amount of that related research and development expenditure.

(12B) The formula for the purposes of subsection (12A) is:

Undeducted past expenditure $-$ Current year core technology adjustment amount

where:

undeducted expenditure means so much of the core technology expenditure incurred by the company during the current year or previous years of income in relation to the relevant core technology under contracts entered into at or after the time referred to in subsection (12) as has not been allowed as a deduction from the company's assessable income of any of those previous years of income.

current year core technology adjustment amount, in relation to a company in relation to a year of income in which:

- (a) an amount or amounts are included in the company's assessable income under subsection (27A) because the company received or was entitled to receive an amount or amounts from the disposal of the relevant core technology; or
- (b) an amount or amounts would be so included apart from the operation of paragraph 73B(27C)(c);

means:

- (c) the core technology adjustment amount in relation to the company in relation to that year of income in respect of the relevant core technology; or

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(d) the amount or the sum of the amounts referred to in paragraph (b);
whichever is the less.

- (12C) A deduction in respect of core technology expenditure is not allowable from a taxpayer's assessable income of any year of income under any provision of this Act other than this section.

Deduction for contracted expenditure

- (13) Subject to this section, where an eligible company incurs contracted expenditure during a year of income, the amount of that expenditure multiplied by 1.25 is an allowable deduction to the company for the year of income.

Deduction for research and development expenditure

- (14) Subject to this section, where:
- (a) an eligible company incurs research and development expenditure (other than contracted expenditure) during a year of income; and
 - (b) the aggregate research and development amount in relation to the company in relation to the year of income is greater than \$20,000;

the amount of that expenditure multiplied by 1.25 is allowable as a deduction from the assessable income of the company of the year of income.

Reduced rate of deduction under subsection (13) or (14)

- (14AA) A part of an eligible company's deduction for a year of income under subsection (13) or (14) in respect of a particular amount of research and development expenditure (the **R&D amount**) is worked out by multiplying the R&D amount by 1 rather than 1.25 if subsection (14AB) applies to the R&D amount.
- (14AB) This subsection applies to an R&D amount of an eligible company for a year of income if:
- (a) any other person (within the meaning of section 73H) incurred expenditure during that year of income or an earlier one in respect of all or a part of the things for which the R&D amount was for; and

- (b) the other person was grouped with the eligible company as mentioned in section 73L at the time the expenditure was incurred by the other person.
- (14AC) The part of the eligible company's R&D amount for the year of income that is multiplied by 1.25 under subsection (13) or (14) is: R&D amount – Total group markup
where:

total group markup is:

- (a) the sum of the amounts derived by persons during the year of income for goods or services in respect of all or a part of the things for which the R&D amount was for while those persons were grouped with the eligible company as mentioned in section 73L; *less*
- (b) the actual cost to those persons of providing those goods or services.
- (14AD) The part of the eligible company's R&D amount for the year of income that is multiplied by 1 rather than 1.25 is the part of the R&D amount representing the total group markup.

Deduction for interest expenditure

- (14A) Subject to this section, if an eligible company incurs interest expenditure during a year of income, the amount of that expenditure is allowable as a deduction from the company's assessable income of the year of income.

Deduction for residual feedstock expenditure

- (14B) Subject to this section, if an eligible company has any residual feedstock expenditure in respect of a year of income in relation to related research and development activities, the amount of that expenditure is allowable as a deduction from the company's assessable income of the year of income.

Deduction for expenditure on foreign owned R&D

- (14C) An eligible company may deduct for a year of income the amount (the *expenditure on foreign owned R&D* by the eligible company for the year of income) worked out under subsection (14D) if:

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- (a) the eligible company incurs expenditure in the year of income at a time when the eligible company is grouped under section 73L with a foreign company; and
- (b) the expenditure is for the purpose of the carrying on of Australian-centred research and development activities; and
- (c) the activities are, are to be or were carried on wholly or primarily on behalf of the foreign company; and
- (d) the activities are, are to be or were carried on directly or indirectly under a written agreement between the eligible company and the foreign company and no other parties for the activities to be performed:
 - (i) by the eligible company; or
 - (ii) by another person directly or indirectly under another agreement to which the eligible company is, or will become, a party; and
- (e) the expenditure is not incurred in connection with an agreement that:
 - (i) is between the eligible company and another eligible company that is grouped under section 73L with the eligible company when the expenditure is incurred; and
 - (ii) is an agreement for the activities to be performed either by the eligible company or by a person who is not a party to the agreement and is to perform the activities directly or indirectly under another agreement to which the eligible company is, or will become, a party; and
- (f) the expenditure on foreign owned R&D by the eligible company for the year of income is greater than \$20,000; and
- (g) the eligible company, and each other eligible company (if any) that is grouped under section 73L with that company at any time in the year of income, is registered under section 39J of the *Industry Research and Development Act 1986* in relation to the year of income and all activities that meet both the following conditions:
 - (i) the activities are ones that, if subsection (2BA) had not been enacted, would be Australian-centred research and development activities carried on wholly or primarily on behalf of a foreign company (whether or not the activities would be such Australian-centred research and development activities taking account of that subsection);

- (ii) the activities are ones in relation to which the eligible company or the other eligible company (as appropriate) incurred expenditure during the year of income.

Note 1: An example of the carrying on or performance of activities indirectly under an agreement that is a contract is the carrying on or performance of the activities under a subcontract, or one of a chain of subcontracts, under the agreement.

Note 2: One effect of paragraph (14C)(e) is that, even if the eligible company has an agreement with the foreign company for the carrying on of Australian-centred research and development activities wholly or primarily on behalf of the foreign company, the eligible company cannot deduct its expenditure:

- (a) for performing the activities as a subcontractor under a subcontract with another eligible company grouped under section 73L with the eligible company; or
- (b) if the eligible company is a subcontractor to another eligible company grouped under section 73L with the eligible company, for further subcontracting the performance of the activities.

Note 3: The eligible company may get an extra deduction under section 73QB if its expenditure on foreign owned R&D for the year of income is greater than the average of the amounts that would be the expenditure on foreign owned R&D by the eligible company for the 3 previous years of income if subsection (2BA) of this section had not been enacted.

(14D) The *expenditure on foreign owned R&D* by the eligible company for the year of income is the amount that would be the eligible company's incremental expenditure under section 73P for the year of income if:

- (a) the Australian-centred research and development activities covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)) of this section were carried on on behalf of the eligible company (and not on behalf of the foreign company mentioned in paragraph (14C)(c)); and
- (b) the only expenditure incurred by the eligible company in the year of income in relation to research and development activities had been the expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)) of this section; and
- (c) the total group markup (if any) of the eligible company for the year of income were the amount (if any) that would be worked out under subsection (14AC) of this section if the company were working out the amount of a deduction under

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subsection (13) or (14) of this section on the basis described in paragraphs (a) and (b) of this subsection.

Note 1: Paragraphs (14D)(a) and (b) affect what would be the eligible company's incremental expenditure by affecting expenditure described in definitions of terms (e.g. *contracted expenditure* and *salary expenditure*) used in the definition of *research and development expenditure*, on which incremental expenditure is based.

Note 2: Subsection 73P(5) excludes a company's total group markup (worked out under subsection (14AC) of this section) from the company's incremental expenditure. The markup is worked out to affect a deduction by the company under subsection (13) or (14) of this section for an amount of research and development expenditure to which subsection (14AB) of this section applies.

Deduction for qualifying plant expenditure

(15) Subject to this section, where, in the year of income during which an eligible company commences to use a unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities or in either of the 2 succeeding years of income, there is an amount of qualifying plant expenditure in relation to the company in relation to the unit of plant:

- (a) in a case where the aggregate research and development amount in relation to the company in relation to the year of income is greater than \$20,000—one-third of the amount of that qualifying plant expenditure multiplied by 1.25; or
- (b) in any other case—one-third of the amount of that qualifying plant expenditure;

is allowable as a deduction from the assessable income of the company of the year of income.

(15AAA) Subsection (15) does not apply to a unit of plant:

- (a) acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
- (b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

Deduction for qualifying expenditure on post-23 July 1996 pilot plant

- (15AA) Subject to this section, if in a year of income an eligible company uses a unit of post-23 July 1996 pilot plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities, the deductible amount of qualifying expenditure in relation to the company in respect of the unit is an allowable deduction from the company's assessable income of the year of income.

Note: If Division 250 of the *Income Tax Assessment Act 1997* applies to you and an asset:

- (a) if section 250-150 of that Act applies—you are taken to have qualifying expenditure in relation to the use of the asset to the extent specified in a determination made under subsection 250-150(3) of that Act; or
- (b) otherwise—you are taken not to have such expenditure.

- (15AAAA) Subsection (15AA) does not apply to a unit of post-23 July 1996 pilot plant:

- (a) acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
- (b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

- (15AB) The sum of the deductions that, apart from this subsection, would be allowable to a company under subsection (15AA) in respect of a unit of post-23 July 1996 pilot plant must not exceed the qualifying pilot plant expenditure in relation to the company in respect of the unit multiplied by 1.25.

Reduction of deduction under subsection (15)

- (15A) Where an eligible company has, whether before or after the commencement of this subsection, received, or become entitled to receive, any consideration in respect of the use, by another person, as mentioned in subsection (5AA), of a unit of plant, one-half of the total amount or value of that consideration shall be applied in the reduction of any deduction or deductions that has or have been allowed, or would but for this subsection be allowable, under

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subsection (15) from the assessable income of the company of any year of income in respect of that unit of plant.

Limit on deduction for expenditure on overseas research and development activities

- (17A) An amount is not allowable as a deduction under subsection (12), (13), (14) or (15) from a company's assessable income of a year of income in respect of expenditure on overseas research and development activities unless the expenditure is certified expenditure.

Choice that this section not apply to plant

- (18) An eligible company may elect that this section shall not apply in relation to a unit of plant to which this section would otherwise apply and, where an election is so made, this section does not apply in relation to that unit of plant in relation to the company.

Limit on double deductions

- (20) Subject to subsections (21), (21A) and (22), where the whole or a part of an amount of expenditure incurred by an eligible company has been allowed or is or may become allowable as a deduction under this section, that expenditure shall not be an allowable deduction, and shall not be taken into account in ascertaining the amount of an allowable deduction, from the assessable income of the company of any year of income under any other provision of this Act.
- (20A) To avoid doubt, subsection (20) applies despite subsection 290-10(1) of the *Income Tax Assessment Act 1997*.
- (21) Subsection (20) does not prevent a deduction for depreciation being allowed to an eligible company in respect of a unit of plant (other than post-23 July 1996 pilot plant) where the company has, before the end of the second year of income (in this subsection referred to as the **relevant year of income**) after the year of income in which the company first used the unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities, ceased to use the unit of plant exclusively for that purpose, and where, by reason of the subsequent use of the unit of plant for another purpose, such a

deduction becomes allowable, the unit of plant shall be deemed to have been acquired by the company:

- (a) at a cost equal to the written-down value of the unit of plant; and
 - (b) on:
 - (i) in a case where the unit of plant was used by the company exclusively for that first-mentioned purpose on the first day of the relevant year of income—that day; or
 - (ii) in any other case—the day on which the unit of plant was first used by the company for that first-mentioned purpose.
- (21A) Subsection (20) does not prevent a deduction for depreciation being allowed to an eligible company in respect of a unit of post-23 July 1996 pilot plant if the company has ceased to use the unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities, and if, because of a later use of the unit for another purpose, such a deduction becomes allowable, the unit is taken to have been acquired by the company:
- (a) at a cost equal to the written-down value of the unit; and
 - (b) on the day on which the unit was first used by the company for the other purpose.
- (22) Where deductions have been allowed to an eligible company under subsection (15) in respect of expenditure incurred by the company in the acquisition or construction of a unit of plant to which subsection (6) applies in respect of 3 years of income, subsection (20) does not prevent a deduction for depreciation being allowed to the company in respect of the unit of plant in respect of a later year of income, and where such a deduction becomes allowable, the unit shall be deemed to have been acquired by the company immediately after the end of the last year of income in respect of which a deduction was allowed to the company under this section in respect of that expenditure at a cost equal to the written-down value of the unit of plant.

Balancing adjustments

(23) Where:

- (a) a deduction has been allowed or is allowable to an eligible company under subsection (15) in respect of expenditure incurred in the acquisition or construction of a unit of plant (other than a unit of pilot plant to which subsection (6) applies);
- (b) during a year of income, the unit of plant is disposed of, lost or destroyed;
- (c) the company had used the unit of plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and
- (d) no deduction has been allowed or is allowable to the company under former section 54 of this Act or the former Division 42 (Depreciation) or Subdivision 40-B (Capital allowances) of the *Income Tax Assessment Act 1997* in respect of the unit of plant;

then:

- (e) in a case where the consideration receivable in respect of the disposal, loss or destruction is less than the written-down value of the unit of plant:
 - (i) if the aggregate research and development amount in relation to the company in relation to the year of income is greater than \$20,000—the amount ascertained by multiplying the amount by which that written-down value exceeds that consideration receivable by 1.25; or
 - (ii) if the aggregate research and development amount in relation to the company in relation to the year of income is less than or equal to \$20,000—the amount by which that written-down value exceeds that consideration receivable;

is allowable as a deduction from the assessable income of the company of the year of income; or

- (f) in a case where the consideration receivable in respect of the disposal, loss or destruction is greater than the written-down value of the unit of plant—so much of the excess as does not exceed the difference between the cost of the unit of plant and the written-down value of the unit of plant shall be

included in the assessable income of the company of the year of income.

Note: This subsection does not apply to an asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997*: see section 73BAG of this Act.

(24) Where:

- (a) a deduction has been allowed or is allowable to an eligible company under subsection (15) in respect of expenditure incurred in the acquisition or construction of a unit of pilot plant to which subsection (6) applies;
- (b) during a year of income, the unit of plant is disposed of, lost or destroyed;
- (c) the company had used the unit of plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and
- (d) no deduction has been allowed or is allowable to the company under former section 54 of this Act or the former Division 42 (Depreciation) or Subdivision 40-B (Capital allowances) of the *Income Tax Assessment Act 1997* in respect of the unit of plant;

then:

- (e) in a case where the consideration receivable in respect of the disposal, loss or destruction is less than the written-down value of the unit of plant but greater than the ineligible pilot plant amount in relation to the unit of plant—the amount ascertained by multiplying the amount by which that written-down value exceeds that consideration receivable by 1.5 is allowable as a deduction from the assessable income of the company of the year of income;
- (f) in a case where the consideration receivable in respect of the disposal, loss or destruction is less than the ineligible pilot plant amount in relation to the unit of plant—the amount ascertained in accordance with the formula $\$5,000,000 A + B$, where:
 - A** is 3 reduced by the number of years of income in respect of which a deduction has been allowed under this section to the company in respect of the unit of plant; and
 - B** is the amount by which that ineligible pilot plant amount exceeds that consideration receivable;

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is allowable as a deduction from the assessable income of the company of the year of income; or

- (g) in a case where the consideration receivable in respect of the disposal, loss or destruction is greater than the written-down value of the unit of plant—so much of the excess as does not exceed the difference between the amount that would, apart from the operation of subsection (6), be the cost of the unit of plant and that written-down value shall be included in the assessable income of the company of the year of income.

(24A) For the purposes of paragraph (23)(c) or (24)(c), a company is not to be taken not to have used a unit of plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because of either or both of the following:

- (a) another person used the unit of plant as mentioned in subsection (5AA);
- (b) the company failed to use the unit of plant for the reason mentioned in subsection (5AB).

(24B) Where:

- (a) a deduction has been allowed or is allowable to an eligible company under subsection (15AA) in respect of expenditure incurred in the acquisition or construction of a unit of post-23 July 1996 pilot plant; and
- (b) during a year of income, the unit of post-23 July 1996 pilot plant is disposed of, lost or destroyed; and
- (c) the company had used the unit of post-23 July 1996 pilot plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and
- (d) no deduction has been allowed or is allowable to the company under former section 54 in respect of the unit of post-23 July 1996 pilot plant;

then:

- (e) in a case where the consideration receivable in respect of the disposal, loss or destruction is less than the written-down value of the unit of post-23 July 1996 pilot plant:
 - (i) if the aggregate research and development amount in relation to the company in relation to the year of income is greater than \$20,000—the amount ascertained by

multiplying the amount by which that written-down value exceeds that consideration receivable by 1.25; or

- (ii) if the aggregate research and development amount in relation to the company in relation to the year of income is less than or equal to \$20,000—the amount by which that written-down value exceeds that consideration receivable;

is allowable as a deduction from the assessable income of the company of the year of income; or

- (f) in a case where the consideration receivable in respect of the disposal, loss or destruction is greater than the written-down value of the unit of post-23 July 1996 pilot plant—so much of the excess as does not exceed the difference between the cost of the unit of post-23 July 1996 pilot plant and the written-down value of the unit of post-23 July 1996 pilot plant shall be included in the assessable income of the company of the year of income.

Note: This subsection does not apply to an asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997*: see section 73BAG of this Act.

Amounts included in assessable income

(27) Where:

- (a) deductions have been allowed from the assessable income of an eligible company under former subsection (17) in respect of expenditure incurred by the company in the acquisition or construction of a building or an extension, alteration or improvement to a building; and
- (b) the company sells or otherwise disposes of the building, extension, alteration or improvement more than 5 years after the day on which it began to use the building, extension, alteration or improvement exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities;

the assessable income of the company of the year of income in which the sale or other disposal occurred shall include:

- (c) in a case where deductions would, apart from this section, have been allowed or allowable from the assessable income of the company under former Division 10D of this Part, or under Division 43 of the *Income Tax Assessment Act 1997*, in

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respect of the expenditure referred to in paragraph (a)—the amount ascertained by deducting from so much of the consideration receivable in respect of the sale or other disposal as does not exceed the amount of the expenditure referred to in paragraph (a) the sum of the deductions that would, apart from this section, have been allowed or allowable from the assessable income of the company under former Division 10D of this Part, or under Division 43 of the *Income Tax Assessment Act 1997*, in respect of that expenditure; or

- (d) in any other case—so much of the consideration receivable in respect of the sale or other disposal as does not exceed the amount of the expenditure referred to in paragraph (a).

(27A) Subject to subsections (27B) and (27C), where an eligible company that has incurred any expenditure on research and development activities in respect of which:

- (a) a deduction under this section has been allowed or is allowable to the company; or
- (b) in the case of a company whose income was exempt from tax when the expenditure was incurred—a deduction under this section would have been allowable if the company's income had not been so exempt from tax;

receives or is entitled to receive:

- (c) an amount in respect of the results of any of the activities; or
- (d) an amount attributable to the company having incurred the expenditure, including an amount that it is entitled to receive irrespective of the results of the activities;

the assessable income of the company of the year of income in which the company received or became entitled to receive that amount includes that amount.

(27B) The reference in subsection (27A) to a company receiving or being entitled to receive an amount in respect of the results of any research and development activities includes a reference to:

- (a) the company receiving or being entitled to receive an amount from the grant of access to, or the grant of a right to use, any of those results; and
- (b) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, any plant (including pilot plant) or from the grant of a right to use any plant

(including pilot plant) where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results; and and

(c) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, or from the grant of a right to occupy or use, a building where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results; and

(d) the company receiving or being entitled to receive an amount from the disposal of core technology;

but does not include a reference to the company receiving or being entitled to receive an amount in consequence of the use by the company of any of those results.

(27C) Where a company receives or is entitled to receive an amount as mentioned in paragraph (27B)(b), (c) or (d), the amount to be included in the company's assessable income by virtue of subsection (27A) is:

(a) in a case to which paragraph (27B)(b) applies—only so much (if any) of the amount referred to in that paragraph as exceeds the cost to the company of acquiring or constructing the plant or pilot plant concerned; or

(b) in a case to which paragraph (27B)(c) applies—only so much (if any) of the amount referred to in that paragraph as exceeds the sum of the deductions that have been allowed or are allowable to the company under subsection (17) in relation to the building concerned; or

(c) if paragraph 27B(d) applies—only so much (if any) of the amount referred to in that paragraph as exceeds the core technology adjustment amount in relation to the core technology concerned.

Amounts worked out on arm's length basis

(31) Where:

(a) an eligible company has:

(i) incurred an amount of research and development expenditure; or

(ii) incurred an amount of core technology expenditure; or

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- (iii) incurred an amount of expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)); or
 - (iv) incurred an amount of expenditure in the acquisition or construction of plant for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and
- (b) the Commissioner is satisfied that:
- (i) having regard to any connection between the company and the person to whom the expenditure was incurred and to any other relevant circumstances, the company and that other person were not dealing with each other at arm's length in relation to the incurring of that expenditure; and
 - (ii) the amount of that expenditure would have been less if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure;
- so much only of that expenditure as the Commissioner considers reasonable having regard to:
- (c) the connection between the company and that other person;
 - (d) the amount of the expenditure that would, in the opinion of the Commissioner, have been incurred by the company if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure; and
 - (e) such other matters as the Commissioner considers relevant;
- shall be taken into account for the purposes of this section.
- (32) Where:
- (a) an eligible company has sold or otherwise disposed of a unit of plant or a building or an extension, alteration or improvement to a building to another person; and
 - (b) the Commissioner is satisfied that:
 - (i) having regard to any connection between the company and that other person and to any other relevant circumstances, the company and that other person were not dealing with each other at arm's length in relation to the sale or disposal; and

- (ii) the consideration receivable by the company in respect of the sale or disposal was less than the market value of the unit of plant or the building or the extension, alteration or improvement, as the case may be, immediately before the sale or disposal;

the consideration receivable by the company in respect of the sale or disposal shall, for the purposes of this section, be deemed to be the market value of the unit of plant or the building or the extension, alteration or improvement, as the case may be, immediately before the sale or disposal.

Deductions denied if Board gives certificates

- (33) Subject to subsection (33C), if the Board gives to the Commissioner a certificate under section 39M or 39MA of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which expenditure has been incurred by a company, a deduction is not allowable, and shall be deemed never to have been allowable, under this section in respect of expenditure incurred by that company in respect of those activities.
- (33A) Subject to subsection (33C), if the Board gives to the Commissioner a certificate stating that a company has failed to comply with a notice under section 39N of the *Industry Research and Development Act 1986* in respect of particular activities, a deduction is not allowable, and shall be deemed never to have been allowable, under this section in respect of expenditure incurred by that company in respect of those activities.
- (33B) Subject to subsection (33C), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39P(4) of the *Industry Research and Development Act 1986*, a deduction is not allowable under this section in respect of expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day on which notice was given to the company concerned under paragraph 39P(5)(a).
- (33BA) Subject to subsections (33BB) and (33C), if the Board gives the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and*
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Development Act 1986, a deduction is not allowable under this section in respect of expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate.

- (33BB) Subsection (33BA) does not apply to expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.
- (33C) If a certificate referred to in subsection (33), (33A), (33B) or (33BA) is revoked, this section applies, and shall be deemed to have applied, as if the certificate had not been given.

Certificates from Board bind Commissioner

- (34) If the Board gives to the Commissioner:
- (a) a certificate that:
 - (i) is given under section 39L of the *Industry Research and Development Act 1986*; and
 - (ii) states whether particular activities were research and development activities; and
 - (iii) relates to activities that were carried on by or on behalf of an eligible company; or
 - (b) a certificate that:
 - (i) is given under section 39LAAA of the *Industry Research and Development Act 1986*; and
 - (ii) states whether particular activities were Australian-centred research and development activities; and
 - (iii) relates to activities in relation to which an eligible company incurred expenditure;

the certificate is binding on the Commissioner for the purpose of making an assessment of the eligible company's taxable income of any year of income in which those activities were carried on.

- (34AA) If the Board gives to the Commissioner a certificate that:
- (a) is given under section 39LAAB of the *Industry Research and Development Act 1986*; and

- (b) states whether particular activities were activities that would have been Australian-centred research and development activities if subsection (2BA) of this section had not been enacted; and
- (c) relates to activities in relation to which an eligible company incurred expenditure;

the certificate is binding on the Commissioner for the purpose of making an assessment of the eligible company's taxable income of any year of income in which those activities were carried on and any later year of income.

- (34A) If the Board gives to the Commissioner a certificate stating whether particular activities that have been or are being carried on by or on behalf of an eligible company in respect of a project are the overseas research and development activities described in the provisional certificate given by the Board to the company under section 39ED of the *Industry Research and Development Act 1986*, the certificate is binding on the Commissioner for the purpose of making an assessment of the company's taxable income of any year of income in which any research and development activities included in the project were carried on.
- (35) If the Board gives to the Commissioner a certificate stating whether particular technology that a specified eligible company has acquired, or has acquired the right to use, for the purpose of particular research and development activities that have been or are being carried on by or on behalf of the company is core technology in relation to those activities, that certificate is binding on the Commissioner for the purpose of making an assessment of the company's taxable income of any year of income in which the company incurred expenditure in acquiring that technology or the right to use that technology.

Apportioning insurance receipts etc.

- (36) Where:
 - (a) an amount is receivable by a company under a policy of insurance or otherwise in respect of the destruction of property; and
 - (b) it is required to be determined for the purposes of this section how much of the amount receivable is receivable in respect of part of the property referred to in paragraph (a);

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so much of the amount referred to in paragraph (a) as, in the opinion of the Commissioner, relates to the part of the property referred to in paragraph (b) shall be taken to be receivable by the company in respect of the part of the property referred to in paragraph (b).

73BAA Effect of consolidation

The purpose of sections 73BAB to 73BAF is to ensure that the research and development concession interacts properly with the consolidation regime in Part 3-90 of the *Income Tax Assessment Act 1997*.

73BAB Head company treated as registered

Sections 73B to 73Z (inclusive) of this Act apply to the head company of a consolidated group or MEC group as if the head company:

- (a) were an eligible company; and
- (b) were registered under section 39J of the *Industry Research and Development Act 1986* in relation to particular activities in respect of a year of income;

during any period that a subsidiary member of the group is an eligible company and registered under section 39J of that Act in relation to those activities in respect of that year of income.

73BABA History for purposes of eligibility for tax offset: joining entity

If:

- (a) a company becomes a subsidiary member of a consolidated group or MEC group; and
- (b) things happening in relation to the company before it became a subsidiary member are, because of section 701-5 (the entry history rule) of the *Income Tax Assessment Act 1997*, taken into account as things happening in relation to the head company of the group in applying paragraph 73J(1)(c) or (d) of this Act to determine for the head company core purposes whether the head company is eligible to choose a tax offset;

the things happening are not taken into account as mentioned in paragraph (b).

**73BAC Expenditure history for purposes of sections 73P to 73Z:
joining entity**

- (1) For the purposes of sections 73P to 73Z (inclusive), where a company (the *joining company*) becomes a member of a consolidated group or MEC group, those provisions have effect after the joining company became a member as if:
 - (a) any expenditure incurred by the joining company before it became a member had been incurred by the head company of the group; and
 - (b) any amounts the joining company has deducted or can deduct for that expenditure had been deducted by the head company; and
 - (c) the head company of the group had received any recoupments of, or grants in respect of, that expenditure that the joining company or a person grouped with it under section 73L received, or became entitled to receive, before the joining company became a member of the group.
- (2) Subsection (1) has effect after any application of subsection 73R(3) or (4) (exceptions to R&D membership period rules).

Note: This provision overrides section 701-5 of the *Income Tax Assessment Act 1997* (the consolidation entry history rule) for the purposes of sections 73P to 73Z (inclusive) of this Act.

73BACA History for purposes of eligibility for tax offset: leaving entity

If:

- (a) a company ceases to be a subsidiary member of a consolidated group or MEC group; and
- (b) while the company was a subsidiary member, things happened in relation to an entity with which, if section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* were disregarded, the company would have been grouped (within the meaning of section 73L of this Act); and
- (c) those things would, if section 701-1 of the *Income Tax Assessment Act 1997* were disregarded, have been taken into account in applying paragraph 73J(1)(c) or (d) of this Act to determine whether the company is eligible to choose a tax offset; and

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- (d) the things are not also things that, because of section 701-40 (the exit history rule) of the *Income Tax Assessment Act 1997*, are taken into account as things happening in relation to an eligible asset etc. (within the meaning of that section) of the company in applying paragraph 73J(1)(c) or (d) of this Act to determine for the entity core purposes whether the company is eligible to choose a tax offset;
- the things are taken into account in applying paragraph 73J(1)(c) or (d) of this Act to determine whether the company is eligible to choose a tax offset.

73BAD Expenditure for purposes of sections 73P to 73Z history: leaving entity

- (1) For the purposes of sections 73P to 73Z (inclusive), where a company (the *leaving company*) ceases to be a member of a consolidated group or MEC group, those provisions have effect after the leaving company ceased to be a member as if:
- (a) any expenditure actually incurred by the leaving company while it was a member of the group had been incurred by it rather than by any other member of the group; and
 - (b) any amounts the head company of the group has deducted or can deduct for that expenditure had been deducted by the leaving company.
- (2) Subsection (1) has effect before any application of subsection 73R(3) or (4) (exceptions to R&D membership period rules).

Note: This provision overrides section 701-40 of the *Income Tax Assessment Act 1997* (the consolidation exit history rule) for the purposes of sections 73P to 73Z (inclusive) of this Act.

73BAE Recoupment where entity leaves group

- (1) All or part of an amount that would, apart from this subsection, be allowable as a deduction to the head company of a consolidated group or MEC group under section 73B or 73BA for a year of income is not allowable as such a deduction if:
- (a) the expenditure that would have given rise to the deduction was incurred by another company that was a subsidiary member of the group; and
 - (b) the other company ceased, during or after that year of income, to be a subsidiary member of the group; and

- (c) the other company would have been denied a deduction for all or that part of the amount for that year of income because it received a recoupment or grant to which section 73C would apply if the other company had never been a subsidiary member of the group.
- (2) The other company must, within 60 days after the end of the financial year in which it received or became entitled to receive the recoupment or grant, give the head company details in the approved form of the part of the initial clawback amount for the recoupment or grant (see section 73C) to be applied by the head company in determining the reduction in the amount referred to in subsection (1).

73BAF Preventing double deductions

- (1) This section applies to the head company of a consolidated group or MEC group if, after the tax cost is set for a depreciating asset, the company can deduct an amount (the **reduction amount**) for expenditure in relation to the asset under section 73B for a year of income.
- (2) The company's deduction for the decline in value of the asset under Division 40 of the *Income Tax Assessment Act 1997*, and its notional Division 40 deduction under section 73BC of this Act, for the year of income are reduced (but not below nil) by the reduction amount.
- (3) Any part of the reduction amount remaining after that reduction is applied to reduce the company's deductions for the decline in value of the asset under Division 40 of the *Income Tax Assessment Act 1997*, and its notional Division 40 deduction under section 73BC of this Act, for later years of income.

73BAG Balancing adjustments for certain assets of consolidated groups

- (1) Subsections 73B(23) and (24B) do not apply to an asset held by the head company of a consolidated group or MEC group where the tax cost of the asset is set under Division 701 of the *Income Tax Assessment Act 1997*. Instead, any balancing adjustment for the asset is worked out under section 73BF of this Act or section 40-292 of the *Income Tax Assessment Act 1997*.

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- (2) In working out the amount of a balancing adjustment under section 73BF of this Act or section 40-292 of the *Income Tax Assessment Act 1997* for the asset, the asset's adjustable value (see section 40-85 of that Act) is reduced by so much of a reduction amount (see section 73BAF of this Act) for the asset that has not been applied in reducing a notional Division 40 deduction for the head company.

73BA Deduction for certain assets etc. used for the purpose of carrying on research and development activities

Object

- (1) The object of this section is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:
- (a) encouraging the development by eligible companies of innovative products, processes and services; and
 - (b) increasing investment by eligible companies in defined research and development activities; and
 - (c) promoting the technological advancement of eligible companies through a focus on innovation and high technical risk in defined research and development activities; and
 - (d) encouraging the use by eligible companies of strategic research and development planning; and
 - (e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

Entitlement to deduction

- (2) If an eligible company has a notional Division 40 deduction for a section 73BA depreciating asset for a year of income, the company is entitled to a deduction under this section for the asset for the year of income.

Amount of deduction

- (3) If the eligible company's aggregate research and development amount for the year of income is more than \$20,000, the deduction

is equal to the notional Division 40 deduction multiplied by 1.25. If not, it equals the notional Division 40 deduction.

No deduction if earlier small business or Division 40 low-value pool deductions allowable

- (4) An eligible company is not entitled to a deduction under this section for a section 73BA depreciating asset for any period if the company was entitled to:
- (a) a deduction for the asset for any earlier period under Subdivision 328-D (about small business entities) of the *Income Tax Assessment Act 1997*; or
 - (b) a deduction for the asset for any earlier period under Division 40 of that Act, in a case to which section 40-440 (about low-value pools) of that Act applied.

Expenditure deductible etc. under this section not deductible under other provisions

- (7) If the whole or a part of an amount of expenditure incurred by an eligible company:
- (a) has been allowed or is or may become allowable as a deduction under this section; or
 - (b) would have been so allowed or become so allowable if the company had not chosen a tax offset under section 73I;
- that whole or part is not an allowable deduction, and is not to be taken into account in working out the amount of an allowable deduction, from the assessable income of the company of any year of income under any other provision of this Act.

Definitions

- (8) In this section:

aggregate research and development amount has the same meaning as in section 73B.

eligible company has the same meaning as in section 73B.

notional Division 40 deduction has the meaning given by section 73BC.

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research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BB Meaning of *section 73BA depreciating asset*

- (1) A *section 73BA depreciating asset* of an eligible company is an asset for which the eligible company could (ignoring section 73BA) deduct an amount under section 40-25 of the *Income Tax Assessment Act 1997* if the following assumptions were made:
 - (b) contrary to paragraph 40-30(1)(c) and subsection 40-30(2) of that Act, all intangible assets were excluded from the definition of *depreciating asset* in section 40-30 of that Act;
 - (c) subsection 40-45(2) of that Act did not, except in the case of buildings, prevent that Division from applying to capital works to which Division 43 of the *Income Tax Assessment Act 1997* applies, or to which that Division would apply but for expenditure being incurred, or capital works being started, before a particular day;
 - (d) the eligible company satisfied any relevant requirement for deductibility under that Division.
- (2) In this section:

eligible company has the same meaning as in section 73B.

73BC Meaning of *notional Division 40 deduction*

- (1) An eligible company has a *notional Division 40 deduction* for a section 73BA depreciating asset for a year of income if it would be entitled to a deduction under section 40-25 of the *Income Tax Assessment Act 1997* for the asset for the year of income assuming the changes set out in this section were made.

First change: replacement of references to use or installation ready for use for purpose of producing assessable income or for taxable purpose

- (2) The first change is that references in Division 40 of the *Income Tax Assessment Act 1997* (other than for the purposes of

sections 40-100, 40-105 and 40-110) to using the asset, or having it installed ready for use:

- (a) for the purpose of producing assessable income; or
- (b) for a taxable purpose;

are instead references to using the asset for the purpose of the carrying on by or on behalf of the eligible company of research and development activities.

Note 1: Section 73BG modifies sections 40-100, 40-105 and 40-110 (about effective life) so that a reference to the research and development purpose is added to the existing references, rather than replacing them.

Note 2: If Division 250 of the *Income Tax Assessment Act 1997* applies to you and an asset:

- (a) if section 250-150 of that Act applies—the asset is taken to be used, or installed ready for use, for the purpose of carrying on, by or on behalf of an eligible company, research or development activities to the extent specified in a determination made under subsection 250-150(3) of that Act; or
- (b) otherwise—the asset is taken not to be used, or installed ready for use, for such a purpose.

Second change: method for working out decline in value where previous Division 40 deduction

- (3) The second change is that, if the eligible company was actually entitled to a deduction under Division 40 of the *Income Tax Assessment Act 1997* for the section 73BA depreciating asset for any period before the start of the first period for which the company will be entitled to a deduction for the asset under this subsection, the same method for working out the decline in value as the company was using for the asset for the earlier period is used.

Third change: treatment of expenditure to which section 73BD or 73BE applies

- (4) The third change is that, in working out the cost of the section 73BA depreciating asset, any amount of expenditure (**section 73BA depreciating asset expenditure**) that would otherwise form part of that cost is to be ignored or treated in some other way if section 73BD or 73BE so provides for the purposes of this section.

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Fourth change: certain provisions to be ignored

- (5) The fourth change is that Division 40 of the *Income Tax Assessment Act 1997* applies as if section 73BA of this Act, and section 40-425 and Subdivision 328-D of that Act, had not been enacted.

- (6) In this section:

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BD Treatment of certain expenditure for the purposes of section 73BC etc.

Requirement for registration under Industry Research and Development Act

- (1) Section 73BA depreciating asset expenditure incurred by an eligible company in a year of income in relation to research and development activities is ignored for the purposes of section 73BC unless:
- (a) the company is registered, in relation to the year of income and in relation to those activities, under section 39J of the *Industry Research and Development Act 1986*; or
 - (b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.

Non-arm's length expenditure

- (2) If:
- (a) an eligible company has incurred an amount of section 73BA depreciating asset expenditure; and
 - (b) the Commissioner is satisfied that:
 - (i) having regard to any connection between the company and the person to whom the expenditure was incurred and to any other relevant circumstances, the company

and that other person were not dealing with each other at arm's length in relation to the incurring of that expenditure; and

- (ii) the amount of that expenditure would have been less if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure;

so much only of that expenditure is to be taken into account for the purposes of section 73BC as the Commissioner considers reasonable having regard to:

- (c) the connection between the company and that other person; and
- (d) the amount of the expenditure that would, in the opinion of the Commissioner, have been incurred by the company if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure; and
- (e) such other matters as the Commissioner considers relevant.

Effect of certificate under section 39M or 39MA of Industry Research and Development Act

- (3) Subject to subsection (8), if the Board gives to the Commissioner a certificate under section 39M or 39MA of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BA depreciating asset expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BC.

Effect of certificate under section 39N of Industry Research and Development Act

- (4) Subject to subsection (8), if the Board gives to the Commissioner a certificate stating that a company has failed to comply with a notice under section 39N of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BA depreciating asset expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BC.

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Effect of certificate under subsection 39P(4) of Industry Research and Development Act

- (5) Subject to subsection (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39P(4) of the *Industry Research and Development Act 1986*, section 73BA depreciating asset expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day on which notice was given to the company concerned under paragraph 39P(5)(a) is ignored for the purposes of section 73BC.

Effect of certificate under subsection 39PB(6) of Industry Research and Development Act

- (6) Subject to subsections (7) and (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and Development Act 1986*, section 73BA depreciating asset expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate is ignored for the purposes of section 73BC.
- (7) Subsection (6) of this section does not apply to section 73BA depreciating asset expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.

Effect of revocation of certificates mentioned above

- (8) If a certificate mentioned in subsection (3), (4), (5) or (6) is revoked, this section applies, and is taken to have applied, as if the certificate had not been given.

Expenditure on overseas research and development activities

- (9) Section 73BA depreciating asset expenditure incurred by an eligible company on overseas research and development activities is ignored for the purposes of section 73BC unless the Board gave a provisional certificate in respect of the expenditure under section 39ED of the *Industry Research and Development Act 1986* before the expenditure was incurred.

Expenditure incurred on behalf of another person

- (10) Section 73BA depreciating asset expenditure incurred by an eligible company for the purpose of carrying on research and development activities on behalf of any other person is ignored for the purposes of section 73BC to the company.
- (11) Subsection (10) does not apply in relation to expenditure incurred on behalf of a partnership by a partner in the partnership in that partner's capacity as such a partner.

Definitions

- (12) In this section:

Board means Innovation Australia, established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

section 73BA depreciating asset expenditure has the meaning given by subsection 73BC(4).

73BE Treatment of certain partnership expenditure for the purposes of section 73BC etc.

When section applies

- (1) If section 73BA depreciating asset expenditure has been incurred by a partnership in which, when the expenditure was incurred:
 - (a) at least one partner was an eligible company; and
 - (b) either:
 - (i) each other partner was an eligible company or was a body corporate that was, or is taken to have been, registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred; or

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(ii) the partnership was designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program;
the following provisions have effect.

Contributions by partners

- (2) Each partner is taken, for the purposes of sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have incurred so much (if any) of the expenditure as was incurred out of money contributed by the partner (otherwise than by way of loan), whether in the year of income in which the expenditure was incurred or a previous year of income.

Recoupments or grants

- (3) If the partnership has, whether before or after the commencement of this subsection, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the expenditure, each partner is to be taken, for the purposes of sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have received, or become entitled to receive, so much (if any) of the recoupment or grant as is worked out in accordance with the formula:

$$\frac{\text{Amount of recoupment or grant} \times \text{Partner's contribution}}{\text{Total contributions}}$$

where:

partner's contribution means the total contribution made (otherwise than by way of loan) by the partner to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

total contribution means the total of the contributions made (otherwise than by way of loan) by all the partners to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

Exception to subsections (2) and (3)

- (4) If the partnership is not designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program, subsection 73C(2A) does not apply in relation to the expenditure that a partner is taken to have incurred by subsection (2) or (3) of this section.

Effect on net income and partnership loss calculation

- (5) Any expenditure that a partner is taken to have incurred by subsection (2) or (3) of this subsection, and any recoupment or grant that a partner is taken to have received or become entitled to receive, is not to be taken into account in determining the net income of the partnership or any partnership loss, as the case may be, of the year of income.

Provisions to apply to each partner, not partnership

- (6) Subject to subsections (2) to (5) of this section, sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, apply in relation to each such partner that is an eligible company as if that partner, and not the partnership, were, or had been, carrying on the relevant project and activities, but so apply with such modifications to those sections as are appropriate having regard to the partner's interest in the partnership.

Definitions

- (7) In this section:

Board means Innovation Australia, established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

section 73BA depreciating asset expenditure has the meaning given by subsection 73BC(4).

73BF Balancing adjustments: section 73BA depreciating assets

(1) If:

- (a) a balancing adjustment event (within the meaning of section 40-295 of the *Income Tax Assessment Act 1997*) happens in relation to a section 73BA depreciating asset of an eligible company; and
- (b) one or more deductions have been allowed or are allowable to the eligible company under section 73BA or 73BH for the asset for a year or years of income, or would have been so allowed or allowable if:
 - (i) the company had not chosen a tax offset under section 73I; or
 - (ii) section 73BAF had not been enacted; and
- (c) no deduction:
 - (i) is allowable to the eligible company under section 40-25 of the *Income Tax Assessment Act 1997* for the asset for any year of income; or
 - (ii) was allowable to the eligible company under section 42-15 of the *Income Tax Assessment Act 1997*, as in force before its repeal by the *New Business Tax System (Capital Allowances) Act 2001*, for the asset for any year of income; and
- (d) a deduction would be allowable to the eligible company, or an amount would be included in the eligible company's assessable income, in respect of the balancing adjustment event under Subdivision 40-D of that Act if:
 - (i) the changes set out in section 73BC were made; and
 - (ii) section 40-292 of the *Income Tax Assessment Act 1997* and this section (other than this paragraph) had not been enacted;

then the deduction mentioned in paragraph (d) is allowable to the eligible company, or the amount mentioned in paragraph (d) is included in the eligible company's assessable income, under this section for the year of income in which the balancing adjustment event occurs.

Note 1: If deductions have been allowed etc. under both section 73BA or 73BH of this Act and section 40-25 of the *Income Tax Assessment Act 1997* for a section 73BA depreciating asset, the balancing adjustment provisions of Division 40 of that Act apply in a modified way: see section 40-292 of that Act.

Note 2: An asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997* may have its adjustable value reduced in applying this section: see section 73BAG of this Act.

Increase in deduction or assessable amount where section 73BA deductions allowable at 1.25 rate

- (2) However, if at least one of the deductions mentioned in paragraph (1)(b) was worked out by multiplying a notional Division 40 deduction or a notional Division 42 deduction by 1.25 (or would have been so worked out had section 73BAF not been enacted), subsection (3) applies.
- (3) Any amount (the **subsection (1) amount**) allowable as a deduction to, or included in the assessable income of, the eligible company under subsection (1) of this section for the section 73BA depreciating asset is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 40/42 deductions}}{\text{Total decline in value}} \times \frac{\text{Adjusted subsection (1) amount}}{\text{amount}} \times 0.25$$

where:

adjusted subsection (1) amount means:

- (a) if the subsection (1) amount is a deduction—the amount of the deduction; or
- (b) if the subsection (1) amount is an amount included in the eligible company's assessable income—so much of the subsection (1) amount as does not exceed the formula component **total decline in value**.

sum of all 1.25 rate notional Division 40/42 deductions means the sum of all notional Division 40 deductions or notional Division 42 deductions that were multiplied by 1.25 in working out the deductions mentioned in paragraph (1)(b) for the section 73BA depreciating asset.

total decline in value means the cost of the section 73BA depreciating asset, less its adjustable value, just before the balancing adjustment event, where that cost and adjustable value are the amounts taken into account in applying Subdivision 40-D of the *Income Tax Assessment Act 1997* in accordance with

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paragraph (1)(d) for the purpose of working out the subsection (1) amount.

(3A) Subsection (3B) has effect if:

- (a) the head company of a consolidated group or MEC group can *deduct* an amount under subsection (1) for a section 73BA depreciating asset for a year of income; and
- (b) the head company's aggregate research and development amount for the year of income exceeds \$20,000; and
- (c) the asset was used exclusively for research and development activities since its tax cost was set under Division 701 of the *Income Tax Assessment Act 1997*.

(3B) The numerator in the formula in subsection (3) is increased by any expenditure on the asset that the head company can deduct under section 73B after the asset's tax cost was set.

Assessability of amounts received in respect of results etc. of research and development activities

(4) Subject to subsections (5) and (6), if:

- (a) an eligible company has incurred any expenditure in respect of which:
 - (i) a deduction under section 73BA or 73BH has been allowed or is allowable to the company, or would have been so allowed or allowable if the company had not chosen a tax offset under section 73I; or
 - (ii) in the case of a company whose income was exempt from tax when the expenditure was incurred—a deduction under section 73BA or 73BH would have been allowable if the company's income had not been so exempt from tax; and
- (b) the eligible company receives or is entitled to receive:
 - (i) an amount in respect of the results of any of the research and development activities in relation to which the expenditure was incurred; or
 - (ii) an amount attributable to the company having incurred the expenditure, including an amount that it is entitled to receive irrespective of the results of the activities;

that amount is included in the company's assessable income of the year of income in which the company received or became entitled to receive it.

- (5) The reference in subsection (4) to a company receiving or being entitled to receive an amount in respect of the results of any research and development activities includes a reference to:
- (a) the company receiving or being entitled to receive an amount from the grant of access to, or the grant of a right to use, any of those results; and
 - (b) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, any section 73BA depreciating asset or from the grant of a right to use any section 73BA depreciating asset where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results;
- but does not include a reference to the company receiving or being entitled to receive an amount in consequence of the use by the company of any of those results.
- (6) If a company receives or is entitled to receive an amount as mentioned in paragraph (5)(b), the amount to be included in the company's assessable income under subsection (4) is only so much (if any) of the amount mentioned in that paragraph as exceeds the cost to the company of acquiring or constructing the section 73BA depreciating asset concerned.

Definitions

- (7) In this section:

aggregate research and development amount has the same meaning as in section 73B.

eligible company has the same meaning as in section 73B.

notional Division 40 deduction has the meaning given by section 73BC.

notional Division 42 deduction has the meaning given by section 73BJ.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BG Effective life calculation under Division 40 of *Income Tax Assessment Act 1997* to take into account use for purpose of carrying on research and development activities

- (1) This section has effect for the purposes of working out, under sections 40-100, 40-105 and 40-110 of the *Income Tax Assessment Act 1997* (whether in their application for the purposes of section 73BA of this Act or otherwise), the effective life of a depreciating asset of an eligible company.
- (2) If, at the time at which the effective life is worked out, it is reasonably likely that the depreciating asset will be used at some time by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities:
 - (a) the references in:
 - (i) item 1.1 of the table in section 40-10 of the *Income Tax Assessment Act 1997* to the period the asset can be used to produce income; and
 - (ii) sections 40-100, 40-105 and 40-110 of that Act to the period the asset can be used by any entity for a taxable purpose or for the purpose of producing exempt income; include a reference to the period the asset can be used by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities; and
 - (b) in applying paragraph 40-100(4)(c) and subsection 40-105(2) of the *Income Tax Assessment Act 1997*, it is to be concluded that no eligible company that can use the asset for the purpose of the carrying on by or on behalf of the eligible company of research and development activities will scrap the asset, will sell it for scrap value or less or will abandon it, for reasons attributable to technical risk in the carrying on of those activities.
- (3) In this section:

depreciating asset has the same meaning as in Division 40 of the *Income Tax Assessment Act 1997*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B of this Act.

73BH Deduction for plant etc. used for purpose of carrying on research and development activities

Entitlement to deduction

- (1) If an eligible company has a notional Division 42 deduction for a unit of section 73BH plant for a year of income, the company is entitled to a deduction under this section for the plant for the year of income.

Amount of deduction

- (2) If the eligible company's aggregate research and development amount for the year of income is more than \$20,000, the deduction is equal to the notional Division 42 deduction multiplied by 1.25. If not, it equals the notional Division 42 deduction.

No deduction if earlier Division 42 pooling or low-value pool deductions allowable

- (3) An eligible company is not entitled to a deduction under this section for a unit of section 73BH plant for any period if the company was entitled to a deduction for the unit for any earlier period under Division 42 of the *Income Tax Assessment Act 1997*, in a case to which Subdivision 42-L or 42-M (about pooling and low-value pools) of that Division applied.

Expenditure deductible under this section not deductible under other provisions

- (6) If the whole or a part of an amount of expenditure incurred by an eligible company has been allowed or is or may become allowable as a deduction under this section, that whole or part is not an allowable deduction, and is not to be taken into account in working out the amount of an allowable deduction, from the assessable income of the company of any year of income under any other provision of this Act.

Section 73BI

Definitions

(7) In this section:

aggregate research and development amount has the same meaning as in section 73B.

eligible company has the same meaning as in section 73B.

notional Division 42 deduction has the meaning given by section 73BJ.

section 73BH plant has the meaning given by section 73BI.

73BI Meaning of *section 73BH plant*

(1) A unit of ***section 73BH plant*** of an eligible company is a thing for which the eligible company could (ignoring section 73BH) deduct an amount under section 42-15 of the *Income Tax Assessment Act 1997* if the following assumptions were made:

- (b) the definition of ***plant*** in section 42-18 of that Act included capital works (other than buildings) to which Division 43 of the *Income Tax Assessment Act 1997* applies, or to which that Division would apply but for expenditure being incurred, or capital works being started, before a particular day;
- (c) the eligible company satisfied any relevant requirement for deductibility under that Division.

(2) However, subsection (1) does not apply to a thing:

- (a) acquired, or constructed, under a contract entered into by the company at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
- (b) that the company commenced to construct at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

(3) In this section:

eligible company has the same meaning as in section 73B.

73BJ Meaning of *notional Division 42 deduction*

Notional Division 42 deduction

- (1) An eligible company has a ***notional Division 42 deduction*** for a year of income for a unit of section 73BH plant if it would be entitled to a deduction for the plant under section 42-15 of the *Income Tax Assessment Act 1997* for the year of income assuming the changes set out in this section were made.

First change: replacement of references to use or installation ready for use for purpose of producing assessable income

- (2) The first change is that references in Division 42 of the *Income Tax Assessment Act 1997* to using the unit, or having it installed ready for use, for the purpose of producing assessable income are instead references to using the unit for the purpose of the carrying on by or on behalf of the eligible company of research and development activities.

Second change: method for calculating deduction where previous Division 42 deduction

- (3) The second change is that, if the eligible company was actually entitled to a deduction under Division 42 of the *Income Tax Assessment Act 1997* for the unit of section 73BH plant for any period before the start of the first period for which the company will be entitled to a deduction for the plant under this subsection, the same method for calculating the deduction as the company was using for the unit for the earlier period is used.

Third change: treatment of expenditure to which section 73BK or 73BL applies

- (4) The third change is that, in working out the cost of the unit of section 73BH plant, any amount of expenditure (***section 73BH plant expenditure***) that would otherwise form part of that cost is to be ignored or treated in some other way if section 73BK or 73BL so provides for the purposes of this section.

Section 73BK

Fourth change: certain provisions to be ignored

- (5) The fourth change is that Division 42 of the *Income Tax Assessment Act 1997* applies as if section 73BH of this Act and Subdivisions 42-L and 42-M of that Act had not been enacted.

Definition

- (6) In this section:

section 73BH plant has the meaning given by section 73BI.

73BK Treatment of certain expenditure for the purposes of section 73BJ etc.

Requirement for registration under Industry Research and Development Act

- (1) Section 73BH plant expenditure incurred by an eligible company in a year of income in relation to research and development activities is ignored for the purposes of section 73BJ unless:
- (a) the company is registered, in relation to the year of income and in relation to those activities, under section 39J of the *Industry Research and Development Act 1986*; or
 - (b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.

Non-arm's length expenditure

- (2) If:
- (a) an eligible company has incurred an amount of section 73BH plant expenditure; and
 - (b) the Commissioner is satisfied that:
 - (i) having regard to any connection between the company and the person to whom the expenditure was incurred and to any other relevant circumstances, the company and that other person were not dealing with each other at arm's length in relation to the incurring of that expenditure; and
 - (ii) the amount of that expenditure would have been less if the company and that other person had dealt with each

other at arm's length in relation to the incurring of that expenditure;

so much only of that expenditure is to be taken into account for the purposes of section 73BJ as the Commissioner considers reasonable having regard to:

- (c) the connection between the company and that other person; and
- (d) the amount of the expenditure that would, in the opinion of the Commissioner, have been incurred by the company if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure; and
- (e) such other matters as the Commissioner considers relevant.

Effect of certificate under section 39M or 39MA of Industry Research and Development Act

- (3) Subject to subsection (8), if the Board gives to the Commissioner a certificate under section 39M or 39MA of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BH plant expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BJ.

Effect of certificate under section 39N of Industry Research and Development Act

- (4) Subject to subsection (8), if the Board gives to the Commissioner a certificate stating that a company has failed to comply with a notice under section 39N of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BH plant expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BJ.

Effect of certificate under subsection 39P(4) of Industry Research and Development Act

- (5) Subject to subsection (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39P(4) of the *Industry Research and Development Act 1986*, section 73BH plant expenditure in relation to research and

Section 73BK

development activities referred to in the certificate that is incurred by that company or any of those companies after the day on which notice was given to the company concerned under paragraph 39P(5)(a) is ignored for the purposes of section 73BJ.

Effect of certificate under subsection 39PB(6) of Industry Research and Development Act

- (6) Subject to subsections (7) and (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and Development Act 1986*, section 73BH plant expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate is ignored for the purposes of section 73BJ.
- (7) Subsection (6) of this section does not apply to section 73BH plant expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.

Effect of revocation of certificates mentioned above

- (8) If a certificate mentioned in subsection (3), (4), (5) or (6) is revoked, this section applies, and is taken to have applied, as if the certificate had not been given.

Expenditure on overseas research and development activities

- (9) Section 73BH plant expenditure incurred by an eligible company on overseas research and development activities is ignored for the purposes of section 73BJ unless the Board gave a provisional certificate in respect of the expenditure under section 39ED of the *Industry Research and Development Act 1986* before the expenditure was incurred.

Expenditure incurred on behalf of another person

- (10) Section 73BH plant expenditure incurred by an eligible company for the purpose of carrying on research and development activities on behalf of any other person is ignored for the purposes of section 73BJ.

- (11) Subsection (10) does not apply in relation to expenditure incurred on behalf of a partnership by a partner in the partnership in that partner's capacity as such a partner.

Definitions

- (12) In this section:

Board means Innovation Australia, established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

section 73BH plant expenditure has the meaning given by subsection 73BJ(4).

73BL Treatment of certain partnership expenditure for the purposes of section 73BJ etc.

When section applies

- (1) If section 73BH plant expenditure has been incurred by a partnership in which, when the expenditure was incurred:
- (a) at least one partner was an eligible company; and
 - (b) either:
 - (i) each other partner was an eligible company or was a body corporate that was, or is taken to have been, registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred; or
 - (ii) the partnership was designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program;
- the following provisions have effect.

Section 73BL

Contributions by partners

- (2) Each partner is taken, for the purposes of sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have incurred so much (if any) of the expenditure as was incurred out of money contributed by the partner (otherwise than by way of loan), whether in the year of income in which the expenditure was incurred or a previous year of income.

Recoupsments or grants

- (3) If the partnership has, whether before or after the commencement of this subsection, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the expenditure, each partner is to be taken, for the purposes of sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have received, or become entitled to receive, so much (if any) of the recoupment or grant as is worked out in accordance with the formula:

$$\frac{\text{Amount of recoupment or grant} \times \text{Partner's contribution}}{\text{Total contributions}}$$

where:

partner's contribution means the total contribution made (otherwise than by way of loan) by the partner to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

total contribution means the total of the contributions made (otherwise than by way of loan) by all the partners to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

Exception to subsections (2) and (3)

- (4) If the partnership is not designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program, subsection 73C(2A) does not apply in relation to

the expenditure that a partner is taken to have incurred by subsection (2) or (3) of this section.

Effect on net income and partnership loss calculation

- (5) Any expenditure that a partner is taken to have incurred by subsection (2) or (3) of this subsection, and any recoupment or grant that a partner is taken to have received or become entitled to receive, is not to be taken into account in determining the net income of the partnership or any partnership loss, as the case may be, of the year of income.

Provisions to apply to each partner, not partnership

- (6) Subject to subsections (2) to (5) of this section, sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, apply in relation to each such partner that is an eligible company as if that partner, and not the partnership, were, or had been, carrying on the relevant project and activities, but so apply with such modifications to those sections as are appropriate having regard to the partner's interest in the partnership.

Definitions

- (7) In this section:

Board means Innovation Australia, established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

section 73BH plant expenditure has the meaning given by subsection 73BJ(4).

73BM Balancing adjustments: section 73BH plant

(1) If:

- (a) a balancing adjustment event (within the meaning of subsection 42-30(3) of the *Income Tax Assessment Act 1997*) happens in relation to a unit of section 73BH plant of an eligible company; and
- (b) one or more deductions have been allowed or are allowable to the eligible company under section 73BH for the unit for a year or years of income; and
- (c) no deduction was allowable to the eligible company under section 42-15 of the *Income Tax Assessment Act 1997* for the unit for any year of income; and
- (d) a deduction would be allowable to the eligible company, or an amount would be included in the eligible company's assessable income, in respect of the balancing adjustment event under Subdivision 42-F of that Act as so in force, if:
 - (i) the changes set out in section 73BJ were made; and
 - (ii) section 42-220A of the *Income Tax Assessment Act 1997* and this section (other than this paragraph) had not been enacted;

then the deduction mentioned in paragraph (d) is allowable to the eligible company, or the amount mentioned in paragraph (d) is included in the eligible company's assessable income, under this section for the year of income in which the balancing adjustment event occurs.

Note: If deductions have been allowable under both section 73BH of this Act and section 42-15 of the *Income Tax Assessment Act 1997* for a unit of section 73BH plant, the balancing adjustment provisions of Division 42 of that Act apply in a modified way: see section 42-220A of that Act.

Increase in deduction or assessable amount where section 73BH deductions allowable at 1.25 rate

- (2) However, if at least one of the deductions mentioned in paragraph (1)(b) was worked out by multiplying a notional Division 42 deduction by 1.25, subsection (3) applies.

- (3) Any amount (the *eligible subsection (1) amount*):
- (a) allowable as a deduction to the eligible company under subsection (1) of this section for the unit of section 73BH plant; or
 - (b) included in the assessable income of the eligible company under subsection (1) of this section for the unit of section 73BH plant, where that amount is so included as a result of the application of section 42-190 of the *Income Tax Assessment Act 1997* in accordance with paragraph (1)(d) of this section;

is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 42 deductions}}{\text{Total decline in value}} \times \frac{\text{Eligible subsection (1) amount}}{\text{amount}} \times 0.25$$

where:

sum of all 1.25 rate notional Division 42 deductions means the sum of all notional Division 42 deductions that were multiplied by 1.25 in working out the deductions mentioned in paragraph (1)(b) for the unit of section 73BH plant.

total decline in value means the cost of the unit of section 73BH plant, less its undeducted cost, just before the balancing adjustment event, where that cost and undeducted cost are the amounts taken into account in applying Subdivision 42-F of the *Income Tax Assessment Act 1997* in accordance with paragraph (1)(d) for the purpose of working out the deduction allowable to the eligible company, or the amount included in the eligible company's assessable income, under subsection (1) for the unit.

Assessability of amounts received in respect of results etc. of research and development activities

- (4) Subject to subsections (5) and (6), if:
- (a) an eligible company has incurred any expenditure in respect of which:
 - (i) a deduction under section 73BH has been allowed or is allowable to the company; or
 - (ii) in the case of a company whose income was exempt from tax when the expenditure was incurred—a deduction under section 73BH would have been

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allowable if the company's income had not been so exempt from tax; and

(b) the eligible company receives or is entitled to receive:

- (i) an amount in respect of the results of any of the research and development activities in relation to which the expenditure was incurred; or
- (ii) an amount attributable to the company having incurred the expenditure, including an amount that it is entitled to receive irrespective of the results of the activities;

that amount is included in the company's assessable income of the year of income in which the company received or became entitled to receive it.

(5) The reference in subsection (4) to a company receiving or being entitled to receive an amount in respect of the results of any research and development activities includes a reference to:

- (a) the company receiving or being entitled to receive an amount from the grant of access to, or the grant of a right to use, any of those results; and
- (b) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, any section 73BH plant or from the grant of a right to use any section 73BH plant where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results;

but does not include a reference to the company receiving or being entitled to receive an amount in consequence of the use by the company of any of those results.

(6) If a company receives or is entitled to receive an amount as mentioned in paragraph (5)(b), the amount to be included in the company's assessable income under subsection (4) is only so much (if any) of the amount mentioned in that paragraph as exceeds the cost to the company of acquiring or constructing the section 73BH plant concerned.

Definitions

(7) In this section:

eligible company has the same meaning as in section 73B.

notional Division 42 deduction has the meaning given by section 73BJ.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

73BN Effective life calculation under Division 42 of *Income Tax Assessment Act 1997* to take into account use for purpose of carrying on research and development activities

- (1) This section has effect for the purposes of working out, under sections 42-105, 42-110 and 42-112 of the *Income Tax Assessment Act 1997* (whether in their application for the purposes of section 73BH of this Act or otherwise), the effective life of a unit of plant of an eligible company:
 - (a) that was acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or
 - (b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.
- (2) If, at the time at which the effective life is worked out, it is reasonably likely that the plant will be used at some time by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities:
 - (a) references in sections 42-105, 42-110 and 42-112 of the *Income Tax Assessment Act 1997* to the period the unit can be used by any entity for income producing purposes include references to the period the unit can be used by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities; and
 - (b) for the purposes of subsection 42-105(3) and paragraph 42-112(5)(c) of that Act, it is to be concluded that no eligible company that can use the unit for the purpose of the carrying on by or on behalf of the eligible company of research and development activities will scrap the unit, will sell it for scrap value or less or will abandon it, for reasons attributable to technical risk in carrying on those activities.

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(3) In this section:

eligible company has the same meaning as in section 73B.

plant has the same meaning as in Division 42 of the *Income Tax Assessment Act 1997*.

research and development activities has the same meaning as in section 73B of this Act.

73C Recouped expenditure on research and development activities

(1) For the purposes of interpretation, this section is to be read and construed as if it were part of section 73B.

(2) This section applies where:

(a) an eligible company has, at any time on or after 1 July 1985, incurred expenditure (in this section called the *relevant expenditure*) on research and development activities that formed or form part of a particular project carried on by or on behalf of the company; and

(b) the company has, whether before or after the commencement of this section, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the relevant expenditure by or from the Commonwealth, a State or a Territory, an STB (within the meaning of Division 1AB) or an authority constituted by or under a law of the Commonwealth, of a State or of a Territory, or another person has received or become entitled to receive such a recoupment or grant where the other person is, at the time of receipt or entitlement, grouped with the first-mentioned company as mentioned in section 73L.

(2A) A reference in this section to a recoupment of, or a grant in respect of, the whole or any part of expenditure incurred by an eligible company on research and development activities that formed or form part of a particular project carried on by or on behalf of the company does not include a reference to a recoupment or grant where the recoupment or grant is made:

(a) by or from the Commonwealth; and

(b) under the program known as the Co-operative Research Centres Program.

- (3) Where this section applies to a company in respect of relevant expenditure in relation to a particular project:
- (a) the relevant expenditure is subject to the application of clawback in accordance with this section; and
 - (b) for the purposes of this section the initial clawback amount in relation to the relevant expenditure is an amount equal to twice the amount, or twice the total of the amounts, as the case may be, that the company or the grouped person (see paragraph (2)(b)) has received, or become entitled to receive, as a recoupment of, or as a grant in respect of, any of the relevant expenditure as mentioned in paragraph (2)(b).
- (4) A deduction is not allowable, and is to be taken never to have been allowable, under section 73B in respect of any relevant expenditure that was incurred before 21 November 1987 and in respect of which this section applies to the company, and that expenditure is, subject to the provisions of this section relating to clawback, to be disregarded for the purposes of the application of section 73B to the company.
- (5) The following subsections apply only if the relevant expenditure includes, or consists wholly of, expenditure incurred on or after 21 November 1987.
- (6) Where the relevant expenditure includes both expenditure incurred before 21 November 1987 and expenditure incurred on or after that date:
- (a) if the initial clawback amount is equal to or less than the relevant expenditure that was incurred before that date, clawback applies to so much of the relevant expenditure that was incurred before that date as does not exceed the initial clawback amount; or
 - (b) if the initial clawback amount exceeds the relevant expenditure that was incurred before that date, the following provisions have effect:
 - (i) clawback applies to so much of the relevant expenditure as was incurred before that date;
 - (ii) if the excess (in the following subparagraphs called the **excess clawback amount**) is equal to or greater than so much of the relevant expenditure as was or is incurred on or after that date (in this subsection called the

- deductible relevant expenditure*)—clawback applies to the whole of the deductible relevant expenditure;
- (iii) if the excess clawback amount is less than the deductible relevant expenditure—clawback applies to so much of the deductible relevant expenditure as does not exceed the excess clawback amount;
 - (iv) for the purpose of applying clawback to deductible relevant expenditure as mentioned in subparagraph (iii):
 - (A) regard is to be had first to the earliest year of income of the company in which any deductible relevant expenditure was incurred and then, if necessary, in chronological order to each later year of income; and
 - (B) to the extent that clawback is applied to deductible relevant expenditure incurred in a year of income of the company, the excess clawback amount to be applied to such expenditure incurred in a later year of income is reduced accordingly; and
 - (C) if the part of the excess clawback amount that is applicable to deductible relevant expenditure incurred in a year of income is less than that expenditure and that expenditure comprises 2 or more kinds of expenditure—that part of the excess clawback amount is to be apportioned among those kinds of expenditure in such manner as the Commissioner determines, being an apportionment that will minimise any reduction in the deduction allowable to the company under section 73B, 73BA or 73BH in respect of that expenditure.
- (7) Where the relevant expenditure consists wholly of expenditure incurred on or after 21 November 1987 the following provisions have effect:
- (a) if the initial clawback amount is equal to or greater than the relevant expenditure—clawback applies to the whole of that expenditure;
 - (b) if the initial clawback amount is less than the relevant expenditure—clawback applies to so much of the relevant expenditure as does not exceed the initial clawback amount;

- (c) for the purpose of applying clawback to relevant expenditure as mentioned in paragraph (b):
- (i) subject to subparagraph (ii), regard is to be had to the years of income of the company in the following order:
 - (A) the year of income, or, in chronological order, each year of income, in which the company or the grouped person (see paragraph (2)(b)) received, or became entitled to receive, an amount that is taken into account in ascertaining the initial clawback amount;
 - (B) in reverse chronological order, each year of income before the year, or the earliest year, of income referred to in sub-subparagraph (A);
 - (C) in chronological order, each year of income to which regard has not been had under sub-subparagraph (A) or (B); and
 - (ii) if the company or the grouped person did not receive, or become entitled to receive, any part of the initial clawback amount until after the last year of income in which any of the relevant expenditure was incurred, regard is to be had first to the latest year of income in respect of which a deduction was allowed, or is allowable, under section 73B, 73BA or 73BH in respect of any of that expenditure or would have been allowable under that section if the company or the grouped person had not chosen a tax offset under section 73I and then, in reverse chronological order, to each of the earlier years of income; and
 - (iii) to the extent that clawback is applied to relevant expenditure incurred in a year of income of the company, the initial clawback amount to be applied to such expenditure incurred in another year of income is reduced accordingly; and
 - (iv) if the part of the initial clawback amount that is applicable to relevant expenditure incurred in a year of income is less than that expenditure and that expenditure comprises 2 or more kinds of expenditure—that part of the initial clawback amount is to be apportioned among those kinds of expenditure in such manner as the Commissioner determines, being an apportionment that will minimise any reduction in the

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deduction allowable to the company under section 73B, 73BA or 73BH in respect of that expenditure.

- (8) Where clawback applies to contracted expenditure incurred on or after 21 November 1987, subsection 73B(13) has effect in relation to that expenditure as if there were omitted from that subsection ***multiplied by 1.25***.
- (9) If clawback applies to expenditure (other than contracted expenditure) incurred on or after 21 November 1987, subsections 73B(4E) and (14), paragraph 73B(15)(a), paragraph 73B(15)(a) and subsections 73BA(3) and 73BH(2) have effect as if ***multiplied by 1.25*** were omitted from those subsections and that paragraph.
- (10) Except as provided by subsections (8) and (9), the application of clawback to any expenditure does not have any effect for the purposes of section 73B, 73BA or 73BH.

73CA Guaranteed returns to investors

- (1) For the purposes of interpretation, this section is to be read and construed as if it were part of section 73B.
- (2) Where:
 - (a) an amount or amounts would, but for this section, be allowable as a deduction or deductions under section 73B, 73BA or 73BH, as affected by section 73C to an eligible company in respect of expenditure incurred in a year of income; and
 - (b) that amount or the sum of those amounts exceeds the amount of the expenditure; and
 - (c) the Commissioner is satisfied that, when the expenditure was incurred, the company was not at risk in respect of the whole or a part of the expenditure;the following provisions of this section have effect.
- (3) If the Commissioner is so satisfied in respect of the whole of the expenditure, the amount, or the sum of the amounts, referred to in paragraph (2)(a) is taken to be reduced by the amount of the excess referred to in paragraph (2)(b).
- (4) If the Commissioner is so satisfied in respect of part of the expenditure, the amount, or the sum of the amounts, referred to in

paragraph (2)(a) is taken to be reduced by an amount ascertained in accordance with the formula:

$$\text{Excess} \times \frac{\text{Part of expenditure not at risk}}{\text{The amount of the expenditure}}$$

where:

Excess means the amount of the excess referred to in paragraph (2)(b).

Part of expenditure not at risk means the part of the expenditure in respect of which the Commissioner is satisfied that the company was not at risk when the expenditure was incurred.

- (5) For the purposes of the application of this section in relation to any expenditure incurred by a company, the company is taken to have not been at risk at the time when the expenditure was incurred in respect of so much of the expenditure as does not exceed any consideration that, in the opinion of the Commissioner, because of:
- (a) any act that occurred, transaction or agreement that was entered into, or circumstance that existed, before or at that time; or
 - (b) any act that was likely to occur, any transaction or agreement that was likely to be entered into, or any circumstance that was likely to exist, after that time;

the company or any associate of the company could reasonably have expected at that time to receive as the direct or indirect result of the incurring of the expenditure.

- (6) In this section:

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied, and whether or not intended to be enforceable by legal proceedings.

expenditure does not include core technology expenditure.

73CB Expenditure incurred to tax-exempt bodies

- (1) In this section:

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied,

and whether or not intended to be enforceable by legal proceedings.

Australian government means the Commonwealth, a State or a Territory.

Australian governmental authority means an authority of the Commonwealth, of a State or of a Territory.

tax-exempt entity means a person, a body or association of persons (whether incorporated or unincorporated), or a fund, that is not liable to income tax and, without limiting the generality of the above, includes an Australian government and an Australian governmental authority that is not liable to income tax.

- (2) For the purposes of this section:
- (a) a body is taken to be an authority of the Commonwealth if:
 - (i) the Commonwealth has a controlling interest in the body; or
 - (ii) the Commonwealth has an interest in the body and the only other persons having an interest in the body are Australian governments or Australian governmental authorities; and
 - (b) a body is taken to be an authority of a State if:
 - (i) the State has a controlling interest in the body; or
 - (ii) the State has an interest in the body and the only other persons having an interest in the body are Australian governments or Australian governmental authorities; and
 - (c) a body is taken to be an authority of a Territory if:
 - (i) the Territory has a controlling interest in the body; or
 - (ii) the Territory has an interest in the body and the only other persons having an interest in the body are Australian governments or Australian governmental authorities.
- (3) For the purposes of this section, but without limiting the meaning of the expression “associate”:
- (a) the Commonwealth is taken to be an associate of each authority of the Commonwealth; and
 - (b) an authority of the Commonwealth is taken to be an associate of each other authority of the Commonwealth; and
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- (c) a State is taken to be an associate of each authority of the State; and
 - (d) an authority of a State is taken to be an associate of each other authority of the State; and
 - (e) a Territory is taken to be an associate of each authority of the Territory; and
 - (f) an authority of a Territory is taken to be an associate of each other authority of the Territory.
- (4) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.
- (5) If:
- (a) an eligible company incurs expenditure to a tax-exempt entity, or an associate of a tax-exempt entity, in connection with research and development activities carried out on behalf of the company; and
 - (b) when the expenditure was incurred, the company was not at risk in respect of the whole of the expenditure or was not at risk in respect of a part of the expenditure; and
 - (c) at the time when the expenditure was incurred, the tax-exempt entity or associate, as the case requires, was not entered on the Register of Commercial Government Bodies kept under section 39HA of the *Industry Research and Development Act 1986*;
- a deduction is not allowable to the company under section 73B, 73BA or 73BH for any part of the expenditure.
- (6) For the purposes of the application of this section in relation to any expenditure incurred by a company, the company is taken to have not been at risk in respect of the expenditure at the time when the expenditure was incurred if, in the Commissioner's opinion, the company or any associate of the company could reasonably have expected at that time to receive, as the direct or indirect result of the incurring of the expenditure or any part of the expenditure, any consideration because of:
- (a) any act that occurred, transaction or agreement that was entered into, or circumstance that existed, before or at that time; or

- (b) any act that was likely to occur, any transaction or agreement that was likely to be entered into, or any circumstance that was likely to exist, after that time.

73E Section 73B roll-over relief on disposal of unit of plant to another member of same wholly-owned group

- (1A) This section does not apply in respect of a disposal in respect of which Subdivision 170-D of the *Income Tax Assessment Act 1997* applies.

Roll-over relief where CGT roll-over relief allowed

- (1) This section applies to the disposal of a unit of plant by an eligible company (in this section called the **transferor**) to another eligible company (in this section called the **transferee**) if:
 - (a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*, as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and
 - (b) subject to subsection (11), a deduction or deductions have been allowed or are allowable under subsection 73B(15) to the transferor in respect of the unit; and
 - (c) no deduction has been allowed or is allowable under the former section 54 of this Act or the former Division 42 (Depreciation) or Subdivision 40-B (Capital allowances) of the *Income Tax Assessment Act 1997* to the transferor in respect of the unit.

No balancing charges

- (2) Subsection 73B(23) or (24), as the case requires, does not apply in respect of the disposal of the unit by the transferor.

No deduction for decline in value for transferor in year of disposal

- (3) A deduction under the former Division 42 (Depreciation) or Subdivision 40-B (Capital allowances) of the *Income Tax Assessment Act 1997* is not allowable to the transferor in respect of
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the unit in relation to the year of income in which the disposal took place.

*Subsection 73B(4) definition of **qualifying plant expenditure** not applicable to transferee*

- (4) Subsection 73B(4) does not apply to the transferee in relation to the unit.

Transferee to inherit transferor's qualifying plant expenditure

- (5) If:
- (a) immediately after the disposal took place, the transferee commences to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities; and
 - (b) apart from the disposal, there would have been an amount of qualifying plant expenditure in relation to the transferor in relation to:
 - (i) the year of income of the transferor in which the disposal took place; or
 - (ii) the first subsequent year of income of the transferor;

then:

- (c) subject to subsection 73B(5), section 73B and this section have effect as if an amount equal to that amount were taken:
 - (i) to have been incurred by the transferee in the acquisition of the unit; and
 - (ii) to be an amount of qualifying plant expenditure in relation to the transferee in relation to:
 - (A) if subparagraph (b)(i) applies—the year of income of the transferee in which the disposal took place; and
 - (B) if subparagraph (b)(ii) applies—the first subsequent year of income of the transferee; and
- (d) a reference in subsection 73B(21) to the end of the second year of income after the year of income in which the transferee first used the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities is to be read as a reference to the end of the 3-year period commencing at the beginning of:

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- (i) the year of income in which the transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the transferor of research and development activities; or
 - (ii) if there have been 2 or more prior successive applications of this section—the earliest year of income in which a prior successive transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the prior successive transferor of research and development activities; and
- (e) the reference in subsection 73B(22) to deductions having been allowed to the transferee under subsection 73B(15) in relation to the unit in respect of 3 years of income is to be read as a reference to deductions having been allowed to the transferee under subsection 73B(15) in relation to the unit in respect of 3 years of income, reduced by one year for each year of income for which a deduction was allowed or allowable under subsection 73B(15) to:
- (i) the transferor in respect of the unit; or
 - (ii) if there have been 2 or more prior successive applications of this section—any of the prior successive transferors in respect of the unit.

Modification of capital allowance provisions applicable to transferee

- (6) If a deduction is or becomes allowable to the transferee for the decline in value of the unit, the provisions of Division 40 (Capital allowances) of the *Income Tax Assessment Act 1997* apply as if:
- (a) the transferee had acquired the unit for a cost equal to the modified written-down value of the unit; and
 - (b) subsections 73B(21) and (22) had effect as if a reference in those subsections to the written-down value of the unit were a reference to the modified written-down value of the unit; and
 - (c) in relation to the year of income of the transferee in which the disposal took place, the component “days held” in the formula in section 40-70 or 40-75 of the *Income Tax Assessment Act 1997* included the number of days in that year when the transferor both:

- (i) held the unit within the meaning of Division 40 of the *Income Tax Assessment Act 1997*; and
- (ii) used it for a taxable purpose within the meaning of that Division or had it installed ready for use for that purpose.

Disposal by transferee where no roll-over relief—inheritance of transferor's cost and deductions

(7) If:

- (a) after the disposal of the unit to the transferee, the unit is lost or destroyed or the transferee disposes of the unit; and
- (b) in the case of a disposal by the transferee—this section does not apply to the disposal;

then, for the purposes of the application of subsection 73B(23) or (24), as the case may be, in relation to the loss, destruction or disposal, those subsections have effect as if:

- (c) a reference in those subsections to the written-down value of the unit were a reference to the modified written-down value of the unit; and
- (d) a reference in those subsections, and in the definition of *ineligible pilot plant amount* in subsection 73B(1), to the cost of the unit were a reference to:
 - (i) the cost of the unit to the transferor (worked out as if subsection 73B(6) had not been enacted); or
 - (ii) if there have been 2 or more prior successive applications of this section—the cost of the unit to the earliest prior successive transferor (worked out as if subsection 73B(6) had not been enacted); and
- (e) a reference in paragraph 73B(24)(f) to a year of income in respect of which a deduction has been allowed under section 73B to the transferee in respect of the unit were worked out on the basis that whichever of the following is applicable:
 - (i) the deductions allowed or allowable to the transferor under section 73B in respect of one or more years of income in relation to the unit;
 - (ii) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under

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section 73B in respect of one or more years of income in relation to the unit;

had been deductions allowed or allowable to the transferee under section 73B in respect of the years of income in relation to the unit.

Meaning of modified written-down value

(8) For the purposes of the application of subsections (6) and (7) to the transferee, the modified written-down value of the unit is the amount that would have been the written-down value if:

(a) whichever of the following is applicable:

- (i) the deductions allowed or allowable to the transferor under section 73B in respect of one or more years of income in relation to the unit;
- (ii) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under section 73B in respect of one or more years of income in relation to the unit;

had been deductions allowed or allowable to the transferee under section 73B in respect of the years of income in relation to the unit; and

(b) whichever of the following is applicable:

- (i) the cost of the unit to the transferor (worked out as if subsection 73B(6) had not been enacted);
- (ii) if there have been 2 or more prior successive applications of this section—the cost of the unit to the earliest prior successive transferor (worked out as if subsection 73B(6) had not been enacted);

had been the cost of the unit to the transferee.

Pilot plant covered by subsection 73B(6)

(9) If subsection 73B(6) applied to the unit in relation to the transferor, section 73B and this section have effect as if subsection 73B(6) applies to the unit in relation to the transferee.

Recoupment of expenditure—consequential amendment of assessments

- (10) Section 170 does not prevent the amendment at any time of an assessment of the transferee where section 73C or 73CB has applied to:
- (a) the transferor in respect of the unit; or
 - (b) if there have been 2 or more prior successive applications of this section—any of the prior successive transferors in respect of the unit.

Second or subsequent application of section—paragraph (1)(b) does not apply

- (11) If, apart from this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by:
- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.

Interpretation

- (13) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.

Definition

- (14) In this section:
- modified written-down value* has the meaning given by subsection (8).

73EA Section 73BF roll-over relief on disposal of asset to another member of wholly-owned group

Roll-over relief where CGT roll-over relief allowed

- (1) This section applies to the disposal of a section 73BA depreciating asset by an eligible company (the *transferor*) to another eligible company (the *transferee*) if:

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- (a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*, as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and
- (b) Subdivision 170-D of the *Income Tax Assessment Act 1997* does not apply to the disposal; and
- (c) subject to subsection (5), a deduction or deductions have been allowed or are allowable to the transferor in respect of the asset under section 73BA or 73BH, or would have been so allowed or allowable if the company had not chosen a tax offset under section 73I; and
- (d) no deduction has been allowed or is allowable to the transferor in respect of the asset under:
 - (i) Division 40 (capital allowances) of the *Income Tax Assessment Act 1997*; or
 - (ii) Division 42 (depreciation of plant) of that Act as in force before its repeal by the *New Business Tax System (Capital Allowances) Act 2001*.

No balancing charges for transferor

- (2) Section 73BF does not apply in respect of the disposal of the asset by the transferor.

Effect on transferee

- (3) The transferee is entitled to a deduction under section 73BA worked out using the same effective life and method for working out decline in value as the transferor was using in respect of the asset under that section.

Additional consequences

- (4) For the purposes of Division 45 of the *Income Tax Assessment Act 1997*:
 - (a) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for most of the

time when the transferor or partnership held the asset—the transferee is taken also to have done so; and

- (b) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity—the transferee is taken also to have done so; and
- (c) if the main business of the transferor, or a partnership of which the transferor was a member, was to lease assets of that kind—the main business of the transferee is taken also to have been to lease assets of that kind.

Subsequent applications of roll-over relief—relief available even if no deduction for subsequent transferor

- (5) If, apart from this subsection, this section has applied to the disposal of the section 73BA depreciating asset to the transferee, then, in working out whether it applies to a subsequent disposal of the asset by:
 - (a) the transferee; or
 - (b) one or more subsequent successive transferees;this section has effect as if paragraph (1)(c) (which deals with deductions) were ignored.

Notice to allow transferee to work out how this section applies

- (6) The transferor must give the transferee a notice containing enough information about the transferor's holding of the asset for the transferee to work out how this section applies to the transferee's holding of it.
- (7) The transferor must give the notice within 6 months after the end of the transferee's year of income in which the disposal mentioned in subsection (1) occurred, or within a longer period allowed by the Commissioner.
- (8) The transferee must keep the notice until the end of 5 years after the earlier of these events:
 - (a) the transferee disposes of the asset;
 - (b) the asset is lost or destroyed.

Penalty: 30 penalty units.

- (9) The *Criminal Code* applies to the offence in subsection (8).

73EB Section 73BM roll-over relief on disposal of plant to another member of wholly-owned group

Roll-over relief where CGT roll-over relief allowed

- (1) This section applies to the disposal of a unit of section 73BH plant by an eligible company (the *transferor*) to another eligible company (the *transferee*) if:
 - (a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*, as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and
 - (b) Subdivision 170-D of the *Income Tax Assessment Act 1997* does not apply to the disposal; and
 - (c) subject to subsection (5), a deduction or deductions have been allowed or are allowable to the transferor in respect of the unit of plant under section 73BH; and
 - (d) no deduction has been allowed or is allowable to the transferor in respect of the unit of plant under Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*.

No balancing charges for transferor

- (2) Section 73BM does not apply in respect of the disposal of the unit by the transferor.

Effect on transferee

- (3) The transferee is entitled to a deduction under section 73BH worked out using the same effective life and method for working out deductions as the transferor was using in respect of the plant under that section.

Additional consequences

- (4) For the purposes of Division 45 of the *Income Tax Assessment Act 1997*:
- (a) if the transferor, or a partnership of which the transferor was a member, leased the unit of plant to another entity for most of the time when the transferor or partnership held the unit—the transferee is taken also to have done so; and
 - (b) if the transferor, or a partnership of which the transferor was a member, leased the unit to another entity—the transferee is taken also to have done so; and
 - (c) if the main business of the transferor, or a partnership of which the transferor was a member, was to lease units of plant of that kind—the main business of the transferee is taken also to have been to lease units of plant of that kind.

Subsequent applications of roll-over relief—relief available even if no deduction for subsequent transferor

- (5) If, apart from this subsection, this section has applied to the disposal of the unit of section 73BH plant to the transferee, then, in working out whether it applies to a subsequent disposal of the unit of plant by:
- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(c) (which deals with deductions) were ignored.

Notice to allow transferee to work out how this section applies

- (6) The transferor must give the transferee a notice containing enough information about the transferor's holding of the unit of plant for the transferee to work out how this section applies to the transferee's holding of it.
- (7) The transferor must give the notice within 6 months after the end of the transferee's year of income in which the disposal mentioned in subsection (1) occurred, or within a longer period allowed by the Commissioner.

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(8) The transferee must keep the notice until the end of 5 years after the earlier of these events:

- (a) the transferee disposes of the unit;
- (b) the unit is lost or destroyed.

Penalty: 30 penalty units.

(9) The *Criminal Code* applies to the offence in subsection (8).

73G Section 73B roll-over relief on disposal of item of intellectual property to another member of same wholly-owned group

Roll-over relief where CGT roll-over relief allowed

(1) This section applies to the disposal of an item of intellectual property (as defined by subsection 995-1(1) of the *Income Tax Assessment Act 1997*) by an eligible company (the **transferor**) to another eligible company (the **transferee**) if:

- (a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*, as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*; and
- (b) subject to subsection (5), apart from this section, an amount would be included in the transferor's assessable income under subsection 73B(27A) in respect of the disposal.

Transferor not assessable under subsection 73B(27A) on disposal

(2) Subsection 73B(27A) does not apply in respect of the disposal of the item by the transferor.

No deduction for transferee's acquisition expenditure

(3) No part of the expenditure (if any) incurred by the transferee in the acquisition of the item is an allowable deduction to the transferee under any provision of this Act.

Disposal by transferee where no roll-over relief—proceeds of disposal assessable to transferee

- (4) If:
- (a) after the disposal of the item to the transferee, the transferee disposes of the item; and
 - (b) this section does not apply to the disposal by the transferee; the transferee's assessable income of the year of income in which the disposal by the transferee took place includes the consideration receivable in respect of the disposal.

Subsequent application of section—paragraph (1)(b) does not apply

- (5) If, apart from this subsection, this section has applied to the disposal of the item to the transferee, then, in working out whether this section applies to a subsequent disposal of the item by:
- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with assessability under subsection 73B(27A)) had not been enacted.

Interpretation

- (6) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.

73H Interpretation

- (1) For the purposes of interpretation, sections 73I, 73J, 73K, 73L and 73M are to be read and construed as if they were part of sections 73B, 73BA and 73BH.
- (2) In sections 73I, 73J, 73K, 73L and 73M:

affiliate has the meaning given by section 73M.

fixed trust estate: a trust estate is a *fixed trust estate* if persons have fixed entitlements to all of the income and capital of the trust estate.

gambling supply has the meaning given by section 195-1 of the GST Act.

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global GST amount has the meaning given by section 195-1 of the GST Act.

person includes (as well as a company):

- (a) a body politic; and
- (b) a partnership; and
- (c) any other unincorporated association or body of persons; and
- (d) a trust estate; and
- (e) a superannuation fund.

R&D group turnover has the meaning given by section 73K.

taxable supply includes a supply made in the course of carrying on research and development activities.

tax offset has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

value of the supplies: the **value of the supplies** a taxpayer makes in a year of income is:

- (a) for taxable supplies (if any) the taxpayer made during the year in the course of carrying on a business or in the course of carrying on research and development activities—the value (as defined by section 9-75 of the GST Act) of the supplies; and
- (b) for other supplies the taxpayer made during the year in the course of carrying on a business or in the course of carrying on research and development activities—the prices (as defined by section 9-75 of the GST Act) of the supplies.

73I Tax offset instead of deduction under section 73B, 73BA, 73BH or 73QA

- (1) An eligible company can choose a tax offset instead of a deduction under section 73B (except subsection 73B(14C)), 73BA, 73BH or 73QA for a year of income (the **tax offset year**) if it is eligible to make that choice (see section 73J).
- (2) The choice must be made:
 - (a) in the company's return of income for the tax offset year; or
 - (b) by notice in writing given to the Commissioner:

- (i) for a year of income starting before the commencement of this subsection—before the end of the period that the Commissioner could amend an assessment for the company assuming such an assessment were made at that commencement; or
 - (ii) otherwise—before the end of the period that the Commissioner could amend an assessment for the company for the tax offset year.
- (3) The eligible company's tax offset for the tax offset year is 30 cents for each dollar that the company could, apart from subsection (4), deduct for that year under section 73B (except subsection 73B(14C)), 73BA, 73BH or 73QA.
- (4) An eligible company cannot deduct any amount under section 73B (except subsection 73B(14C)), 73BA, 73BH or 73QA for the tax offset year if it chooses the tax offset for that year.

Note: The tax offset is subject to the refundable tax offset rules: see section 67-25 of the *Income Tax Assessment Act 1997*.

73IA Objections

- (1) The Commissioner may give an eligible company a written notice specifying the amount of a tax offset allowable to the company under section 73I. The notice must specify that it was issued under this subsection and may contain such other information as the Commissioner thinks fit.
- (2) If an eligible company is dissatisfied with the notice, the company may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

73J Eligibility for tax offset

- (1) An eligible company is eligible to choose the tax offset for the tax offset year if:
 - (a) it could, apart from subsection 73I(4), deduct an amount under section 73B (except subsection 73B(14C)), 73BA, 73BH or 73QA for that year; and

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- (b) either:
 - (i) all or part of the amount that the company could, apart from subsection 73I(4), have deducted is contracted expenditure; or
 - (ii) its aggregate research and development amount for the tax offset year exceeds \$20,000; and
- (c) the aggregate research and development amount for the tax offset year of the company and of persons with which it is grouped (while they are grouped in that year) is not more than \$1,000,000; and
- (d) the R&D group turnover of the company for that year is less than \$5,000,000.

Note: Section 73L sets out the persons with which the company is grouped.

Exception

- (2) An eligible company is not eligible to choose the tax offset for the tax offset year if an exempt entity, the affiliates of an exempt entity, an exempt entity together with its affiliates, or 2 or more exempt entities, at any time during the tax offset year, legally or beneficially own, or have the right to acquire, the legal or beneficial ownership of:
 - (a) interests in the company that carry between them the right to exercise, or control the exercise of, at least 25% of the voting power in the company; or
 - (b) interests in the company that carry between them the right to receive at least 25% of any distribution of income or capital by the company.

73K Meaning of R&D group turnover

- (1) The **R&D group turnover** of an eligible company for a year of income is the sum of:
 - (a) the value of the supplies the company made in the year of income; and
 - (b) the value of the supplies made in the year of income by other persons while they were grouped with the company;reduced by:
 - (c) the value of the supplies the company made in the year of income to persons grouped with it while they were grouped with it; and

- (d) the value of the supplies persons grouped with the company made in the year of income to the company while the company was grouped with them; and
 - (e) the value of the supplies another person made in the year of income to a third person while the other person and the third person were grouped with the company.
- (2) To the extent that the taxable supplies a person makes in a year of income includes gambling supplies, use an amount equal to 11 times the person's global GST amount for those supplies rather than the value of the supplies in working out the person's R&D group turnover.
- (3) In working out the value of the supplies made by a person, disregard:
- (a) any supply made to the extent that the consideration for the supply is a payment or a supply by an insurer in settlement of a claim under an insurance policy; and
 - (b) to the extent that a supply is constituted by a loan—any repayment of principal, and any obligation to repay principal.

73L Grouped taxpayers

- (1) A person is grouped with another person at a time in a year of income if, at that time:
- (a) either person controls the other person in the way described in this section; or
 - (b) both persons are controlled in that way by the same third person; or
 - (c) the persons are affiliates of each other.
- (2) This section applies to a person that directly controls a second person as if the first person also controlled any other person that is directly, or indirectly by any other application or applications of this section, controlled by the second person.

Individuals, companies and fixed trusts

- (3) A person controls another person if the first person, its affiliates or the first person together with the first person's affiliates:
- (a) legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the other person

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that carry between them the right to receive more than 50% of any distribution of income or capital by the other person; or

- (b) if the other person is a company—legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the company that carry between them the right to exercise, or control the exercise of, more than 50% of the voting power in the company.

Non-fixed trust estates

- (4) A person controls a trust estate that is not a fixed trust estate if:
- (a) the trustee has made a distribution, in any of the last 4 years of income (except the tax offset year) of \$100,000 or more to the person, the person's affiliates or the person together with the person's affiliates; or
 - (b) the person, the person's affiliates or the person together with the person's affiliates:
 - (i) have the power, directly or indirectly, to obtain the beneficial enjoyment of any of the capital or income of the trust estate; or
 - (ii) are capable of gaining that enjoyment under an agreement; or
 - (c) a trustee of the trust estate is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the person, the person's affiliates or the person together with the person's affiliates.

Partnerships

- (5) A person controls a partnership if the person, the person's affiliates or the person together with the person's affiliates have the right to more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business (except assets that are leased to the partnership).
- (6) A partnership (the *controller*) controls another person if a partner in the controller, or 2 or more partners in the controller, have the right to receive more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business, and:

- (a) if the other person is a company—the same partner, or the same 2 or more partners, have the right to receive more than 50% of any distribution of income or capital by the company, or to exercise, or to control the exercise of, more than 50% of the voting power in the company; or
- (b) if the other person is a fixed trust estate—the same partner, or the same 2 or more partners, have the right to receive more than 50% of any distribution of income or capital by the trustee; or
- (c) if the other person is a trust estate that is not a fixed trust estate—a condition in a paragraph of subsection (4) is satisfied for the same partner, or the same 2 or more partners in relation to the trust estate; or
- (d) if the other person is a partnership—the same partner, or the same 2 or more partners, have the right to receive more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business, of the partnership.

73M Meaning of *affiliate*

- (1) A person is an *affiliate* of another person if the person acts, or could reasonably be expected to act, in accordance with the other person's directions or wishes, or in concert with the other person, in relation to the affairs of the person's business or research and development expenditure.
- (2) Another partner in a partnership in which a person is a partner is not the person's *affiliate* only because the partner acts, or could reasonably be expected to act, in concert with the person in relation to the affairs of the partnership.

73P Interpretation

- (1) For the purposes of interpretation, this section and sections 73QA to 73Z (inclusive) are to be read and construed as if they were part of sections 73B, 73BA and 73BH.
- (1A) Subsection (1) of this section and subsection 73B(9) do not prevent a deduction under section 73QA or 73QB merely because those sections require account to be taken of expenditure incurred by an

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eligible company in relation to activities carried on wholly or primarily on behalf of a foreign company.

(1B) Subsection (1) of this section does not cause any of section 73CA to apply in relation to expenditure in respect of which deductions are available under both subsection 73B(14C) and section 73QB.

(2) In sections 73QA to 73Z (inclusive):

AA₀ means a group's adjustment amount for the *Y₀* year of income.

AA_{.1} means a group's adjustment amount for the *Y_{.1}* year of income.

adjustment amount has the meaning given by section 73T.

adjustment balance has the meaning given by section 73V.

commercial ready grant means a subsidy or grant that:

- (a) is paid to an eligible company under the program known as the Commercial Ready program; and
- (b) includes a component for activities of the company that are research and development activities, or would be, apart from subsection 73B(2BA); and
- (c) is for a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

group member means a primary group member or a secondary group member.

group membership period of an eligible company has the meaning given by section 73R.

incremental expenditure means expenditure that:

- (a) is research and development expenditure except:
 - (i) expenditure to lease or hire plant; and
 - (ii) expenditure under a contract to the extent that it is, in substance, for the acquisition of plant and not for the receipt of services; and
- (b) can be taken into account in working out the amount of a deduction under subsection 73B(13) or (14) or could be taken into account in working out the amount of a deduction under subsection 73B(14) apart from paragraph 73B(14)(b).

Note: The effects of paragraph (b) of the definition of *incremental expenditure* include preventing a company from counting as incremental expenditure:

- (a) expenditure that the company is required by subsection 73B(9) to disregard because it was incurred by the company for the purpose of carrying on research and development activities on behalf of another person; and
- (b) expenditure on overseas research and development activities that is not certified expenditure and so is expenditure for which subsection 73B(17A) denies a deduction under subsection 73B(13) or (14).

person has the same meaning as in section 73H.

primary group member has the meaning given by section 73R.

R&D spend of an eligible company and its group members for a year of income means the sum of:

- (a) the amounts worked out for the year of income under steps 1, 2 and 3 of the method statement in subsection 73RA(1) as the reduced expenditure on Australian owned R&D by each eligible company in its group membership period for the year of income; and
- (b) the amounts worked out for the year of income under steps 4, 5 and 6 of the method statement in subsection 73RB(1) as the reduced notional expenditure on foreign owned R&D by each eligible company in its group membership period for the year of income.

RA₋₁ (short for Running Average for the Y₋₁ year of income) means half the sum of the R&D spend of the eligible company and its group members for the Y₋₂ and Y₋₃ years of income.

secondary group member has the meaning given by section 73R.

start grant means a subsidy or grant paid to an eligible company:

- (a) under an agreement between the company and the Board entered into under the program known as the R&D Start Program; and
- (b) in respect of a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

viable business has the meaning given by section 73R.

Section 73QA

- (3) For the purposes of the definition of *incremental expenditure* in subsection (2), where expenditure under a contract is both for the acquisition of plant and for the provision of services, the expenditure must be apportioned on a reasonable basis between them.
- (4) None of the expenditure referred to in subsection (3) can be *incremental expenditure* if a reasonable apportionment is not possible.
- (5) A company's *incremental expenditure* for a year of income excludes the total group markup of the company for that expenditure (as worked out under subsection 73B(14AC)).
- (6) In this section and in sections 73QA, 73QB, 73R, 73RA, 73RB, 73T and 73V, particular years of income are identified by the letter "Y" with a further identifier. Under that system:
 - (a) Y_0 is the year of income for which an eligible company is working out its assessable income and deductions; and
 - (b) Y_{-1} means the year of income before the Y_0 year of income; and
 - (c) Y_{-2} means the year of income 2 years before the Y_0 year of income; and
 - (d) Y_{-3} means the year of income 3 years before the Y_0 year of income.

73QA Extra deduction for increase in expenditure on Australian owned research and development

Prerequisites for deduction

- (1) An eligible company may deduct an amount for the Y_0 year of income if:
 - (a) the company can deduct an amount for that year under subsection 73B(13) or (14) for incremental expenditure incurred in the company's group membership period; and
 - (b) for each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, any of the following conditions is met:
 - (i) the eligible company could deduct for the year of income an amount under subsection 73B(13) or (14) for expenditure incurred in its group membership period;

- (ii) one of the eligible company's other group members could deduct for the year of income an amount under subsection 73B(13) or (14) for expenditure incurred in its group membership period;
 - (iii) the eligible company received a start grant or commercial ready grant in respect of the year of income;
 - (iv) one of the eligible company's other group members received a start grant or commercial ready grant in respect of the year of income;
- (whether or not the same condition is met for 2 or more of those years, and whether or not a condition is met by the same company for 2 or more of those years); and
- (c) the amount (the *eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D by the group*) worked out under subsection (3) is more than zero.

Amount of deduction

- (2) The amount of the eligible company's deduction for the Y₀ year of income is 50% of the eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D by the group.
- (3) The *eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D by the group* is the amount worked out using the formula:

$$\frac{\text{Increase in expenditure on Australian owned R\&D by the eligible company}}{\text{Total increase in expenditure on Australian owned R\&D by the eligible companies in the group}} \times \frac{\text{Net increase in expenditure on Australian owned R\&D by the group}}{\text{Net increase in expenditure on Australian owned R\&D by the group} + \text{Net increase in expenditure on foreign owned R\&D by the group}} \times \text{Adjusted increase in expenditure on R\&D by the group}$$

where:

adjusted increase in expenditure on R&D by the group means the amount worked out under section 73RE.

increase in expenditure on Australian owned R&D by the eligible company means the amount worked out under subsection 73RA(1).

net increase in expenditure on Australian owned R&D by the group means the amount worked out under section 73RC.

net increase in expenditure on foreign owned R&D by the group means the amount worked out under section 73RD.

total increase in expenditure on Australian owned R&D by the eligible companies in the group means the amount worked out under subsection 73RA(2).

Note: The amount worked out using the formula will not be more than zero if at least one of the following is zero:

- (a) the increase in expenditure on Australian owned R&D by the eligible company;
- (b) the net increase in expenditure on Australian owned R&D by the group;
- (c) the adjusted increase in expenditure on R&D by the group.

Solitary company may be able to deduct under subsection (1)

- (4) To avoid doubt, an eligible company for which there are no other group members may be able to deduct an amount under subsection (1).

Note: For an eligible company for which there are no other group members, the values of the following components of the formula in subsection (3) will all be the same:

- (a) the increase in expenditure on Australian owned R&D by the eligible company;
- (b) the total increase in expenditure on Australian owned R&D by the eligible companies in the group;
- (c) the net increase in expenditure on Australian owned R&D by the group.

73QB Extra deduction for increase in expenditure on foreign owned research and development

Prerequisites for deduction

- (1) An eligible company may deduct an amount for the Y_0 year of income if:

- (a) the company can deduct an amount for that year under subsection 73B(14C) for expenditure incurred in the company's group membership period; and
 - (b) for each of the Y₋₁, Y₋₂ and Y₋₃ years of income, any of the following conditions is met:
 - (i) the eligible company could deduct for the year of income an amount under subsection 73B(14C) for expenditure in its group membership period;
 - (ii) one of the eligible company's other group members could deduct for the year of income an amount under subsection 73B(14C) for expenditure in its group membership period;
 - (iii) the year of income is one (a *nil expenditure year*) for which both the conditions in subsection (2) are met; (whether or not the same condition in this paragraph is met for 2 or more of those years, and whether or not such a condition is met by the same company for 2 or more of those years); and
 - (c) the amount (the *eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group*) worked out under subsection (4) is more than zero.
- (2) For the purposes of subparagraph (1)(b)(iii), the conditions for a nil expenditure year are as follows:
- (a) neither the eligible company nor any other group member (determined under section 73R) of the eligible company existed at any time in the nil expenditure year or the 10 immediately preceding years of income;
 - (b) at no time in the nil expenditure year or the 10 immediately preceding years of income did any of the following carry on business in Australia:
 - (i) a foreign company that was grouped under section 73L with the eligible company at any time in the Y₀, Y₋₁, Y₋₂ or Y₋₃ year of income;
 - (ii) a foreign company that was grouped under section 73L with another group member (under section 73R) of the eligible company at any time during the other group member's group membership period (under section 73R);

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- (iii) a person who was grouped under section 73L with a foreign company described in subparagraph (i) or (ii) at any time in the nil expenditure year or the 10 immediately preceding years of income.

Note: Section 73R provides for:

- (a) primary group members to be determined on the basis of the relationship between companies at the end of the Y₀ year of income; and
- (b) secondary group members to be determined on the basis of the relationship between a company and a primary group member during the primary group member's group membership period (which ends at the end of the Y₀ year of income and starts at or after the start of the Y₋₃ year of income).

Amount of deduction

- (3) The eligible company may deduct an amount for the Y₀ year of income equal to 75% of the eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group.
- (4) The *eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group* is the amount worked out using the formula:

$$\frac{\text{Increase in expenditure on foreign owned R\&D by the eligible company}}{\text{Total increase in expenditure on foreign owned R\&D by the eligible companies in the group}} \times \frac{\text{Net increase in expenditure on foreign owned R\&D by the group}}{\text{Net increase in expenditure on Australian owned R\&D by the group} + \text{Net increase in expenditure on foreign owned R\&D by the group}} \times \text{Adjusted increase in expenditure on R\&D by the group}$$

where:

adjusted increase in expenditure on R&D by the group means the amount worked out under section 73RE.

increase in expenditure on foreign owned R&D by the eligible company means the amount worked out under subsection 73RB(1).

net increase in expenditure on Australian owned R&D by the group means the amount worked out under section 73RC.

net increase in expenditure on foreign owned R&D by the group means the amount worked out under section 73RD.

total increase in expenditure on foreign owned R&D by the eligible companies in the group means the amount worked out under subsection 73RB(2).

Note: The amount worked out using the formula will not be more than zero if at least one of the following is zero:

- (a) the increase in expenditure on foreign owned R&D by the eligible company;
- (b) the net increase in expenditure on foreign owned R&D by the group;
- (c) the adjusted increase in expenditure on R&D by the group.

Solitary company may be able to deduct under subsection (1)

- (5) To avoid doubt, an eligible company for which there are no other group members may be able to deduct an amount under subsection (1).

Note: For an eligible company for which there are no other group members, the values of the following components of the formula in subsection (4) will all be the same:

- (a) the increase in expenditure on foreign owned R&D by the eligible company;
- (b) the total increase in expenditure on foreign owned R&D by the eligible companies in the group;
- (c) the net increase in expenditure on foreign owned R&D by the group.

73R Group members

- (1) This section sets out rules for determining which eligible companies that have deducted or can deduct an amount under subsection 73B(13), (14) or (14C), or that received a start grant or commercial ready grant, are group members. In applying this section, use section 73L to determine whether companies are grouped.

- (2) Work out the **group members** of the eligible company and their **group membership periods** in this way:

Method statement

Step 1. Work out, as at the last day of the Y_0 year of income, which companies are grouped with the eligible company. The eligible company and these grouped companies are the **primary group members**.

Step 2. Work out the day before the last day of the Y_0 year of income, or the first day of the Y_{-3} year of income, whichever is the later, when a company that is a primary group member:

- (a) was controlled, as mentioned in section 73L, by a person other than a person who controlled it as at the last day of the Y_0 year of income; or
- (b) acted, or could be expected to act, in accordance with the directions or wishes of a person other than a person in accordance with whose directions or wishes it acted, or could be expected to act, as at the last day of the Y_0 year of income.

The period between this day and the last day of the Y_0 year of income is that company's **group membership period**.

Step 3. Any other company that was grouped with a primary group member at a time during the member's group membership period is a **secondary group member**.

Step 4. Work out the day before the last day of the Y_0 year of income when a secondary group member became grouped with the primary group member as mentioned in step 3, or the first day of the Y_{-3} year of income, whichever is the later.

Step 5. Work out the day before the last day of the Y_0 year of income when the secondary group member was not so grouped with the primary group member. The period between that day and the day worked out under step 4 is the secondary group member's **group membership period**.

Exception: secondary member leaving with a viable business

- (3) The period that would be a secondary group member's group membership period is treated as never having existed if, at the end of that period when the secondary group member stops being grouped with a primary group member, the secondary group member has a viable business.

Exception: extending group membership period

- (4) The group membership period of a group member of a particular group (the **current group**) is extended to include its history period with its former group (see subsection (5)) if, when the company became a group member of the current group, it did so with a viable business.

Viable business

- (5) A company stops being or starts being a group member of a group with a **viable business** if:
- (a) sufficient assets (including assets that have been used in carrying on research and development activities) are transferred under the transactions involved in the change of control to allow the continued operation of a business; and
 - (b) the person or persons that disposed of control of the company agree in writing with the person or persons that gain control that this subsection should apply; and
 - (c) the person or persons that disposed of control of the company provide written details of the following needed to enable the making of calculations required by sections 73QA, 73QB, 73RA, 73RB, 73RC, 73RD, 73RE, 73T and 73V:
 - (i) expenditure incurred by the company during the period (its **history period**) it was a group member of its former group;

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- (ii) receipts of grants and recouplements relating to that expenditure;
- (iii) entitlements to receive grants and recouplements relating to that expenditure.

Note: The definition of *person* includes trusts, partnerships and other entities as well as companies: see section 73H.

- (6) The written agreement referred to in paragraph (5)(b) must be made, and the written details referred to in paragraph (5)(c) must be provided:
 - (a) for a change of control occurring before 1 July 2002—by 30 June 2002; or
 - (b) otherwise—by the end of the year of income in which the change of control occurs; or
 - (c) within a further time allowed by the Commissioner.

73RA Increases in expenditure on Australian owned R&D by eligible companies

- (1) For the purposes of section 73QA, work out the *increase in expenditure on Australian owned R&D by the eligible company* as follows:

Method statement

Step 1. For each of the Y_0 , Y_{-1} , Y_{-2} and Y_{-3} years of income, work out the eligible company's incremental expenditure incurred in its group membership period.

Step 2. For each of the Y_0 , Y_{-1} , Y_{-2} and Y_{-3} years of income, work out how much (if any) of the initial clawback amount (if any) under section 73C relating to expenditure incurred by the eligible company is attributable to incremental expenditure incurred in the eligible company's group membership period.

Step 3. For each of those years of income, reduce (but not below zero) the result of step 1 for the year of income by the result of step 2 for the year of income. The result is the **reduced expenditure on Australian owned R&D** by the eligible company in its group membership period for the year of income.

Step 4. Add up:

- (a) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the Y_{-1} year of income; and
- (b) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the Y_{-2} year of income; and
- (c) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the Y_{-3} year of income.

Step 5. Divide the result of step 4 by 3.

Step 6. Subtract the result of step 5 from the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the Y_0 year of income (see step 3). The result is the **change in expenditure on Australian owned R&D by the eligible company**.

Note: The change in expenditure on Australian owned R&D by the eligible company may be a positive or negative number or zero.

Step 7. The **increase in expenditure on Australian owned R&D by the eligible company** is:

- (a) the change in expenditure on Australian owned R&D by the eligible company; or
- (b) zero, if the change in expenditure on Australian owned R&D by the eligible company is a negative number.

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- (2) For the purposes of section 73QA, work out the ***total increase in expenditure on Australian owned R&D by the eligible companies in the group*** as follows:

Method statement

Step 1. For each group member that is an eligible company, work out the increase in expenditure on Australian owned R&D by the eligible company under subsection (1) of this section.

Step 2. Total the results of step 1.

73RB Increases in expenditure on foreign owned R&D by eligible companies

- (1) For the purposes of section 73QB, work out the ***increase in expenditure on foreign owned R&D by the eligible company*** as follows:

Method statement

Step 1. For the Y_0 year of income, work out the amount of the expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) that was incurred by the company in its group membership period. The result is the ***expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income.

Step 2. For the Y_0 year of income, work out how much (if any) of the initial clawback amount (if any) under section 73C relating to expenditure incurred by the eligible company is attributable to the expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income.

Step 3. Reduce (but not below zero) the result of step 1 for the year of income by the result of step 2 for the year of income. The result is the **reduced expenditure on foreign owned R&D** by the eligible company in its group membership period for the Y_0 year of income.

Step 4. For each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, work out the amount (the **notional expenditure on foreign owned R&D** by the eligible company in its group membership period for the year of income) of expenditure that:

- (a) was incurred by the company in its group membership period; and
- (b) would have been expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) if subsection 73B(2BA) had not been enacted.

Note 1: This requires counting of expenditure relating to all activities that would have been research and development activities had they been carried on in accordance with a plan described in subsection 73B(2BA) (whether or not they were carried on in that way).

Note 2: If all relevant activities were carried on in accordance with such a plan, and the eligible company's group membership period includes the whole of the year of income, the notional expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income is the same as the expenditure on foreign owned R&D by the company for the year of income.

Step 5. For each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, work out what would have been the amount of the eligible company's initial clawback amount (if any) under section 73C attributable to the notional expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income if subsection 73B(2BA) had not been enacted.

Note: This requires counting of grants and recoupments described in section 73C relating to expenditure on projects involving activities that would have been research and development activities had they been carried on in accordance with a plan described in subsection 73B(2BA) (whether or not they were carried on in that way).

Step 6. For each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, reduce (but not below zero) the result of step 4 for the year of income by the result of step 5 for the year of income. The result is the **reduced notional expenditure on foreign owned R&D** by the eligible company in its group membership period for the year of income.

Step 7. Add up:

- (a) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the Y_{-1} year of income; and
- (b) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the Y_{-2} year of income; and
- (c) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the Y_{-3} year of income.

Step 8. Divide the result of step 7 by 3.

Step 9. Subtract the result of step 8 from the reduced expenditure on foreign owned R&D by the eligible company for the Y_0 year of income (see step 3). The result is the **change in expenditure on foreign owned R&D by the eligible company**.

Note: The change in expenditure on foreign owned R&D by the eligible company may be a positive or negative number or zero.

Step 10. The *increase in expenditure on foreign owned R&D by the eligible company* is:

- (a) the change in expenditure on foreign owned R&D by the eligible company; or
- (b) zero, if the change in expenditure on foreign owned R&D by the eligible company is a negative number.

- (2) For the purposes of section 73QB, work out the *total increase in expenditure on foreign owned R&D by the eligible companies in the group* as follows:

Method statement

Step 1. For each group member that is an eligible company, work out the increase in expenditure on foreign owned R&D by the eligible company under subsection (1) of this section.

Step 2. Total the results of step 1.

73RC Net increase in expenditure on Australian owned R&D by the group

For the purposes of sections 73QA and 73QB, work out the *net increase in expenditure on Australian owned R&D by the group* as follows:

Method statement

Step 1. For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in expenditure on Australian owned R&D by the eligible company.

Step 2. Total the results of step 1. If the result is a negative number, the *net increase in expenditure on Australian owned R&D by the group* is zero instead.

73RD Net increase in expenditure on foreign owned R&D by the group

For the purposes of sections 73QA and 73QB, work out the *net increase in expenditure on foreign owned R&D by the group* as follows:

Method statement

Step 1. For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

Step 2. Total the results of step 1. If the result is a negative number, the *net increase in expenditure on foreign owned R&D by the group* is zero instead.

73RE Adjusted increase in expenditure on R&D by the group

Work out the *adjusted increase in expenditure on R&D by the group* as follows:

Method statement

Step 1. For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in expenditure on Australian owned R&D by the eligible company.

Step 2. For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

Step 3. Add up all the results of steps 1 and 2.

Note: If the sum is a negative number, the adjusted increase in expenditure on R&D by the group will be zero.

Step 4. Subtract the adjustment balance worked out under section 73V from the result of step 3. If the result is a negative number, the *adjusted increase in expenditure on R&D by the group* is zero instead.

73S Calculating the amounts relevant to the additional deduction

If a negative result is obtained from a calculation in section 73T or 73V, that result is taken to be zero.

73T Adjustment amounts

- (1) The *adjustment amount* for an eligible company and its group members for the Y_0 year of income is:

$$[\text{R\&D spend for } Y_{-2} \text{ year} \times 80\%] - \text{R\&D spend for } Y_{-1} \text{ year}$$

- (2) The *adjustment amount* for an eligible company and its group members for the Y_{-1} year of income is:

$$[\text{R\&D spend for } Y_{-3} \text{ year} \times 80\%] - \text{R\&D spend for } Y_{-2} \text{ year}$$

Exceptions

- (3) AA_0 is zero if:
- the eligible company or any of its group members could deduct an amount under section 73QA or 73QB for the Y_{-1} year of income; and
 - there has been no change in the control of the eligible company or any of its group members for the Y_0 year of income resulting in:
 - a company entering or leaving the group with a viable business; and

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- (ii) a change to the R&D spend of the eligible company for the Y_{-1} , Y_{-2} or Y_{-3} year of income.
- (4) AA_{-j} is zero if:
- (a) the eligible company or any of its group members could deduct an amount under section 73QA or 73QB for the Y_{-2} year of income; and
 - (b) there has been no change in the control of the eligible company or any of its group members for the Y_0 or Y_{-1} year of income resulting in:
 - (i) a company entering or leaving the group with a viable business; and
 - (ii) a change to the R&D spend of the eligible company for the Y_{-1} , Y_{-2} or Y_{-3} year of income.

73V Adjustment balance

- (1) The *adjustment balance* is, if the R&D spend of the eligible company for the Y_{-1} year of income is less than or equal to RA_{-1} :
 $AA_0 + AA_{-1}$
- (2) Otherwise, the *adjustment balance* is:
 $RA_{-1} + AA_0 + AA_{-1}$
reduced by the R&D spend of the eligible company for the Y_{-1} year of income.
- (3) The *adjustment balance* is zero if:
- (a) the eligible company or any of its group members met the conditions either in paragraphs 73QA(1)(a) and (b) or in paragraphs 73QB(1)(a) and (b) for the Y_{-1} year of income; and
 - (b) there has been no change in the control of the eligible company or any of its group members for the Y_0 year of income resulting in:
 - (i) a company entering or leaving the group with a viable business; and
 - (ii) a change to the R&D spend of the eligible company for the Y_{-1} , Y_{-2} or Y_{-3} year of income.

73Z Anti-avoidance

- (1) This section applies to a company if:
 - (a) the company requests an amendment to an assessment for a year of income to reduce the amount of its research and development expenditure for a year of income; and
 - (b) the Commissioner is of the opinion that the purpose of the proposed amendment is to increase the company's entitlement to a deduction under section 73QA or 73QB for any year of income.
- (2) The amount of that reduction is ignored in working out the company's incremental expenditure for any year of income or the notional expenditure on foreign owned R&D by the eligible company in its group membership period for any year of income (see step 4 of the method statement in subsection 73RB(1)).

78A Certain gifts not to be allowable deductions

- (1) In this section:

agreement includes any agreement, arrangement or understanding, whether formal or informal or express or implied, and whether or not enforceable by legal proceedings (whether or not the agreement, arrangement or understanding was intended to be so enforceable).

associate, in relation to the donor of a gift, means:

- (a) in the case of a donor being a natural person:
 - (i) a relative of the donor;
 - (ii) a partner of the donor;
 - (iii) if a partner of the donor is a natural person—the spouse of that partner;
 - (iv) a trustee of a trust estate where the donor or a person who is an associate of the donor by virtue of subparagraph (i), (ii), (iii) or (v) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

- (v) a company where:
 - (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor, of a person who is an associate of the donor by virtue of subparagraph (i), (ii), (iii) or (iv) or of a company that is an associate of the donor by virtue of another application of this subparagraph; or
 - (B) the donor is, the persons who are associates of the donor by virtue of subparagraphs (i), (ii), (iii) and (iv) are, or the donor and the persons who are associates of the donor by virtue of those paragraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or
- (b) in the case of a donor being a company:
 - (i) a partner of the donor company;
 - (ii) if a partner of the donor company is a natural person—the spouse of that partner;
 - (iii) another person where:
 - (A) the donor company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, whether those directions, instructions or wishes are communicated directly to the donor company or its directors, or through any interposed companies; or
 - (B) that person is, or that person and the persons who, if that person were the donor, would be associates of that person by virtue of paragraph (a) or by virtue of another subparagraph of this paragraph are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the donor company;

- (iv) a trustee of a trust estate where the donor company or a person who is an associate of the donor company by virtue of subparagraph (i), (ii), (iii), (v) or (vi) benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts;
 - (v) another company where:
 - (A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor company, of a person who is an associate of the donor company by virtue of subparagraph (i), (ii), (iii), (iv) or (vi) or of a company that is an associate of the donor company by virtue of another application of this subparagraph; or
 - (B) the donor company is, the persons who are associates of the donor company by virtue of subparagraphs (i), (ii), (iii), (iv) and (vi) are, or the donor company and the persons who are associates of the donor company by virtue of those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
 - (vi) another person who, if a third person who is an associate of the donor company by virtue of subparagraph (iii) were the donor, would be an associate of that third person by virtue of paragraph (a) or by virtue of another subparagraph of this paragraph.
- (2) Subject to this section, a gift of money, or of property other than money, made by a person (in this section referred to as the *donor*) to a fund, authority, institution or person is not an allowable deduction under Division 30 of the *Income Tax Assessment Act 1997* where:
- (a) by reason of any act, transaction or circumstance that has occurred, will occur, or may reasonably be expected to occur,

being an act, transaction or circumstance occurring as part of, in connexion with or as a result of:

- (i) the making or receipt of the gift; or
- (ii) any agreement or scheme entered into in association with the making or receipt of the gift;

the amount or value of the benefit derived by the fund, authority, institution or person as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift;

- (b) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), any fund, authority, institution or person other than the fund, authority, institution or person to which the gift was made, makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment, or transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property, to any person or incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation;
 - (c) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), the donor or an associate of the donor has obtained, will obtain or may reasonably be expected to obtain any benefit, advantage, right or privilege other than the benefit of any deduction that, but for this section, would be allowable from the assessable income of the donor under Division 30 of the *Income Tax Assessment Act 1997*; or
 - (d) by reason of any agreement or scheme entered into as part of or in association with the making of the gift, any property, other than property comprising the gift, has been acquired or will be acquired, whether directly or indirectly, from the donor or an associate of the donor by that fund, authority, institution or person or by another fund, authority, institution or person.
- (3) Without limiting the application of subsection (2), where the terms and conditions on which a gift of property other than money is made are such that the fund, authority, institution or person to which the gift is made does not receive immediate custody and

control of the property, does not have the unconditional right to retain custody and control of the property in perpetuity to the exclusion of the donor or an associate of the donor or does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property, paragraph (2)(c) shall be deemed to apply in relation to that gift.

- (4) Paragraph (2)(a) does not prevent a deduction under Division 30 of the *Income Tax Assessment Act 1997* from being allowed from the assessable income of the donor where the amount or value of the benefit derived by the fund, authority, institution or person as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift by reason only that the fund, authority, institution or person has incurred, will incur, or may reasonably be expected to incur, expenses for the purpose of obtaining or soliciting the gift, being expenses that, in the opinion of the Commissioner, are reasonable in relation to the value of the gift.
- (5) This section does not prevent a deduction under section 30-15 of the *Income Tax Assessment Act 1997* (because of item 4, 5 or 6 of the table in that section) from being allowed from the assessable income of the donor in respect of a gift of property other than money by reason only that the terms and conditions on which the gift was made are such, or the effect of any arrangement (within the meaning of that Act) entered into in association with the making or receipt of the gift is such, that the value of the gift may be reduced in accordance with section 30-220 of that Act.

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

Volume 2 includes: Table of Contents
Sections 79A – 121L

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

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

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79A Rebates for residents of isolated areas

- (1) For the purpose of granting to residents of the prescribed area an income tax concession in recognition of the disadvantages to which they are subject because of the uncongenial climatic conditions, isolation and high cost of living in Zone A and, to a lesser extent, in Zone B, in comparison with parts of Australia not included in the prescribed area, a taxpayer (not being a company or a taxpayer in the capacity of a trustee) who is a resident of the prescribed area in the year of income is entitled, in his assessment in respect of income of that year of income, to a rebate of tax ascertained in accordance with this section.
- (2) Subject to subsections (2A) and 79B(4), the rebate allowable under this section in the assessment of a taxpayer in respect of income of the year of income is:
 - (a) where the taxpayer is a resident of the special area in Zone A, or of the special area in Zone B, in the year of income—\$1,173 increased by 50% of the relevant rebate amount in relation to the taxpayer in relation to the year of income;
 - (d) where the taxpayer is a resident of Zone A in the year of income but has not resided or actually been in the special area in Zone A or the special area in Zone B during any part of the year of income—\$338 increased by 50% of the relevant rebate amount in relation to the taxpayer in relation to the year of income;
 - (e) where the taxpayer is a resident of Zone B in the year of income but has not resided or actually been in Zone A or the special area in Zone B during any part of the year of income—\$57 increased by 20% of the relevant rebate amount in relation to the taxpayer in relation to the year of income; or
 - (f) in any other case—such amount as, in the opinion of the Commissioner, is reasonable in the circumstances, being an amount not greater than the amount of the rebate to which the taxpayer would have been entitled under this section if paragraph (a) had applied to him in respect of the year of income and not less than the amount of rebate to which he would have been so entitled if paragraph (e) had so applied to him.

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- (2A) The amount of any rebate that would, but for this subsection, be allowable to a taxpayer under this section in his assessment in respect of income of a year of income shall be reduced by the amount of any prescribed allowance paid to the taxpayer in respect of the year of income.
- (3) Any alteration of the boundaries of any area referred to in Schedule 2 made (otherwise than by an amendment of this Act) after the commencement of this section shall not affect the operation of this section.
- (3A) This section has effect subject to section 23AB.
- (3B) For the purposes of this section, a taxpayer is a resident of a particular area, being the prescribed area, Zone A, Zone B, the special area in Zone A or the special area in Zone B (in this subsection referred to as the *relevant area*) in a year of income if:
- (a) the taxpayer resided in the relevant area in the year of income for a period of more than one-half of the year of income;
 - (b) the taxpayer was actually in the relevant area in the year of income for a period of more than one-half of the year of income;
 - (c) the taxpayer died during the year of income and at the date of his death resided in the relevant area;
 - (d) the following conditions are satisfied:
 - (i) the taxpayer resided, or actually was, in the relevant area in the year of income for a period of not more than one-half of the year of income;
 - (ii) the taxpayer resided, or actually was, in the relevant area in the next preceding year of income for a period of not more than one-half of the next preceding year of income;
 - (iii) for the purposes of this section, the taxpayer was not a resident of the relevant area in the next preceding year of income; and
 - (iv) the sum of:
 - (A) the number of days in the period mentioned in subparagraph (i); and
 - (B) the number of days in the period mentioned in subparagraph (ii), other than days included in a period to which subsection 23AB(8) or 79B(3)

- applied in relation to the taxpayer in relation to the next preceding year of income;
exceeds 182; or
- (e) the following conditions are satisfied:
- (i) the taxpayer resided in the relevant area in the year of income for a period of not more than one-half of the year of income, being a period that included the first day of the year of income;
 - (ii) the taxpayer resided in the relevant area, in a relevant preceding year of income, for a period of not more than one-half of that relevant preceding year of income;
 - (iii) for the purposes of this section, the taxpayer was not a resident of the relevant area in that relevant preceding year of income;
 - (iv) the sum of:
 - (A) the number of days in the period mentioned in subparagraph (i); and
 - (B) the number of days in the period mentioned in subparagraph (ii), other than days included in a period to which subsection 23AB(8) or 79B(3) applied in relation to the taxpayer in relation to that relevant preceding year of income;exceeds 182; and
 - (v) the taxpayer resided in the relevant area continuously from the commencement of the period mentioned in subparagraph (ii) until the end of the period mentioned in subparagraph (i).
- (3C) In subsection (3B), a reference to a taxpayer residing, or actually being, in a particular area in a year of income for a period of more than, or not more than, one-half of the year of income is a reference to the taxpayer:
- (a) residing, or actually being, in that area in the year of income for one period of more than, or not more than, as the case may be, one-half of the year of income; or
 - (b) residing, or actually being, in that area in the year of income for 2 or more periods the aggregate of the lengths of which is more than, or not more than, as the case may be, one-half of the year of income.

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(3D) For the purposes of this section:

- (a) the special area within Zone A or Zone B is constituted by:
 - (i) the points in that Zone that were not, as at 1 November 1981, situated at a distance of 250 kilometres or less by the shortest practicable surface route, from the centre point of the nearest urban centre (whether or not within that Zone) with a census population of not less than 2,500; and
 - (ii) the points in that Zone that were within the special area in that Zone for the purposes of this section as in force immediately before the commencement of the *Income Tax Assessment Amendment Act (No. 4) 1984*; and
- (b) the distance, by the shortest practicable surface route, between a point in Zone A or Zone B and the centre point of an urban centre is:
 - (i) where there is only one location within that urban centre from which distances between the urban centre and other places are usually measured—the distance, by the shortest practicable surface route, between that point in Zone A or Zone B and that location; and
 - (ii) where there are 2 or more locations within that urban centre from which distances between parts of the urban centre and other places are usually measured—the distance, by the shortest practicable surface route, between that point in Zone A or Zone B and the one of those locations that is in the principal one of those parts.

(3E) For the purposes of this section other than this subsection, the Commissioner may, if he considers it appropriate having regard to all the circumstances, treat a point in Zone A or Zone B that is not in the special area in that Zone but is adjacent to or in close proximity to the special area in that Zone as being a point in the special area in that Zone.

(3F) For the purposes of this section, the census population of Nhulunbuy is taken to be less than 2,500.

(4) In this section:

census population, in relation to an urban centre, means the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian

Statistician on 30 June 1981, being the results published by the Australian Bureau of Statistics in the documents entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

prescribed allowance means:

- (a) so much of a payment under the *Social Security Act 1991* or the *Veterans’ Entitlements Act 1986* as was included in the payment by way of remote area allowance; or
- (b) so much of an exceptional circumstances relief payment, or a payment of farm help income support, under the *Farm Household Support Act 1992* as would have been included by way of remote area allowance if it had been a payment of newstart allowance under the *Social Security Act 1991* instead of an exceptional circumstances relief payment, or a payment of farm help income support.

relevant preceding year of income, in relation to a year of income, means any of the next 4 preceding years of income other than the immediately preceding year of income.

relevant rebate amount, in relation to a taxpayer in relation to a year of income, means the sum of the following rebates (if any):

- (a) any rebate to which the taxpayer would be entitled under section 159K, apart from subsection 159K(1A);
- (aa) any rebate to which the taxpayer would be entitled under section 159L, apart from subsections 159L(3A), (5A) and (5B);
- (b) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2);
- (ba) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 2 in the table in subsection 159J(2), apart from subsections 159J(1AA), (3AA) and (3AB);
- (c) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);
- (d) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) (ignoring subsections 159J(1AA), (3AA) and (3AB)) if subsection 159J(1B) also

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included a reference to any dependant included in class 1 of that table and the amount applicable to class 1 of that table were \$2,440.

- Note 1: This definition lets a taxpayer include the dependent spouse rebate (without child), the child-housekeeper rebate or the housekeeper rebate for the purpose of working out the relevant rebate amount under this section, even if the taxpayer or the taxpayer's spouse is eligible for family tax benefit at the Part B rate for the whole or part of a year.
- Note 2: Another effect of the definition (see paragraph (d)) is to let a taxpayer include the dependent spouse rebate (with child), despite its abolition by the *A New Tax System (Consequential and Related Measures) Act (No. 1) 1999*, for the purpose of working out the relevant rebate amount.

surface route means a route other than an air route.

the prescribed area means the area comprised in Zone A and Zone B.

urban centre means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Bureau of Statistics in the documents entitled "Persons and Dwellings in Local Government Areas and Urban Centres".

Zone A means the area described in Part I of Schedule 2.

Zone B means the area described in Part II of Schedule 2.

79B Rebates for members of Defence Force serving overseas

- (1) Subject to this section, a taxpayer who, during the year of income, serves as a member of the Defence Force at an overseas locality is entitled, in his assessment in respect of income of the year of income, to a rebate of tax ascertained in accordance with this section.
- (1A) A taxpayer is not entitled to a rebate under this section in relation to service:
- (a) as or under an attachè at an Australian Embassy or Legation in an overseas locality at a time as at which that locality was, or is deemed to have been, a specified locality for the purposes of this subsection; or

- (b) with the South-East Asia Treaty Organization Military Planning Office.
- (1B) Where the Chief of the Defence Force or a service chief or a person authorized by a chief of staff to give certificates under this subsection certifies, and the Treasurer is satisfied, that any service of a taxpayer in any locality was or will be performed in circumstances similar to those in which any service referred to in subsection (1A) is performed, the taxpayer is not entitled to a rebate under this section in relation to that service.
- (2) Subject to the succeeding provisions of this section, the rebate allowable under this section in the assessment of a taxpayer in respect of income of the year of income is:
- (a) where the total period of service of the taxpayer at overseas localities during the year of income is more than one-half of the year of income, or where the taxpayer dies at an overseas locality during the year of income—an amount equal to the sum of:
- (i) \$338; and
- (ii) an amount equal to 50% of the concessional rebate amount; or
- (b) in any other case—such amount as, in the opinion of the Commissioner, is reasonable in the circumstances, being an amount not greater than the amount of the rebate to which the taxpayer would have been entitled under this section if paragraph (a) had applied to him in respect of the year of income.
- (3) For the purposes of subsection (2), the total periods of service of the taxpayer in any year of income at overseas localities shall be deemed to include any period of service of the taxpayer as a member of the Defence Force in that year of income in the prescribed area.
- (3A) For the purposes of subsection (2), the total periods of service of the taxpayer in any year of income at overseas localities shall be deemed not to include any period of service of the taxpayer in respect of which an exemption from income tax applies under section 23AC, 23AD or 23AG.
- (4) The aggregate of the rebates allowable under this section and section 23AB or under this section and section 79A in the
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assessment of a taxpayer in respect of income of a year of income shall not exceed an amount equal to the sum of:

- (a) \$338; and
- (b) an amount equal to 50% of the concessional rebate amount.

(4A) Where:

- (a) but for subsection (4) and this subsection, a rebate would be allowable under this section and a rebate would be allowable under section 79A in the assessment of a taxpayer in respect of income of a year of income; and
- (b) the rebate allowable under section 79A exceeds an amount equal to the sum of:
 - (i) \$338; and
 - (ii) an amount equal to 50% of the concessional rebate amount;

the taxpayer is not entitled to a rebate under this section in that assessment and subsection (4) does not apply in relation to that assessment.

(5) For the purposes of this section the Treasurer may, by writing signed by him and deposited with the Commissioner, declare that a locality outside Australia specified in the declaration shall:

- (a) by reason of the uncongenial nature of service in that locality and the isolation of the locality, be, or be deemed to have been, as from a date, or during a period, (whether before or after the date of the declaration) specified in the declaration, a locality in relation to which this section applies; or
- (b) as from a date (whether before or after the date of the declaration) specified in the declaration, cease, or be deemed to have ceased, to be such a locality;

and this section shall apply, or be deemed to have applied, and shall cease to apply, or be deemed to have ceased to apply, in relation to any such locality accordingly.

(5A) The Treasurer may, by writing signed by him and deposited with the Commissioner, declare that an overseas locality specified in the declaration shall become, or be deemed to have become, on a specified date, or shall cease, or be deemed to have ceased, on a specified date, to be, a specified locality for the purposes of subsection (1A).

(5B) Nothing in section 170 prevents the amendment of an assessment at any time for the purpose of allowing a rebate to which the taxpayer has become entitled under this section after the making of the assessment.

(6) For the purpose of this section:

concessional rebate amount, in relation to a taxpayer in relation to a year of income, means the sum of the following rebates (if any):

- (a) any rebate to which the taxpayer would be entitled under section 159K, apart from subsection 159K(1A);
- (aa) any rebate to which the taxpayer would be entitled under section 159L, apart from subsections 159L(3A), (5A) and (5B);
- (b) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 5 or 6 in the table in subsection 159J(2);
- (ba) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 2 in the table in subsection 159J(2), apart from subsections 159J(1AA), (3AA) and (3AB);
- (c) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);
- (d) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) (ignoring subsections 159J(1AA), (3AA) and (3AB)) if subsection 159J(1B) also included a reference to any dependant included in class 1 of that table and the amount applicable to class 1 of that table were \$2,440.

Note 1: This definition lets a taxpayer include the dependent spouse rebate (without child), the child-housekeeper rebate or the housekeeper rebate for the purpose of working out the concessional rebate amount under this section, even if the taxpayer or the taxpayer's spouse is eligible for family tax benefit at the Part B rate for the whole or part of a year.

Note 2: Another effect of this definition (see paragraph (d)) is to let a taxpayer include the dependent spouse rebate (with child), despite its abolition by the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*, for the purpose of working out the concessional rebate amount.

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locality means an area of land or waters or an area of land and waters.

overseas locality means, in relation to service during any period or death at any time, a locality in relation to which, during that period or at that time, this section applies or is deemed to have applied; and

the prescribed area has the same meaning as that expression has in section 79A.

82 Double deductions

Where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure incurred by him in connexion with that property has been allowed or is allowable as a deduction under this Act, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

82A Deductions for expenses of self-education

- (1) Where a deduction is, or but for this section would be, allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of a year of income in respect of expenses of self-education, the deduction, or the aggregate of the deductions, so allowable to the taxpayer in respect of those expenses shall not be greater than the amount by which the net amount of expenses of self-education exceeds \$250.

- (2) In this section:

educational assistance means amounts (other than amounts in the nature of an allowance for maintenance or accommodation) payable under a scheme for the provision by the Commonwealth of assistance for secondary education, technical or tertiary education or post-graduate study.

expenses of self-education means expenses necessarily incurred by the taxpayer for or in connection with a prescribed course of education but does not include:

- (a) a payment made to an institution of higher education to which Chapter 4 of the *Higher Education Funding Act 1988*

applies in respect of a contribution payable under that Chapter; or

- (ab) a payment made to the Open Learning Agency of Australia in respect of any charge payable in respect of a unit of study undertaken by the taxpayer for the purposes of an approved course of study within the meaning of Chapter 5 of the *Higher Education Funding Act 1988*; or
- (b) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth under Chapter 5A of that Act; or
- (ba) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
- (bb) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth under Chapter 4 of that Act; or
- (c) a payment made in respect of, or in respect of the reduction or discharge of, any indebtedness to the Commonwealth or to a participating corporation under Chapter 2B of the *Social Security Act 1991* or Part 4A of the *Student Assistance Act 1973*.

net amount of expenses of self-education means the amount ascertained by subtracting from the total amount of expenses of self-education incurred by the taxpayer in the year of income the sum of:

- (a) any payment or payments of educational assistance that were capable of being claimed in the year of income by the taxpayer or by another person in respect of the taxpayer other than:
 - (i) a payment the amount of which has been, or will be, included in the assessable income of the taxpayer of any year of income; or
 - (ii) a payment that was capable of being claimed in a preceding year of income; and
- (b) any payment or payments (other than a payment the amount of which has been, or will be, included in the assessable income of the taxpayer of any year of income) received by the taxpayer, or that the taxpayer was entitled to receive, in the year of income, from the taxpayer's employer, or from any other person, in respect of:

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- (i) expenses of self-education that were incurred by the taxpayer during the year of income; or
- (ii) expenses of self-education in respect of which a deduction has been allowed, or is allowable, or in respect of which a rebate of tax has been allowed, or is allowable, in an assessment in respect of income derived by the taxpayer in a preceding year of income.

prescribed course of education means a course of education provided by a school, college, university or other place of education, and undertaken by the taxpayer for the purpose of gaining qualifications for use in the carrying on of a profession, business or trade or in the course of any employment.

Subdivision CB—Regional Headquarters (RHQs)

82C Object

The object of this Subdivision is to provide a deduction for certain expenditure incurred by approved companies in establishing a regional headquarters in Australia.

82CA Deduction for setup costs of RHQ companies

RHQ setup costs incurred on or after 1 July 1994 by an RHQ company in a year of income are an allowable deduction from the assessable income of the RHQ company of the year of income.

82CB Interpretation

- (1) In this Subdivision:

associated company has the meaning given by section 82CC.

management related services include the following:

- (a) finance and treasury services;
- (b) business planning services;
- (c) marketing services;
- (d) accounting services;
- (e) research and development services.

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RHQ company means a company that the Treasurer, under section 82CE, has determined to be an RHQ company.

RHQ setup costs means expenditure (whether or not of a capital nature) incurred by an RHQ company:

- (a) both:
 - (i) in setting up the facilities referred to in subsection 82CD(1); and
 - (ii) in the period starting 12 months before, and ending 12 months after, the company first derives assessable income from the provision of regional headquarters support from those facilities; or
- (b) in reimbursing expenditure incurred by a non-resident associated company of the RHQ company if the latter expenditure would have been covered by paragraph (a) if it had instead been incurred by the RHQ company at the time when it was incurred by the associated company;

but does not include:

- (c) costs incurred in connection with feasibility studies in relation to the setting up of facilities in Australia to provide regional headquarters support; or
 - (d) costs incurred in connection with moving facilities that provide regional headquarters support from one location in Australia to another location in Australia; or
 - (e) the cost of depreciating assets, equipment, land, buildings or similar items.
- (2) A company **provides regional headquarters support** if:
- (a) the company provides to an associated company that is located in a country other than Australia; or
 - (b) a part of the company provides to another part of the company that is located in a country other than Australia;
- any of the following:
- (c) management related services; or
 - (d) data services; or
 - (e) software support services.
- (3) A reference in this section to the provision of data services to a company, or a part of a company, is a reference to:
- (a) the substantial input, transmission or manipulation of data; or

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- (b) the production of information from data;
for, or on behalf of, that company or that part of that company.
- (4) A reference in this section to the provision of software support services to a company, or a part of a company, is a reference to the provision, to clients of that company or that part of that company, of advice and assistance in relation to computer software sold by that company or that part of that company.

82CC Associated companies

For the purposes of this Subdivision, a company is an *associated company* of another company if:

- (a) either company controls at least 10% of the votes in the other company (either directly or through one or more interposed companies, partnerships or trust estates); or
- (b) a third company is an associated company (including by one or more applications of this paragraph) of both of the companies.

82CD Application to become an RHQ company

- (1) A company may, in writing, apply to the Treasurer to become an RHQ company if the company intends to establish facilities in Australia mainly for the purpose of providing regional headquarters support.
- (2) The Treasurer must publish the address to which applications must be sent.

82CE Determination of RHQ companies

- (1) Subject to subsection (3), the Treasurer may, on application by a company under section 82CD, determine, by legislative instrument, that the company is an RHQ company for the purposes of this Subdivision.
- (2) The determination must:
 - (a) specify the day when the company commences to be an RHQ company; and
 - (b) contain any other information the Treasurer considers appropriate.

- (3) A determination of the Treasurer under subsection (1):
 - (a) may only be made if the Treasurer is satisfied that the company has the intention mentioned in subsection 82CD(1); and
 - (b) must be made in accordance with guidelines determined by the Treasurer under this section.
- (4) The Treasurer must, by legislative instrument, determine guidelines for the making of determinations under subsection (1). The guidelines may require the Treasurer to take into account:
 - (a) specified criteria; or
 - (b) recommendations of particular bodies; or
 - (c) any other factors.

Subdivision D—Losses and outgoings incurred under certain tax avoidance schemes

82KH Interpretation

- (1) In this Subdivision, unless the contrary intention appears:

additional benefit, in relation to an amount of eligible relevant expenditure, means the additional benefit, or the aggregate of the additional benefits, as the case may be, referred to in paragraph (1F)(b) in relation to that eligible relevant expenditure.

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

associate, in relation to a taxpayer, means:

- (a) in the case of a taxpayer who is a natural person, other than a taxpayer in the capacity of a trustee:
 - (i) a relative of the taxpayer;
 - (ii) a partner of the taxpayer;
 - (iii) if a person who is an associate of the taxpayer by virtue of subparagraph (ii) is a natural person—the spouse or a child of that person;
 - (iv) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of

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another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

- (v) a company where:
 - (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the taxpayer, of another person who is an associate of the taxpayer by virtue of another subparagraph of this paragraph, of a company that is an associate of the taxpayer by virtue of another application of this subparagraph or of any 2 or more such persons; or
 - (B) the taxpayer is, the persons who are associates of the taxpayer by virtue of sub-subparagraph (A) and the preceding subparagraphs of this paragraph are, or the taxpayer and the persons who are associates of the taxpayer by virtue of that sub-subparagraph and those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company;
- (b) in the case of a taxpayer being a company, other than a taxpayer in the capacity of a trustee:
 - (i) a partner of the taxpayer;
 - (ii) if a person who is an associate of the taxpayer by virtue of subparagraph (i) is a natural person—the spouse or a child of that person;
 - (iii) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts;

(iv) another person where:

(A) the taxpayer company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, or of that person and another person or other persons, whether those directions, instructions or wishes are communicated directly to the taxpayer company or its directors, or through any interposed companies, partnerships or trusts; or

(B) that person is, or that person and the persons who, if that person were the taxpayer, would be associates of that person by virtue of paragraph (a), by virtue of sub-subparagraph (A), by virtue of another subparagraph of this paragraph or by virtue of paragraph (c) are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the taxpayer company;

(v) another company where:

(A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the taxpayer company, of a person who is an associate of the taxpayer company by virtue of another subparagraph of this paragraph, of a company that is an associate of the taxpayer company by virtue of another application of this subparagraph or of any 2 or more such persons; or

(B) the taxpayer company is, the persons who are associates of the taxpayer company by virtue of sub-subparagraph (A) and the other subparagraphs of this paragraph are, or the taxpayer company and the persons who are associates of the taxpayer company by virtue of that sub-subparagraph and those subparagraphs are, in a position to cast, or control the casting

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- of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
- (vi) any other person who, if a third person who is an associate of the taxpayer company by virtue of subparagraph (iv) were the taxpayer, would be an associate of that third person by virtue of paragraph (a), by virtue of another subparagraph of this paragraph or by virtue of paragraph (c);
- (c) in the case of a taxpayer in the capacity of a trustee of a trust estate:
- (i) any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust estate, either directly or through any interposed companies, partnerships or trusts;
 - (ii) where a person who is an associate of the taxpayer by virtue of subparagraph (i) is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or this paragraph; or
 - (iii) where a person who is an associate of the taxpayer by virtue of subparagraph (i) or (ii) is a company—any person who, if that company were the taxpayer, would be an associate of that company by virtue of paragraph (b) or this paragraph; or
- (d) in the case of a taxpayer being a partnership:
- (i) a partner in the partnership;
 - (ii) where any partner in the partnership is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or (c); or
 - (iii) where any partner in the partnership is a company—any person who, if the company were the taxpayer, would be an associate of the company by virtue of paragraph (b) or (c).

consumable supplies means property other than:

- (a) trading stock; or
- (b) choses in action.

expected tax saving, in relation to an amount of eligible relevant expenditure incurred by a taxpayer, means:

- (a) where only one amount is, under subsection (1B), a tax saving amount for the purposes of the application of this definition in relation to the eligible relevant expenditure—that tax saving amount; and
- (b) where 2 or more amounts are, under subsection (1B), tax saving amounts for the purposes of the application of this definition in relation to the eligible relevant expenditure—the sum of those tax saving amounts.

film means an aggregate of images, or of images and sounds, embodied in any material.

market research means:

- (a) the undertaking of research to ascertain the location, extent, value or other characteristics of the market, or the potential market, for goods or services; and
- (b) the provision of information, advice or assistance in connection with the marketing of particular goods or services or of goods or services generally.

property includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

relevant expenditure, in relation to a taxpayer, means:

- (a) expenditure in respect of which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997*;
- (b) expenditure in respect of which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 25-30 (Expenses of discharging a mortgage) of the *Income Tax Assessment Act 1997*;
- (c) a loss or outgoing incurred by the taxpayer in the purchase by the taxpayer of property (not being a chose in action) that, for the purposes of the application of this Act in relation to the taxpayer, is trading stock, to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;

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- (d) a loss or outgoing incurred by the taxpayer in respect of interest to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (e) a loss or outgoing incurred by the taxpayer in respect of rent to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (f) a bad debt incurred by the taxpayer in respect of money lent by the taxpayer in the course of carrying on a business to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 or section 25-35 of the *Income Tax Assessment Act 1997* in respect of the bad debt;
- (g) a loss or outgoing incurred by the taxpayer in respect of:
 - (i) the production, marketing or distribution of a film; or
 - (ii) the acquisition of a copyright subsisting in a film;to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (h) expenditure incurred by the taxpayer in respect of a unit of industrial property, being a unit of industrial property that relates to copyright subsisting in a film, to the extent to which the amount of that expenditure is taken into account, or would, apart from subsections 124R(2) and (3), be taken into account, in calculating the residual value of the unit of industrial property in ascertaining whether, apart from section 82KL, a deduction would be allowable to the taxpayer under section 124M or 124N in respect of the residual value of the unit of industrial property;
- (ka) expenditure incurred by the taxpayer in respect of an item of intellectual property (as defined in of the *Income Tax Assessment Act 1997*) that relates to copyright subsisting in a film, but only to the extent described at the end of this definition;
- (k) a loss or outgoing incurred by the taxpayer in the purchase of consumable supplies to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer

under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;

- (m) a loss or outgoing incurred by the taxpayer in respect of market research to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (n) expenditure incurred by the taxpayer in respect of the acquisition of a unit of industrial property, being a licence under a copyright subsisting in computer software, to the extent to which the amount of that expenditure is taken into account, or would, apart from subsection 124R(3) be taken into account, in calculating the residual value of the unit of industrial property in ascertaining whether, apart from section 82KL, a deduction would be allowable to the taxpayer under section 124M or 124N in respect of the residual value of the unit of industrial property;
- (oa) expenditure incurred by the taxpayer in respect of acquiring an item of intellectual property (as defined in of the *Income Tax Assessment Act 1997*) that is a licence under a copyright subsisting in computer software, but only to the extent described at the end of this definition;
- (o) a loss or outgoing or expenditure incurred by the taxpayer by way of commission for collecting assessable income of the taxpayer to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing or the expenditure;
- (p) a loss or outgoing incurred by the taxpayer in respect of the growing, care or supervision of trees on behalf of the taxpayer to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (pa) a loss or outgoing incurred by the taxpayer in respect of the establishment and tending of trees for felling on behalf of the taxpayer to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 394-10 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;

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- (q) a loss or outgoing incurred by the taxpayer for the purpose of increasing the value of shares in a company, being shares held or beneficially owned by the taxpayer as trading stock, to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (r) a loss or outgoing incurred by the taxpayer in respect of:
 - (i) the production by another person of a master sound recording; or
 - (ii) the procurement of the production by another person of a master sound recording;to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing;
- (s) calls paid by the taxpayer on shares owned by the taxpayer in respect of which a deduction would, apart from section 82KL, be allowable to the taxpayer under Division 30 (which is about gifts) of the *Income Tax Assessment Act 1997*;
- (v) expenditure (other than expenditure to which a preceding paragraph of this definition applies) incurred by the taxpayer in respect of a unit of industrial property to the extent to which the amount of that expenditure is taken into account, or would, apart from subsections 124R(2) and (3), be taken into account, in calculating the residual value of the unit of industrial property in ascertaining whether, apart from section 82KL, a deduction would be allowable to the taxpayer under section 124M or 124N in respect of the residual value of the unit of industrial property; or
- (wa) expenditure (unless covered by an earlier paragraph of this definition) incurred by the taxpayer in respect of an item of intellectual property (as defined in of the *Income Tax Assessment Act 1997*), but only to the extent described at the end of this definition;
- (w) a loss or outgoing (other than a loss or outgoing referred to in subsection 52A(1) or to which a preceding paragraph of this definition applies) incurred by the taxpayer to the extent to which a deduction would, apart from section 82KL, be

allowable to the taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the loss or outgoing.

However, paragraph (ka), (oa) or (wa) only covers expenditure to the extent that:

- (x) it is taken into account in working out under Division 40 of the *Income Tax Assessment Act 1997* the adjustable value of the item to the taxpayer in determining whether, apart from section 82KL of this Act, the taxpayer could deduct an amount under that Division for the item for a year of income; or
- (y) it would be so taken into account apart from item 8 in the table in subsection 40-180(2), or item 1 in the table in subsection 40-190(3) (both about non-arm's length transactions).

rent means rent in respect of land or premises.

tax avoidance agreement means an agreement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the agreement had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the agreement had not been entered into or carried out.

unit of industrial property has the same meaning as in Division 10B.

- (1A) In determining for the purposes of this Subdivision whether an agreement is a tax avoidance agreement, no regard shall be had to a purpose that is a merely incidental purpose.
- (1AA) A reference in this Subdivision to the incurring by a taxpayer of a bad debt shall be read as a reference to a debt, or a part of a debt, owed to the taxpayer becoming a bad debt.
- (1AB) A reference in:
 - (a) subsection 82KL(2); or
 - (b) former section 80 in relation to this Subdivision;to the incurring by a taxpayer of a loss or outgoing shall be read as including a reference to the incurring by a taxpayer of a bad debt.

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- (1ABA) This section has the same effect in relation to an allowable deduction under section 63E in respect of the extinguishing of the whole or part of a debt as it has in respect of an allowable deduction under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of a debt as bad.
- (1AC) In this Subdivision:
- (a) a reference to a copyright subsisting in a film shall be read as including a reference to:
 - (i) a licence under a copyright subsisting in a film; and
 - (ii) an interest, whether at law or in equity, in respect of a copyright, or in respect of a licence under a copyright, subsisting in a film; and
 - (b) a reference to a licence under a copyright subsisting in computer software shall be read as including a reference to an interest, whether at law or in equity, in a licence under a copyright subsisting in computer software.
- (1AD) A reference in this Subdivision to a tax benefit being allowed or allowable or not being allowed or allowable in respect of relevant expenditure incurred by a taxpayer shall be read as a reference to:
- (a) in a case where the relevant expenditure is relevant expenditure to which paragraph (h), (n) or (v) of the definition of **relevant expenditure** in subsection (1) applies—a deduction being allowed or allowable or not being allowed or allowable, as the case may be, to the taxpayer under section 124M or 124N in respect of the residual value of a unit of industrial property where that residual value would be calculated by reference to the relevant expenditure; and
 - (b) if paragraph (ka), (oa) or (wa) of the definition of **relevant expenditure** in subsection (1) covers the expenditure—the taxpayer deducting or being able to deduct, or not deducting or not being able to deduct, as appropriate, an amount under Division 40 of the *Income Tax Assessment Act 1997* for an item of intellectual property for a year of income because the taxpayer's adjustable value of the item would be calculated under that Division by reference to the relevant expenditure; and

- (d) in any other case—a deduction being allowed or allowable or not being allowed or allowable, as the case may be, to the taxpayer in respect of the relevant expenditure.
- (1B) For the purposes of the application of the definition of *expected tax saving* in subsection (1) in relation to an amount of eligible relevant expenditure incurred by a taxpayer:
- (a) where:
- (i) if a tax benefit were not allowable in respect of any part of that eligible relevant expenditure, a person (whether the taxpayer or another person and whether in the capacity of a trustee of a trust estate or otherwise) would be liable to pay income tax in respect of a year of income; and
 - (ii) if a tax benefit or tax benefits were allowable under this Act in respect of that eligible relevant expenditure, that person would be liable to pay a lesser amount of income tax in respect of that year of income;
- the amount by which the amount of the tax referred to in subparagraph (i) exceeds the amount of the tax referred to in subparagraph (ii) is a tax saving amount; and
- (b) where:
- (i) if a tax benefit were not allowable in respect of any part of that eligible relevant expenditure, a person (whether the taxpayer or another person and whether in the capacity of a trustee of a trust estate or otherwise) would be liable to pay income tax in respect of a year of income; and
 - (ii) if a tax benefit or tax benefits were allowable under this Act in respect of that eligible relevant expenditure, that person would not be liable to pay income tax in respect of that year of income;
- the amount of the tax referred to in subparagraph (i) is a tax saving amount.
- (1BA) In the application of subsection (1B) in determining whether there is a tax saving amount in relation to an amount of eligible relevant expenditure incurred by a taxpayer in a case where, if a tax benefit or tax benefits were allowable in respect of that eligible relevant expenditure, a person (whether the taxpayer or another person and

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whether in the capacity of a trustee of a trust estate or otherwise) would:

- (a) have a tax loss for a year of income that the person would not have; or
- (b) have a greater tax loss for a year of income than the person would have;

if a tax benefit were not allowable in respect of any part of that eligible relevant expenditure, apply Division 36 and Subdivision 375-G of the *Income Tax Assessment Act 1997* as if the amount were relevant expenditure but not eligible relevant expenditure.

- (1D) Subject to subsection (1E), where, in respect of any 2 or more amounts of eligible relevant expenditure (whether incurred by one taxpayer or by 2 or more taxpayers and whether incurred in one year of income or in 2 or more years of income), the following conditions are satisfied, namely:
 - (a) if subsection (1B) were applied in relation to one of those amounts of eligible relevant expenditure in relation to a person (whether or not that person is the person or one of the persons who incurred the eligible relevant expenditure) in relation to a year of income on the assumption that no tax benefit is or was allowable in respect of any part of the other amount of eligible relevant expenditure, or in respect of any part of any of the other amounts of eligible relevant expenditure, as the case may be, the tax saving amount determined in accordance with that subsection would be greater than the tax saving amount that would be determined in accordance with that subsection in relation to that amount of eligible relevant expenditure in relation to that person in relation to that year of income if that subsection were applied on the assumption that a tax benefit or tax benefits were allowable under this Act in respect of the other amount of eligible relevant expenditure, or in respect of each of the other amounts of eligible relevant expenditure, as the case may be; and
 - (b) if paragraph (a) of this subsection were applied in relation to that person in relation to that year of income in relation to the other amount of eligible relevant expenditure, or in relation to each of the other amounts of eligible relevant expenditure, as the case may be, the condition specified in that paragraph

would be satisfied in relation to that other amount or in relation to each of those other amounts, as the case may be; then, in the application of subsection (1B) in calculating the tax saving amount in relation to that person in relation to the year of income in relation to any one of the amounts of eligible relevant expenditure first referred to in this subsection, it shall be assumed that no tax benefit is or was allowable in respect of any part of the other of those amounts or in respect of any part of any of the other of those amounts, as the case may be.

(1E) Where:

- (a) but for this subsection, subsection (1D) would apply to require it to be assumed, for the purposes of the application of subsection (1B) in relation to an amount of eligible relevant expenditure, that no tax benefit is or was allowable in respect of any part of another amount of eligible relevant expenditure (in this subsection referred to as the *allowable relevant expenditure*); and
- (b) section 82KL does not and will not operate to deem a tax benefit not to be allowable and never to have been allowable in respect of any part of the allowable relevant expenditure; subsection (1D) shall not apply and shall be taken never to have applied so as to require it to be assumed, in the application of subsection (1B) in relation to an amount of eligible relevant expenditure other than the allowable relevant expenditure, that no tax benefit is or was allowable in respect of any part of the allowable relevant expenditure.

(1F) For the purposes of this Subdivision, an amount of relevant expenditure incurred by a taxpayer shall be taken to be an amount of eligible relevant expenditure if:

- (a) that amount of relevant expenditure was incurred after 24 September 1978 by reason of, as a result of or as part of a tax avoidance agreement entered into after that date;
- (b) by reason of, as a result of or as part of the tax avoidance agreement the taxpayer has obtained, in relation to that relevant expenditure being incurred, a benefit or benefits in addition to:
 - (i) in a case to which subparagraph (ii) does not apply:
 - (A) the benefit in respect of which the relevant expenditure was incurred; and

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- (B) any benefit that resulted directly or indirectly from the benefit in respect of which the relevant expenditure was incurred and is a benefit that, in the opinion of the Commissioner, might reasonably be expected to have resulted if the benefit in respect of which the relevant expenditure was incurred had been obtained otherwise than by reason of, as a result of or as part of a tax avoidance agreement; or
 - (ii) in a case where the relevant expenditure is relevant expenditure to which paragraph (w) of the definition of **relevant expenditure** in subsection (1) applies—any benefit that resulted directly or indirectly from the incurring of the relevant expenditure and is a benefit that, in the opinion of the Commissioner, might reasonably be expected to have resulted if the relevant expenditure had been incurred otherwise than by reason of, as a result of or as part of a tax avoidance agreement; and
 - (c) in a case where the relevant expenditure is relevant expenditure to which paragraph (s), (v) or (w) of the definition of **relevant expenditure** in subsection (1) applies—that amount of relevant expenditure was incurred by reason of, as a result of or as part of a tax avoidance agreement entered into before 28 May 1981.
- (1FA) For the purposes of the application of subsection (1F) in relation to an amount of relevant expenditure to which paragraph (f) of the definition of **relevant expenditure** in subsection (1) applies, any benefit obtained by the taxpayer in relation to the making of the loan in respect of which the bad debt is incurred shall be taken to be a benefit obtained by the taxpayer in relation to that relevant expenditure being incurred.
- (1G) The reference in subsection (1F) to the benefit in respect of which relevant expenditure was incurred by a taxpayer shall be read as a reference to:
 - (a) in a case where the relevant expenditure is expenditure incurred by the taxpayer in borrowing money, being expenditure in respect of which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 25-25 (Borrowing expenses) of the *Income Tax*

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Assessment Act 1997—the making available to the taxpayer of the money borrowed by the taxpayer;

- (b) in a case where the relevant expenditure is expenditure incurred by the taxpayer in connection with the discharge of a mortgage, being expenditure in respect of which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 25-30 (Expenses of discharging a mortgage) of the *Income Tax Assessment Act 1997*—the discharge of the mortgage;
- (c) in a case where the relevant expenditure was incurred by the taxpayer in the purchase of property that, for the purposes of the application of this Act in relation to the taxpayer, is or was trading stock—the acquisition of that property by the taxpayer;
- (d) in a case where the relevant expenditure was incurred by the taxpayer in respect of interest—the availability to the taxpayer of the money borrowed by the taxpayer;
- (e) in a case where the relevant expenditure was incurred by the taxpayer in respect of rent—the use of the property in respect of which the rent was paid;
- (f) in a case where the relevant expenditure incurred by the taxpayer was in respect of a bad debt—any interest received or receivable by the taxpayer in respect of the loan in respect of which the bad debt was incurred;
- (g) in a case where the relevant expenditure was incurred by the taxpayer in respect of the production, marketing or distribution of a film or the acquisition of a copyright subsisting in a film and is relevant expenditure to which paragraph (g) of the definition of *relevant expenditure* in subsection (1) applies—the production, marketing or distribution of the film, or the acquisition of the copyright by the taxpayer, as the case may be;
- (h) in a case where the relevant expenditure was incurred by the taxpayer in respect of a unit of industrial property, being a unit of industrial property that relates to copyright subsisting in a film, and is relevant expenditure to which paragraph (h) of the definition of *relevant expenditure* in subsection (1) applies—the ownership by the taxpayer of the unit of industrial property;

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- (k) in a case where the relevant expenditure was incurred by the taxpayer in the purchase of consumable supplies—the acquisition of those consumable supplies by the taxpayer;
- (m) in a case where the relevant expenditure was incurred by the taxpayer in respect of market research—the undertaking of the research, or the provision of the information, advice or assistance, in respect of which the relevant expenditure was incurred;
- (n) in a case where the relevant expenditure was incurred by the taxpayer in respect of the acquisition of a unit of industrial property, being a licence under a copyright subsisting in computer software—the acquisition by the taxpayer of the unit of industrial property;
- (o) in a case where the relevant expenditure was incurred by the taxpayer by way of commission for collecting assessable income of the taxpayer—the collection on behalf of the taxpayer of assessable income of the taxpayer;
- (p) in a case where the relevant expenditure was incurred by the taxpayer in respect of the growing, care or supervision of trees on behalf of the taxpayer—the growing, care or supervision of the trees on behalf of the taxpayer;
- (pa) in a case where the relevant expenditure was incurred by the taxpayer in respect of the establishment and tending of trees for felling on behalf of the taxpayer—the establishment and tending of trees for felling on behalf of the taxpayer;
- (q) in a case where the relevant expenditure was incurred by the taxpayer for the purpose of increasing the value of shares in a company, being shares held or beneficially owned by the taxpayer as trading stock—the increase in the value of those shares;
- (r) in a case where the relevant expenditure was incurred by the taxpayer in respect of the production of, or the procurement of the production of, a master sound recording—any amount payable to the taxpayer in respect of the master sound recording, being an amount that, in the opinion of the Commissioner, would be payable to the taxpayer as a result of the incurring by the taxpayer of the relevant expenditure if that expenditure had been incurred by reason of, as a result of or as part of an agreement other than a tax avoidance agreement;

- (s) in a case where the relevant expenditure consists of calls paid by the taxpayer on shares owned by the taxpayer and is relevant expenditure to which paragraph (s) of the definition of *relevant expenditure* in subsection (1) applies—the satisfaction of any liability of the taxpayer to pay the calls and the taxpayer’s continuing ownership of the shares; and
 - (u) in a case where the relevant expenditure was incurred by the taxpayer in respect of a unit of industrial property and is relevant expenditure to which paragraph (v) of the definition of *relevant expenditure* in subsection (1) applies—the ownership by the taxpayer of the unit of industrial property.
- (1H) For the purposes of paragraph (1F)(b), but without limiting the generality of that paragraph, where:
- (a) an amount of relevant expenditure is incurred by a taxpayer by reason of, as a result of or as part of a tax avoidance agreement;
 - (b) in relation to that relevant expenditure being incurred and by reason of, as a result of or as part of the tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement, the taxpayer or an associate of the taxpayer acquires from another person the right to recover the amount of a debt that was owed to that other person; and
 - (c) by reason of, as a result of or as part of the tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement, no consideration was paid or given by the taxpayer or the associate of the taxpayer, as the case may be, in respect of the acquisition of that right or the amount or value of the consideration paid or given by the taxpayer or the associate of the taxpayer, as the case may be, in respect of the acquisition of that right was less than the amount of the debt;
- the taxpayer shall be deemed to have obtained, by reason of the tax avoidance agreement and in relation to the relevant expenditure being incurred by the taxpayer, a benefit having a value equal to:
- (d) in a case where no consideration was paid or given by the taxpayer or the associate of the taxpayer, as the case may be, in respect of the acquisition of the right to recover the amount of the debt—the amount of the debt; and

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- (e) in any other case—the amount by which the amount of the debt exceeds the amount or value of the consideration paid or given by the taxpayer or the associate of the taxpayer, as the case may be, in respect of the acquisition of the right to recover the amount of the debt.
- (1J) For the purposes of paragraph (1F)(b), but without limiting the generality of that paragraph, where:
- (a) an amount of relevant expenditure is incurred by a taxpayer by reason of, as a result of or as part of a tax avoidance agreement;
 - (b) in relation to that relevant expenditure being incurred and by reason of, as a result of or as part of the tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement:
 - (i) a debt becomes owing by the taxpayer or an associate of the taxpayer; or
 - (ii) a debt became owing, before or at the time of the incurring of the relevant expenditure, by the taxpayer or an associate of the taxpayer; and
 - (c) it may reasonably be expected that, by reason of, as a result of or as part of the tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement, the person to whom the debt is owed will release, abandon or fail to demand repayment of the debt or of a part of the debt;

the taxpayer shall be deemed to have obtained, by reason of the tax avoidance agreement and in relation to the relevant expenditure being incurred by the taxpayer, a benefit of an amount equal to the amount of the debt or that part of the debt, as the case may be.

- (1JA) For the purposes of the application of subsection (1H) in relation to an amount of relevant expenditure incurred by a taxpayer, being relevant expenditure to which paragraph (f) of the definition of **relevant expenditure** in subsection (1) applies, a reference in paragraph (1H)(b) to the acquisition by the taxpayer or an associate of the taxpayer, in relation to that relevant expenditure being incurred, of the right to recover a debt shall be read as including a reference to the acquisition by the taxpayer or an associate of the taxpayer, in relation to the making by the taxpayer of the loan in

respect of which the relevant expenditure was incurred, of such a right.

(1JB) For the purposes of the application of subsection (1J) in relation to an amount of relevant expenditure incurred by a taxpayer, being relevant expenditure to which paragraph (f) of the definition of *relevant expenditure* in subsection (1) applies, a reference in paragraph (1J)(b) to a debt becoming owing, or having become owing, by the taxpayer or an associate of the taxpayer in relation to that relevant expenditure being incurred, shall be read as including a reference to a debt becoming owing, or having become owing, by the taxpayer or an associate of the taxpayer, in relation to the making by the taxpayer of the loan in respect of which the relevant expenditure was incurred.

(1JE) For the purposes of paragraph (1F)(b), but without limiting the generality of that paragraph, where:

- (a) an amount of relevant expenditure is incurred by a taxpayer by reason of, as a result of or as part of a tax avoidance agreement;
- (b) that relevant expenditure consists of calls paid by the taxpayer on shares owned by the taxpayer and is relevant expenditure to which paragraph (s) of the definition of *relevant expenditure* in subsection (1) applies; and
- (c) in relation to that relevant expenditure being incurred and by reason of, as a result of or as part of the tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement, consideration (in this subsection referred to as the *relevant consideration*) is paid or given to the taxpayer or an associate of the taxpayer in respect of the acquisition by any person from the taxpayer of:
 - (i) all or any of those shares;
 - (ii) the right to purchase all or any of those shares; or
 - (iii) the right to require a person to vote, in a meeting of shareholders of the company, in favour of a resolution to vary the rights attached to all or any of those shares;

the taxpayer shall be deemed to have obtained, by reason of the tax avoidance agreement and in relation to the relevant expenditure being incurred by the taxpayer, a benefit in addition to the benefits referred to in subparagraphs (1F)(b)(i) and (ii) having a value equal

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to the amount or value of the relevant consideration reduced by the amount or value of the part (if any) of that relevant consideration that, in the opinion of the Commissioner, is attributable to expenditure (other than the relevant expenditure) incurred by the taxpayer in respect of the shares.

(1K) Where:

- (a) 2 or more amounts of relevant expenditure are incurred by a taxpayer (whether in the same year of income or in different years of income) by reason of, as a result of or as part of the same tax avoidance agreement;
 - (b) the same paragraph of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts; and
 - (c) those amounts were incurred in respect of the same benefit;
- those amounts shall, for the purposes of this Subdivision, be treated as together constituting one amount of relevant expenditure.

(1L) For the purposes of subsection (1K), 2 or more amounts of relevant expenditure shall be taken to have been incurred in respect of the same benefit if:

- (a) in a case where paragraph (a) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same loan;
- (b) in a case where paragraph (b) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the discharge of the same mortgage;
- (c) in a case where paragraph (c) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in the purchase of the same property;
- (d) in a case where paragraph (d) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same loan;
- (e) in a case where paragraph (e) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same property;

- (f) in a case where paragraph (f) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same loan;
- (g) in a case where paragraph (g) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same film;
- (h) in a case where paragraph (h) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same film;
- (k) in a case where paragraph (k) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in the purchase of the same property;
- (m) in a case where paragraph (m) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same market research;
- (n) in a case where paragraph (n) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same unit of industrial property;
- (o) in a case where paragraph (o) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same source of assessable income;
- (p) in a case where paragraph (p) or paragraph (pa) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of trees on the same parcel of land;
- (q) in a case where paragraph (q) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same shares;
- (r) in a case where paragraph (r) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were payable to the same person;

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- (s) in a case where paragraph (s) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were calls paid on shares in the same company;
 - (v) in a case where paragraph (v) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same unit of industrial property; and
 - (w) in a case where paragraph (w) of the definition of *relevant expenditure* in subsection (1) applies in relation to each of those amounts—those amounts were incurred in respect of the same source of assessable income or in carrying on the same business.
- (1M) For the purposes of this Subdivision, a person who obtains a benefit by reason of an act, transaction or circumstance that occurs as part of, in connection with or as a result of a tax avoidance agreement shall be deemed to have obtained that benefit by reason of the tax avoidance agreement.
- (1N) Where, for the purposes of the application of any provision of this Subdivision, it is required to be assumed that a tax benefit is not or was not allowable in respect of any part of an amount of eligible relevant expenditure and that expenditure is expenditure that was incurred in the acquisition of property that, for the purposes of the application of this Act in relation to the person who incurred the expenditure, is or was trading stock, it shall also be assumed, for the purposes of the application of that provision, that, for the purposes of the application of Division 70 (Trading stock) or 385 (Primary production) of the *Income Tax Assessment Act 1997* in relation to that property in relation to the person who incurred the expenditure, that the cost of that property is, and at all times was, nil.
- (1P) For the purposes of this Subdivision, any benefit that has been obtained by an associate of a taxpayer by reason of, as a result of or as part of a tax avoidance agreement, being a benefit that was obtained in relation to the incurring by the taxpayer, by reason of, as a result of or as part of that tax avoidance agreement, of relevant expenditure, not being relevant expenditure to which subsection (1Q) applies, shall be taken to be a benefit that was obtained by the taxpayer by reason of that tax avoidance agreement

and in relation to that relevant expenditure being incurred by the taxpayer.

(1Q) For the purposes of this Subdivision, any benefit that has been obtained by an associate of a taxpayer by reason of, as a result of or as part of a tax avoidance agreement, being a benefit that was obtained in relation to:

- (a) the incurring by the taxpayer, by reason of, as a result of or as part of that tax avoidance agreement, of relevant expenditure to which paragraph (f) of the definition of **relevant expenditure** in subsection (1) applies; or
- (b) the making by the taxpayer, by reason of, as a result of or as part of that tax avoidance agreement, of the loan in respect of which relevant expenditure to which that paragraph applies was incurred;

shall be taken to be a benefit that was obtained by the taxpayer by reason of that tax avoidance agreement and in relation to the relevant expenditure being incurred by the taxpayer or that loan being made by the taxpayer, as the case may be.

(1S) For the purposes of the application of this section in determining the amount of any additional benefit obtained by a taxpayer in relation to an amount of relevant expenditure to which paragraph (h) of the definition of **relevant expenditure** in subsection (1) applies being incurred, being expenditure that, by virtue of the expenditure of moneys (in this subsection referred to as the **partnership moneys**) by a partnership, is deemed by section 124KA to have been incurred by the taxpayer:

- (a) the partnership shall be taken to be an associate of the taxpayer;
- (b) a reference to the relevant expenditure being incurred by the taxpayer shall be read as including a reference to the partnership moneys being expended by the partnership; and
- (c) any benefit obtained by the partnership in relation to the partnership moneys being expended by the partnership shall be taken to have been obtained by the taxpayer in relation to the relevant expenditure being incurred by the taxpayer to such extent only as the Commissioner considers fair and reasonable.

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(1T) Where:

- (a) a taxpayer expends moneys (in this subsection referred to as the *film moneys*) in producing, or by way of contribution to the cost of producing, a film; and
- (b) by virtue of the operation of subsection 124K(2), a part only of the film moneys is taken to be an amount of relevant expenditure to which paragraph (h) of the definition of *relevant expenditure* in subsection (1) applies;

for the purposes of the application of this section in determining the amount of any additional benefit obtained by the taxpayer in relation to the relevant expenditure being incurred:

- (c) a reference to the relevant expenditure being incurred by the taxpayer shall read as including a reference to the film moneys being expended by the taxpayer; and
 - (d) any benefit obtained by the taxpayer in relation to the film moneys being expended by the taxpayer shall be taken to have been obtained by the taxpayer in relation to the relevant expenditure being incurred by the taxpayer to such extent only as the Commissioner considers fair and reasonable.
- (2) A reference in this Subdivision to the supply of goods or the provision of services shall be read as not including a reference to the making available of money by way of loan.
 - (3) For the purposes of this Subdivision, an agreement shall be taken to have been entered into or carried out for a particular purpose, or for purposes that included a particular purpose, if any of the parties to the agreement entered into or carried out the agreement for that purpose, or for the purposes that included that purpose, as the case may be.
 - (4) A reference in this Subdivision to a person shall be read as including a reference to a person in the capacity of a trustee.
 - (5) A reference in this Subdivision to a provision of the *Income Tax Assessment Act 1997* includes a reference to the corresponding provision of the *Income Tax Assessment Act 1936*.

82KJ Deduction not allowable in respect of certain pre-paid outgoings

Where:

- (a) a loss or outgoing in respect of which a deduction would, but for this Subdivision, be allowable, was incurred by a taxpayer after 19 April 1978 by reason of, as a result of or as part of a tax avoidance agreement;
 - (b) having regard to the benefit in respect of which the loss or outgoing was incurred (but without regard to any benefit relating to the acquisition or possible acquisition of the property referred to in paragraph (c)), the amount of the loss or outgoing was greater than the amount (if any) that might reasonably be expected to have been incurred, at the time when the loss or outgoing was incurred, in respect of that benefit if the loss or outgoing had not been incurred by reason of, as a result of or as part of a tax avoidance agreement;
 - (c) property has been, will be, or may reasonably be expected to be, acquired by the taxpayer or by an associate of the taxpayer as a result of, by reason of, or as part of the tax avoidance agreement; and
 - (d) the consideration (if any) that was payable in respect of the acquisition of that property was less, or the consideration that may reasonably be expected to be payable in respect of the acquisition of that property is less, than the consideration that might reasonably be expected to have been payable, or to be payable, as the case may be, in respect of the acquisition of that property if the loss or outgoing had not been incurred;
- notwithstanding any other provision of this Act, a deduction is not allowable to the taxpayer in respect of the loss or outgoing.

82KK Schemes designed to postpone tax liability

- (1) This section applies to a loss or outgoing incurred by a taxpayer if:
 - (a) the loss or outgoing was incurred after 19 April 1978 and was incurred to an associate of the taxpayer;
 - (b) a deduction is allowable to the taxpayer in respect of that loss or outgoing; and
 - (c) the deduction allowable in respect of that loss or outgoing would, but for this section, be allowable to the taxpayer in

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the year of income in which the loss or outgoing was incurred and:

- (i) in a case where the loss or outgoing is in respect of interest that, if it had actually been paid, would be subject to withholding tax under Division 11A—the withholding tax payable in respect of the whole or a part of the interest is not payable until a time occurring in a subsequent year of income; and
- (ii) in any other case—the whole or a part of the amount incurred to the associate will not be included in the assessable income of the associate until a subsequent year of income.

(2) Notwithstanding any other provision of this Act, where:

- (a) a taxpayer incurs in a year of income (in this subsection referred to as the *relevant year of income*) a loss or outgoing (not being a loss or outgoing in respect of the supply of goods or the provision of services at a time that occurs after, or during a period that occurs after or extends beyond, the end of the relevant year of income) and the loss or outgoing is a loss or outgoing to which this section applies; and
- (b) the loss or outgoing was incurred by reason of, as a result of, as part of or in connection with an agreement, course of conduct or course of business that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that:
 - (i) in a case where the loss or outgoing is in respect of interest that, if it had actually been paid, would be subject to withholding tax under Division 11A—the withholding tax payable in respect of the whole or a part of the interest will not be payable until a time occurring in a subsequent year of income; and
 - (ii) in any other case—the whole or a part of the amount incurred to the associate would not be included in the assessable income of the associate until a subsequent year of income;

the loss or outgoing shall, for the purposes of this Act, be deemed to have been incurred by the taxpayer in the relevant year of income and in any subsequent year of income only to the extent to which the loss or outgoing represents an amount actually paid during the relevant year of income or that subsequent year of

income by the taxpayer to the person to whom the loss or outgoing is incurred.

- (3) Notwithstanding any other provision of this Act but subject to subsection (4), where:
- (a) a taxpayer incurs in a year of income a loss or outgoing in respect of the supply of goods or the provision of services at a time that occurs after, or during a period that occurs after or extends beyond, the end of the year of income and the loss or outgoing is a loss or outgoing to which this section applies; and
 - (b) the loss or outgoing was incurred by reason of, as a result of or as part of an agreement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that:
 - (i) a deduction would be allowable to the taxpayer in a year of income in respect of the loss or outgoing; and
 - (ii) the whole or a part of the amount of the loss or outgoing would not be included in the assessable income of the person to whom the loss or outgoing was incurred until a subsequent year of income;
- that loss or outgoing shall, for the purposes of this Act, be deemed to have been incurred by the taxpayer in the year of income in which, or in the years of income in which, goods to which the loss or outgoing relates are supplied or services to which the loss or outgoing relates are provided.
- (4) Where, by virtue of subsection (3), a loss or outgoing incurred by a taxpayer in respect of the supply of goods or the provision of services is deemed to have been incurred by the taxpayer in each of 2 or more years of income, there shall be allowable as a deduction to the taxpayer in each such year of income so much only of the amount that, apart from this section, would be allowable as a deduction in respect of the loss or outgoing as the Commissioner considers reasonable having regard to the extent to which the goods in respect of which the loss or outgoing was incurred were supplied or the services in respect of which the loss or outgoing was incurred were provided, in each of those years of income.
- (5) In determining whether paragraph (2)(b) or (3)(b) applies in relation to a loss or outgoing, no regard shall be had to a purpose that is a merely incidental purpose.

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82KL Tax benefit not allowable in respect of certain recouped expenditure

- (1) Where the sum of the amount or value of the additional benefit in relation to an amount of eligible relevant expenditure incurred by a taxpayer and the expected tax saving in relation to that amount of eligible relevant expenditure is equal to or greater than the amount of the eligible relevant expenditure, notwithstanding any other provision of this Act but subject to this section, a tax benefit is not and shall be deemed never to have been, allowable in respect of any part of that amount of eligible relevant expenditure.
- (2) Where, at any time, the Commissioner is of the opinion that, apart from this subsection, subsection (1) might reasonably be expected, at a later time, to operate to deem a tax benefit not to be allowable and never to have been allowable in respect of expenditure or a loss or outgoing incurred by a taxpayer then, notwithstanding any other provision of this Act but subject to this section, a tax benefit is not allowable and shall be deemed never to have been allowable in respect of that expenditure or that loss or outgoing, as the case may be.
- (3) Where, in the making of an assessment, subsection (2) has been applied by reason that the Commissioner was of the opinion that a particular circumstance would exist and the Commissioner later becomes satisfied that that circumstance will not exist, then, notwithstanding anything contained in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that this Subdivision shall be taken always to have applied on the basis that that circumstance did not, and would not, exist.
- (4) Where:
 - (a) an amount of eligible relevant expenditure is incurred by a partnership;
 - (b) apart from this subsection, this section would not operate to deem a tax benefit not to be allowable and never to have been allowable in respect of any part of that amount of eligible relevant expenditure; and
 - (c) the Commissioner is satisfied that any partner in the partnership became a partner in the partnership by reason of or as a result of an agreement (whether or not that agreement

was the agreement by virtue of which the partner became a partner in the partnership) that was entered into by any of the parties to the agreement for the purpose, or primarily for the purpose, of ensuring that this section would not operate to deem a tax benefit not to be allowable and never to have been allowable in respect of any part of the amount of the eligible relevant expenditure;

then, notwithstanding any other provision of this Act, a tax benefit is not allowable and shall be deemed never to have been allowable in respect of any part of that amount of eligible relevant expenditure.

(5) Where:

- (a) in the making of an assessment, this section has been applied on the basis that a taxpayer was to be taken to have obtained a benefit by reason that it was reasonable to expect that a person to whom a debt was owed by the taxpayer or an associate of the taxpayer would release, abandon or fail to demand repayment of the debt or of a part of the debt; and
- (b) the whole or a part of that debt or of that part of the debt is repaid;

then, notwithstanding anything contained in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that this Subdivision shall be taken never to have applied on the basis that it was reasonable to expect that the person to whom the debt was owed would release, abandon or fail to demand repayment of the amount that was repaid.

- (6) Where subsection (1), (2) or (4) deems a tax benefit not to be and never to have been allowable in respect of a loss or outgoing incurred by a taxpayer in the purchase of property that, for the purposes of the application of this Act and the *Income Tax Assessment Act 1997* in relation to the taxpayer is or was trading stock, then, notwithstanding any other provision of this Act or that Act, the cost or cost price of that property, for the purposes of the application of (Primary production) of the *Income Tax Assessment Act 1997* Subdivision B of Division 2 of Part III of this Act or Division 70 (Trading stock) or 385 in relation to that property in relation to the taxpayer, shall be taken to be, and at all times to have been, nil.

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- (7) Where, at any time after the making of an assessment in relation to a taxpayer, the taxpayer considers that the Commissioner ought to amend the assessment in accordance with subsection (3) or (5), the taxpayer may post to or lodge with the Commissioner a request in writing for an amendment of the assessment in accordance with subsection (3) or (5) or in accordance with subsections (3) and (5).
- (8) The Commissioner shall consider the request and shall serve on the taxpayer, by post or otherwise, a written notice of his decision on the request.
- (9) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision H—Period of deductibility of certain advance expenditure

82KZL Interpretation

- (1) In this Subdivision, unless the contrary intention appears:

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

approved stock exchange has the meaning give by section 470.

associate has the meaning given by section 318.

eligible service period, in relation to an amount of expenditure incurred under an agreement, means the period from the beginning of:

- (a) the day, or the first day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to commence being done; or
- (b) if the expenditure is incurred on a later day—the day on which the expenditure is incurred;

until the end of:

- (c) the day, or the last day, on which the thing to be done under the agreement in return for the amount of expenditure is

required, or permitted, as the case may be, to cease being done; or

- (d) if that day or last day ends more than 10 years after the beginning of the period—10 years after the beginning of the period.

excluded expenditure means an amount of expenditure:

- (a) less than \$1,000;
- (b) required to be incurred by a law, or by an order of a court, of the Commonwealth, a State or a Territory;
- (c) under a contract of service; or
- (d) to the extent that it is of a capital, private or domestic nature; or
- (e) that has been or is incurred after 21 September 1999 by a general insurance company in connection with the issue of a general insurance policy and was related or relates to the gross premiums derived by the company in respect of the policy; or
- (f) that has been or is incurred after 21 September 1999 by a general insurance company in payment of reinsurance premiums in respect of the reinsurance of risks covered by general insurance policies, other than reinsurance premiums that were or are paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agrees, in respect of a loss incurred by the company that is covered by the relevant policy, to pay only some or all of the excess over an agreed amount.

pre-RBT obligation means a contractual obligation that:

- (a) exists under an agreement at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
- (b) requires the payment of an amount for the doing of a thing under the agreement; and
- (c) requires the payment to be made before the doing of the thing; and
- (d) cannot be escaped by unilateral action by the party bound by the obligation to make the payment.

research and development activities has the meaning given by section 73B.

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transfer includes assign.

- (2) Without otherwise limiting the generality of references in this Subdivision to expenditure being incurred under an agreement in return for the doing of a thing under the agreement:
 - (a) where expenditure incurred under an agreement consists of a payment of loan interest or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the making available or continued making available, as the case requires, of the loan principal, or other amount of a similar kind, under the agreement during the period to which the payment relates;
 - (b) where expenditure incurred under an agreement consists of a payment of rent, a lease payment or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the making available or continued making available, as the case requires, of the thing rented or leased, or other thing of a similar kind, under the agreement during the period to which the payment relates; and
 - (c) where expenditure incurred under an agreement consists of a payment of an insurance premium or a payment of a similar kind, the expenditure shall, for the purposes of this Subdivision, be taken to be incurred in return for the provision or continued provision, as the case requires, of insurance against the risk concerned, or of a thing of a similar kind, under the agreement during the period to which the payment relates.
- (3) This Subdivision has effect as if carrying on research and development activities were carrying on a business.

82KZLA Subdivision does not apply to financial arrangements to which Subdivision 250-E applies

To avoid doubt, this Subdivision does not apply to:

- (a) a financial arrangement to which Subdivision 250-E of the *Income Tax Assessment Act 1997* applies; or
- (b) a financial benefit (within the meaning of that Act) that is provided or received in relation to such an arrangement.

Note: See section 250-210 of the *Income Tax Assessment Act 1997*.

**82KZM Expenditure by small business entities and individuals
incurring non-business expenditure**

(1) Where:

- (a) a taxpayer incurs expenditure under an agreement entered into after 25 May 1988; and
- (aa) at least one of the following applies:
 - (i) the taxpayer is a small business entity for the year of income and has not chosen to apply section 82KZMD to the expenditure;
 - (ii) the taxpayer is an individual and the expenditure is not incurred in carrying on a business;
 - (iii) the expenditure meets a pre-RBT obligation (see subsection 82KZL(1)); and
- (b) the expenditure is not excluded expenditure; and
- (ba) either:
 - (i) the eligible service period for the expenditure is longer than 12 months; or
 - (ii) the eligible service period for the expenditure is 12 months or shorter but ends after the last day of the year of income after the one in which the expenditure was incurred; and
- (c) a deduction under former section 51 or section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the expenditure would, apart from this section, be allowable from the assessable income of the taxpayer of the year of income in which the expenditure is incurred;

then, for the purposes of this Act, instead of the deduction being allowable as mentioned in paragraph (c), a proportion of the deduction is allowable from the assessable income of the taxpayer of each year of income during which the whole or part of the eligible service period in relation to the expenditure occurs, being a proportion ascertained in accordance with the formula:

$$\frac{\text{Period in year}}{\text{Eligible service period}}$$

where:

Period in year is the number of days in the whole or the part of the eligible service period that occurs in the year of income.

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Eligible service period is the number of days in the eligible service period.

- (2) Subsection (1) has effect subject to Division 245 of Schedule 2C.

82KZMA Application of section 82KZMD

Overview

- (1) Section 82KZMD sets the amount and timing of deductions for expenditure that a taxpayer incurs in a year of income (the *expenditure year*), if:
- (a) apart from those sections, the taxpayer could deduct the expenditure under section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or section 8-1 of the *Income Tax Assessment Act 1997* for the expenditure year; and
 - (b) the requirements in subsections (2), (3), (4) and (5) are met.

Requirements for taxpayer

- (2) The taxpayer:
- (a) must:
 - (i) carry on a business; or
 - (ii) be a taxpayer that is not an individual and that does not carry on a business; and
 - (b) if the taxpayer is a small business entity for the expenditure year—must, before lodging its return of income for that year or within such further time as the Commissioner allows, choose to apply section 82KZMD to the expenditure.
- (3) The expenditure must be:
- (a) either:
 - (i) incurred in carrying on a business; or
 - (ii) incurred otherwise than in carrying on a business by a taxpayer that is not an individual; and
 - (b) incurred under an agreement (see subsection 82KZL(1)); and
 - (c) incurred in return for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

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Requirement for expenditure not to be excluded expenditure

- (4) The expenditure must not be excluded expenditure (see subsection 82KZL(1)).

Requirement for expenditure not to meet pre-RBT obligation

- (5) The expenditure must not meet a pre-RBT obligation (see subsection 82KZL(1)).

Relationship with other provisions

- (6) Section 82KZMD has effect:
- (a) despite section 8-1 of the *Income Tax Assessment Act 1997*; and
 - (b) subject to Division 245 of Schedule 2C to this Act.

82KZMD Business expenditure and non-business expenditure by non-individual

- (2) For each year of income containing all or part of the eligible service period for the expenditure, the taxpayer may deduct the amount worked out using the formula:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

Note: This section does not apply to expenditure incurred by a small business entity unless the small business entity chooses to apply this section to the expenditure: see paragraph 82KZMA(2)(b).

82KZME Expenditure under some agreements

- (1) Section 82KZMF applies to set the amount and timing of deductions for expenditure that a taxpayer incurs in a year of income (the *expenditure year*) if:
- (a) apart from section 82KZMF, the taxpayer could deduct the expenditure under section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or section 8-1 of the *Income Tax Assessment Act 1997* for the expenditure year; and
 - (c) the requirements of subsections (2) and (3) are met.

Note: There are some exceptions: see subsections (5), (6), (7), (8) and (9).

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General requirements for expenditure

- (2) The expenditure must be incurred:
- (a) after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999 under an agreement; and
 - (b) in return for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

Requirements for agreement

- (3) There are these requirements for the agreement:
- (a) the taxpayer's allowable deductions for the expenditure year that are attributable to the agreement must exceed the taxpayer's assessable income (if any) for the expenditure year that is attributable to the agreement; and
 - (b) the taxpayer does not have day to day control over the operation of the agreement (whether or not the taxpayer has the right to be consulted or give directions); and
 - (c) at least one of these must be satisfied:
 - (i) there is more than one participant in the agreement in the same capacity as the taxpayer;
 - (ii) the person who manages, arranges or promotes the agreement, or an associate of that person, manages, arranges or promotes similar agreements for other taxpayers.

Activities that relate to the agreement

- (4) Without affecting the operation of any other section in this Subdivision, an agreement referred to in this section includes all activities that relate to the agreement, including those that give rise to deductions or assessable income.

Exception 1: certain negatively geared investments

- (5) The expenditure must not be:
- (a) a premium for building insurance, contents insurance or rent protection insurance; or
 - (b) interest on money borrowed to acquire:
 - (i) real property or an interest in real property; or
 - (ii) shares that are listed for quotation in the official list of an approved stock exchange; or

- (iii) units in a trust that has at least 300 beneficiaries and is a widely held unit trust as defined in section 272-105 in Schedule 2F;

where:

- (c) the taxpayer has obtained, or can reasonably be expected to obtain, rent, dividends or trust income from the agreement; and
- (d) the taxpayer has not obtained and will not obtain any other kind of assessable income from the agreement (except a capital gain or an insurance receipt); and
- (e) all aspects of the agreement have been conducted at arm's length.

Exception 2: infrastructure borrowings

- (6) The expenditure must not be an allowable deduction because of section 159GZZZZF in respect of an infrastructure borrowing as defined in subsection 93D(1) of the *Development Allowance Authority Act 1992*.

Exception 3: expenditure is excluded expenditure

- (7) The expenditure must not be excluded expenditure (see subsection 82KZL(1)).

Exception 4: expenditure meets a pre-existing obligation

- (8) The expenditure by the taxpayer must not meet a contractual obligation that:
 - (a) exists under an agreement at or before 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999; and
 - (b) requires the payment of an amount for the doing of a thing under the agreement; and
 - (c) requires the payment to be made before the doing of the thing; and
 - (d) cannot be escaped by unilateral action by the taxpayer.

Exception 5: agreement to which a product ruling applies

- (9) The expenditure must not be under an agreement to which a product ruling applies, describing expenditure under the agreement as being allowable as a deduction.

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- (10) The product ruling must be made:
- (a) on or before 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999; or
 - (b) in response to an application for a product ruling where:
 - (i) the application was received by the Commissioner on or before the time specified in paragraph (a); and
 - (ii) the Commissioner acknowledged receiving the application.

- (11) In this section:

product ruling means a public ruling made under Part IVAAA of the *Taxation Administration Act 1953* about a particular investment product.

82KZMF Proportional deduction

- (1) If this section applies to expenditure incurred by a taxpayer in a year of income:
- (a) the taxpayer cannot deduct all of the expenditure for the expenditure year; and
 - (b) instead, the taxpayer can deduct, for each year of income during which part of the eligible service period for the expenditure occurs, an amount worked out using this formula:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

- (2) This section has effect:
- (a) despite section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or section 8-1 of the *Income Tax Assessment Act 1997*; and
 - (b) subject to Division 245 of Schedule 2C to this Act.

82KZMG Deductions for certain forestry expenditure

- (1) Sections 82KZMD and 82KZMF do not affect the timing of a deduction for expenditure incurred by a taxpayer in a year of income (the **expenditure year**) to the extent that the requirements of this section are met.

General requirements for expenditure

- (2) There are these requirements for the expenditure:
- (a) it must be incurred on or after 2 October 2001 and on or before 30 June 2008 under an agreement; and
 - (b) the eligible service period for the expenditure must be 12 months or shorter and must end on or before the last day of the year of income after the expenditure year; and
 - (c) it must be incurred in return for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

Requirements for agreement

- (3) There are these requirements for the agreement:
- (a) the agreement must be for planting and tending trees for felling; and
 - (b) the taxpayer must not have day to day control over the operation of the agreement (whether or not the taxpayer has the right to be consulted or give directions); and
 - (c) at least one of these must be satisfied:
 - (i) there is more than one participant in the agreement in the same capacity as the taxpayer;
 - (ii) the person (the *manager*) who manages, arranges or promotes the agreement, or an associate of that person, manages, arranges or promotes similar agreements for other taxpayers.

Requirements for expenditure

- (4) The expenditure incurred by the taxpayer must be paid for seasonally dependent agronomic activities undertaken by the manager during the establishment period for the relevant planting of trees for felling.

Example: Examples of seasonally dependent agronomic activities include:

- tending the seedlings prior to planting, and planting them;
- ripping and mounding the site where the planting is to occur;
- applying fertiliser, herbicide or pesticide in conjunction with the planting.

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- (5) The *establishment period* for a particular planting of trees starts on the day when the first seasonally dependent agronomic activity for that planting is done and ends on the later of:
- (a) the day when the last seedling is planted as part of that planting, not including replacement of seedlings already planted; and
 - (b) the day when any fertiliser, herbicide or pesticide is applied to the seedlings in conjunction with that planting.

82KZMGA Deductions for certain forestry expenditure

- (1) A taxpayer cannot deduct expenditure in relation to which the requirements in section 82KZMG are met if:
- (a) the taxpayer holds the taxpayer's interest in the agreement mentioned in section 82KZMG as an initial participant in the agreement; and
 - (b) a CGT event happens in relation to that interest within 4 years after the end of the year of income in which the taxpayer first incurred expenditure under the agreement.
- (2) Despite section 170, the Commissioner may amend the taxpayer's assessment at any time within 2 years after the end of the year of income in which the CGT event happens, for the purpose of giving effect to this section.

82KZMGB CGT event in relation to interest in 82KZMG agreement

- (1) This section applies if:
- (a) a taxpayer holds an interest in an agreement mentioned in section 82KZMG as an initial participant in the agreement; and
 - (b) at least one of these conditions is satisfied:
 - (i) the taxpayer can deduct or has deducted an amount for a year of income in relation to the interest;
 - (ii) the condition in subparagraph (i) would be satisfied if section 82KZMGA were disregarded; and
 - (c) subsection 82KZMG(1) applies to the timing of the deduction (or would apply if section 82KZMGA were disregarded); and
 - (d) a CGT event happens in relation to the interest, other than a CGT event that happens in respect of thinning.

- (2) The taxpayer's assessable income for the year of income in which the CGT event happens includes:
 - (a) if, as a result of the CGT event, the taxpayer no longer holds the interest—the market value of the interest (worked out as at the time of the event); or
 - (b) otherwise—the decrease (if any) in the market value of the interest as a result of the CGT event.
- (3) Any amount that the taxpayer actually receives because of the CGT event is not included in the taxpayer's assessable income (nor is it exempt income).

82KZN Transfer etc. of rights under agreement

Where:

- (a) under an agreement entered into either before or after the commencement of this section, a taxpayer (in this section called the *original taxpayer*) incurs expenditure in return for the doing of a thing during a period after the incurring of the expenditure; and
- (b) either:
 - (i) the original taxpayer transfers to another taxpayer (in this section called the *recipient taxpayer*) all of his or her rights under the agreement in relation to the doing of the thing during the remainder of the period; or
 - (ii) the agreement is discharged (whether by performance or otherwise) in so far as it relates to the doing of the thing during the remainder of the period;

the following provisions have effect for the purpose of this Subdivision:

- (c) if the whole or part of a deduction under former section 51 of this Act or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the expenditure is, because of this Subdivision, allowable from the assessable income of the original taxpayer of any year of income occurring after the year of income in which the transfer or discharge occurs—that deduction is instead allowable from the assessable income of the year of income in which the transfer, assignment or discharge occurs;
- (d) if the recipient taxpayer incurs expenditure in return for the transfer—the recipient taxpayer shall be taken to have

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incurred, under an agreement entered into at the time of the transfer, so much of that expenditure as is not of a capital, private or domestic nature in return for the doing of the thing during the remainder of the period.

82KZO Partnership changes where entire interest in agreement rights is not transferred

Where:

- (a) under an agreement entered into after 25 May 1988, a person (in this section called the *original person*), or the partners in a partnership (in this section called the *original partnership*), incurs or incur expenditure in return for the doing of a thing during a period after the incurring of the expenditure;
- (b) either of the following (in this section called a *partnership change*) happens:

- (i) a partnership is formed or the original partnership is dissolved, or both; or
- (ii) the constitution of the original partnership, or the interests of the partners in the original partnership, is or are varied;

with the result that, after the partnership change:

- (iii) a person (in this section called the *later person*), or the partners in a partnership (in this section called the *later partnership*), holds or hold all of any rights under the agreement to have the thing done during the period after the partnership change; and
 - (iv) the original person, or one or more of the partners in the original partnership, has an interest in the rights after the partnership change; and
- (c) the whole or part of a deduction under former section 51 of this Act or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the expenditure (which whole or part is in this section called a *spread deduction*) is, because of the application of this Subdivision, allowable from the assessable income of the original person or the original partnership of the year of income in which the partnership change happens or a subsequent year of income;

the following provisions have effect:

- (d) if a spread deduction is allowable in relation to the year of income in which the partnership change occurs—the entitlement to the deduction shall, for the purposes of this Act but subject to any later application of this section, be apportioned between the original person or original partnership and the later person or later partnership according to the portions of the eligible service period in the year of income (or, if the case requires, of so much of the period as occurs after a partnership change resulting from a previous application of this section) that occur before and after the partnership change;
- (e) if a spread deduction relates to a subsequent year of income—the later person or later partnership, instead of the original person or original partnership, shall, for the purposes of this Act but subject to any later application of this section, be entitled to the deduction;
- (f) for the purposes of any later application of this section or section 82KZN, the later person or later partnership, instead of the original person or original partnership, shall be taken to have incurred the expenditure under the agreement.

Division 3A—Convertible notes

82LA Application of Division

- (1) This Division applies only for the purposes of:
 - (a) calculating an eligible CFC's attributable income for the purposes of Part X; and
 - (b) defining *convertible note*.
- (2) A term used in paragraph (1)(a) has the same meaning as it has when used in Part X.

82L Interpretation

- (1) In this Division, unless the contrary intention appears:

attributable income has the meaning given by Division 7 of Part X.

CFC or *controlled foreign company* has the meaning given by section 340.

convertible note includes a note issued by a company that provides, whether in pursuance of or by virtue of a trust deed or otherwise:

- (a) that the amount of the loan to the company that is evidenced, acknowledged or created by the note or to which the note relates:
 - (i) whether with or without interest;
 - (iii) whether at the option of the holder or owner of the note or of some other person or not;
 - (iv) whether in whole or in part; or
 - (v) whether exclusively or otherwise;is to be or may be converted into shares in the capital of the company or of another company or is to be or may be redeemed, repaid or satisfied by:
 - (vi) the allotment or transfer of shares in the capital of the company or of some other company, whether to the holder or owner of the note or to some other person;

- (vii) the acquisition of such shares, whether by the holder or owner or by some other person, otherwise than as mentioned in subparagraph (vi); or
 - (viii) application in or towards paying-up, in whole or in part, the balance unpaid on shares issued or to be issued by the company or by some other company, whether to the holder or owner or to some other person; or
- (b) that the holder or owner of the note is to have, or may have, any right or option to have allotted or transferred to him or to some other person, or for him or some other person otherwise to acquire, shares in the capital of the company or of some other company.

foreign loan means a loan to a company raised outside Australia in a currency other than the currency of Australia.

instrument includes debenture, bond, certificate, receipt or any other document or writing.

issued includes given and executed, and **issue** has a corresponding meaning.

loan, in relation to a company, means:

- (a) a loan, advance or deposit of money to or with the company;
 - (b) money subscribed to the company; or
 - (c) any other form of debt or liability of the company;
- whether secured or unsecured and whenever redeemable, repayable or to be satisfied.

note means a note or other instrument issued by a company that evidences, acknowledges, creates or relates to a loan to the company.

qualified person, in relation to the valuing of a share in the capital of a company, means a person registered as a company auditor under a law in force in a State or a Territory, but does not include:

- (a) a director, secretary or employee of the company;
- (b) a partner, employer or employee of a person referred to in paragraph (a); or
- (c) a partner or employee of an employee of a person so referred to.

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the date of offer, in relation to a loan to a company means the earliest date on which, by any relevant prospectus, notice, circular, advertisement or other written invitation, any person was or persons were invited to subscribe to the loan:

- (a) in the case of a new loan—by the payment of money to the company; or
- (b) in the case of an approved replacement loan—by converting, in whole or in part, an earlier loan, or by converting, in whole or in part, an earlier loan and the payment of money to the company.

the maturity date, in relation to a loan to which a convertible note applies, means the date by which the whole of the loan is, under the terms applicable to the note, to be repaid, redeemed or satisfied.

the relevant valuation period, in relation to a share, means:

- (a) where neither paragraph (b) nor (c) applies in relation to the share—the period of one month ending on the date that is the valuation date in relation to the share;
- (b) where:
 - (i) the share is included in a class of shares that, during the whole of the period of 2 months ending on the valuation date, was listed for quotation in the official list of a stock exchange that was a prescribed stock exchange during the whole of that period of 2 months, or in the official lists of 2 or more stock exchanges each of which was a prescribed stock exchange during the whole of that period of 2 months; and
 - (ii) fully paid shares included in that class of shares were not recorded by that stock exchange or by any of those stock exchanges, as the case may be, as having been sold during the period of one month specified in paragraph (a) but were recorded by that stock exchange or by one or more of those stock exchanges, as the case may be, as having been sold during the period of one month immediately preceding the commencement of the period of one month so specified;that preceding period of one month; or
- (c) where:
 - (i) the share is included in a class of shares that, during the whole of the period of 3 months ending on the valuation

date, was listed for quotation in the official list of a stock exchange that was a prescribed stock exchange during the whole of that period of 3 months, or in the official lists of 2 or more stock exchanges each of which was a prescribed stock exchange during the whole of that period of 3 months; and

- (ii) fully paid shares included in that class of shares were not recorded by that stock exchange or by any of those stock exchanges, as the case may be, as having been sold during the period of 2 months ending on the valuation date but were recorded by that stock exchange or by one or more of those stock exchanges, as the case may be, as having been sold during the period of one month immediately preceding the commencement of that period of 2 months;

that preceding period of one month.

the valuation date, in relation to a share, means the date that is earlier by 6 weeks than the date that is the date of offer in relation to the loan in respect of which the value of the share is to be ascertained.

- (2) Where the combined effect or operation of 2 or more related instruments, whether issued at the same time or not, would have the effect or operation of a convertible note, those instruments shall, for the purposes of this Division, be deemed to be together a convertible note.
- (3) Where:
 - (a) a company issues a note that provides that the amount of the loan to the company that is evidenced, acknowledged or created by the note or to which the note relates:
 - (i) whether with or without interest;
 - (iii) whether at the option of the holder or owner of the note or of some other person or not;
 - (iv) whether in whole or in part; or
 - (v) whether exclusively or otherwise;is to be or may be redeemed, repaid or satisfied by the issue, whether by the same company or by another company, of an instrument or a series of instruments; and

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- (b) that instrument, or any instrument in that series of instruments, is to provide, whether in pursuance of or by virtue of a trust deed or otherwise, as mentioned in paragraph (a) or (b) of the definition of *convertible note* in subsection (1);
that note and the instrument, or that note and each of the instruments in the series of instruments, shall, for the purposes of this Division, be deemed to be a convertible note.
- (4) For the purposes of this Division, a convertible note issued by a company applies to a loan to a company if it evidences, acknowledges or creates the loan.
- (5) A reference in this Division to the terms, or a term, applicable to a convertible note shall be read as including a reference to terms, or a term, that so apply or applies in pursuance of or by virtue of a trust deed or otherwise.

82M New loans and replacement loans

- (1) Where:
- (a) a loan to a company is made, and is wholly made, by money being paid to the company at the time when the loan is made; and
 - (b) the loan is not part of or related to a transaction, or is not one of a series of related transactions, under which the person making the loan is to receive or has received, for the purpose of enabling him to make, or of assisting him in making, the loan, any money or other property from the company, or from another company or person as a result of arrangements made with that other company or person by the first-mentioned company;
- the loan shall, for the purposes of this Division, be treated as a new loan.
- (2) Where:
- (a) a loan to a company is, under subsection (1), to be treated as a new loan for the purposes of this Division;
 - (b) the loan is not evidenced, acknowledged or created by a convertible note or is not a loan to which a convertible note otherwise applies;
 - (c) the loan is for a fixed period;

- (d) the rate of interest payable in respect of the loan is the same in respect of all periods occurring before the date by which the whole of the loan is to be repaid, redeemed or satisfied; and
- (e) the loan is, in whole or in part, converted into another loan to the company or to another company, or the loan is, in whole or in part, converted into a part of another loan to the company or to another company and the remainder of the other loan:
 - (i) is made by money being paid to the company or other company at the time when the loan is made; and
 - (ii) would, if it were a separate loan, be a loan that, under subsection (1), is to be treated as a new loan for the purposes of this Division;

that other loan shall, for the purposes of this Division, be treated as an approved replacement loan.

82N Prescribed stock exchanges

For the purposes of this Division, a stock exchange is a prescribed stock exchange during a particular period or at a particular time if, in the regulations as in force during that period or at that time, it is specified as a prescribed stock exchange for the purposes of this Division or if it is declared by the regulations to have been a prescribed stock exchange for the purposes of this Division during that period or a period that includes that period or to have been a prescribed stock exchange for the purposes of this Division during a period that includes that time, as the case may be.

82P Bonus share allotments

- (1) For the purposes of this section, the making of a bonus share allotment by a company is the allotment by the company of shares (in this section referred to as *bonus shares*) in the capital of the company (being shares all of which are of the same class as each other) to persons who are the holders of other shares (in this section referred to as *qualifying shares*) in the capital of the company or in the capital of another company (being shares all of which are of the same class as each other but which are not necessarily of the same class as the bonus shares), being an allotment made to the holders of all shares of the same class as the qualifying shares or an allotment made in pursuance of

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applications for the allotment of the bonus shares by the holders of the qualifying shares in accordance with an invitation to apply for the allotment of shares given to the holders of the qualifying shares and the holders of all other shares of the same class as the qualifying shares.

(2) Where:

- (a) the option to convert that exists under a convertible note is an option to have shares allotted to the holder or owner of the note; and
- (b) the terms applicable to the note are such that, if a bonus share allotment is made by the company that issued the note or by another company in respect of qualifying shares that are of the same class as the shares that are to be allotted to the holder or owner of the note upon the exercise of the option to convert, the holder or owner of the note is to have the right to have allotted to him shares in the capital of the company or of that other company, as the case may be, of the same class as the bonus shares on terms and conditions that are the same as or correspond with, or are no more favourable to him than, the terms and conditions on which bonus shares are allotted to any holder of qualifying shares;

that right shall, for the purposes of subparagraph 82SA(1)(d)(ii), be deemed to be an approved right relating to the allotting or transfer of bonus shares to the holder or owner of the convertible note.

(3) Where:

- (a) the option to convert that exists under a convertible note is an option to have shares transferred to the holder or owner of the note; and
- (b) the terms applicable to the note are such that, if a bonus share allotment is made by the company that issued the note or by another company, being an allotment the qualifying shares relating to which include the shares that are to be transferred to the holder or owner of the note upon the exercise of the option to convert, and bonus shares allotted in respect of the qualifying shares to be so transferred are allotted to the holder of those shares on terms and conditions that are the same as or correspond with, or are no more favourable to him than, the terms and conditions on which bonus shares are allotted to any other holder of qualifying shares, the holder or owner of the note is to have the right to have the bonus

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shares allotted to that person transferred to him upon the payment by him, where a consideration was paid or is payable in respect of the allotment of the bonus shares to the other person, of a consideration not less than that consideration;

that right shall, for the purposes of subparagraphs 82S(1)(d)(ii) and 82SA(1)(d)(ii), be deemed to be an approved right relating to the allotting or transfer of bonus shares to the holder or owner of the convertible note.

82Q Classes of shares

- (1) Shares in the capital of a company to which there are attached the same rights, including the following rights:
 - (a) rights in respect of voting;
 - (b) rights in respect of dividends;
 - (c) rights in respect of distribution of share capital in consequence of a reduction of share capital;
 - (d) rights in respect of distribution of the property of the company in the event of the winding up of the company;constitute a class of shares for the purposes of this Division, and no other shares in the capital of the company constitute a class of shares for such purposes.
- (2) Notwithstanding anything contained in subsection (1), a share in the capital of a company to be allotted upon the exercise of the option to convert given under the terms applicable to a convertible note shall not, for the purposes of this Division, be deemed to be a share of a different class from a share in the capital of the company already allotted by reason only that during the period of one year after the allotment of the first-mentioned share, any dividend payable in respect of the share will or may be less than any dividend payable in respect of the second-mentioned share.

82R Interest on certain convertible notes not to be an allowable deduction

- (1) Subject to section 82SA, this section applies to a convertible note issued by a company, not being:
 - (a) a convertible note issued on or before 15 November 1960; or

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- (b) a convertible note:
 - (i) the terms of the issue of which were announced by the company on or before that date; or
 - (ii) that the company was, in pursuance of an agreement made on or before that date, bound to issue.
- (2) Where, in pursuance of the terms upon which any convertible notes were issued by a company, a person was entitled to have a convertible note issued to him by that company, the company shall, for the purposes of subsection (1), be deemed to have issued the convertible note to that person at the time when the person first became entitled to have the convertible note issued to him.
- (3) An outgoing consisting of interest, or a payment in the nature of interest, under a convertible note to which this section applies shall be deemed not to be an allowable deduction from the assessable income of the company.
- (4) Where a payment has been made by a person (whether under a guarantee or otherwise) that represents, in effect, a payment of interest under a convertible note to which this section applies and the company has incurred an outgoing by way of making good the first-mentioned payment to that person, whether by way of indemnification or otherwise, the amount of that outgoing shall, for the purposes of this section, be deemed to be an outgoing consisting of interest under the convertible note.
- (5) Section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997* does not apply to the expenditure incurred by the company in borrowing money by means of convertible notes to which this section applies.

82SA Interest on certain convertible notes to be an allowable deduction—where loan made on or after 1 January 1976

- (1) Subject to the succeeding provisions of this section, section 82R does not apply in relation to a convertible note issued by a company where:
 - (a) the loan to the company to which the note applies is, under section 82M, to be treated as a new loan or an approved replacement loan for the purposes of this Division;
 - (b) the loan was made on or after 1 January 1976;

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- (c) the convertible note was issued before the expiration of 2 months after the loan was made; and
- (d) the terms applicable to the convertible note are, at the time the note was issued and at all subsequent times, such that:
 - (i) an option is given to the holder or owner of the convertible note (in this Division referred to as the ***option to convert***) to have allotted or transferred to him shares in the capital of the company or of another company;
 - (ii) no provision is made for the allotting or transferring of shares in the capital of the company or of another company to the holder or owner of the convertible note except in pursuance of the exercise of the option to convert or except in pursuance of a right that, under section 82P, is an approved right relating to the allotting or transfer of bonus shares to the holder or owner of the note;
 - (iii) the convertible note would not, but for the option to convert and any right of the kind referred to in subparagraph (ii), be a convertible note;
 - (iv) the earliest date on which the option to convert may be exercised is a date not later than 2 years after the date of offer;
 - (v) the latest date on which the option to convert may be exercised is a date not later than the maturity date of the loan or, if the date of offer is more than 10 years earlier than the maturity date, a date not later than 10 years after the date of offer;
 - (vi) the rate of interest payable in respect of the loan is, subject to subsection (5), the same in respect of all periods occurring before the maturity date of the loan;
 - (vii) subject to subsection (6), the obligations and rights of the holder or owner of the convertible note (including, but without limiting the generality of the foregoing, obligations and rights with respect to the amount payable on repayment, redemption or satisfaction of the loan and the terms on which shares are to be allotted or transferred in pursuance of the exercise of the option to convert) do not vary in his favour by reason that he exercises the option, or he or the company exercises any

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- other right in relation to the note, at a later rather than at an earlier time after the issue of the note;
- (viii) the rights of the holder or owner of the convertible note with respect to the amount payable on repayment, redemption or satisfaction of the loan do not vary according to whether or not he exercises the option to convert;
 - (ix) the shares to be allotted or transferred upon the exercise of the option to convert:
 - (A) are to be allotted or transferred within 2 months after the exercise of the option;
 - (B) in the case of shares to be allotted, are, upon payment of the amount payable in respect of the allotment, to be fully paid shares or, in the case of shares to be transferred, are, at the time of transfer, to be fully paid shares; and
 - (C) are to be shares of the same class as shares in the capital of the company that, not later than 6 weeks before the date that is the date of offer in relation to the loan, had been allotted and were fully paid;
 - (x) the shares to be allotted or transferred upon the exercise of the option to convert are to be shares with respect to which no provision is made (whether by the memorandum, or memorandum and articles, of the company, or other instrument constituting or defining the constitution of the company, or otherwise) for changing or converting them into shares of another class, except for the purpose of enabling, in accordance with any law relating to companies, the consolidation and division of all or any of the share capital of the company or of another company or the sub-division of all or any of the shares in the capital of the company or of another company; and
 - (xi) the amount payable in respect of the allotment or transfer of a share in pursuance of the exercise of the option to convert is to be paid not later than 1 month after the allotment or transfer, and is to be not less than 90% of the amount that, in accordance with section 82T, is the value as at the valuation date of a fully paid share

included in the class of shares in which the share to be allotted or transferred will be, or is, included.

- (2) Where subsection (1) ceases to have effect in relation to a convertible note by reason of a change in the terms applicable to the note (not being a change resulting from a compromise or arrangement approved by a court), subsection (1) shall be deemed never to have had effect in relation to the note.
- (3) Where a note is a convertible note in relation to which subsection (1) has effect and the right to exercise the option to convert relating to the note becomes exercisable by a person other than the holder or owner of the note by reason of an assignment of that right, the assignment shall, for the purposes of this section, be disregarded.
- (4) Where, in relation to a convertible note issued by a company, the company or a director of the company does any act or thing for the purpose of, or purposes that include the purpose of, and having the effect of, causing the amount that, for the purposes of subsection (1), is the minimum amount applicable to a share to be allotted or transferred in pursuance of the exercise of the option to convert relating to the note, to be less than it would otherwise have been, subsection (1) does not have effect in relation to the note.
- (5) Where, under the terms applicable to a convertible note, the rate of interest payable in respect of the loan to which the note applies is to be varied from time to time (otherwise than with retrospective effect) in accordance with changes, or changes exceeding a specified percentage, in the rate of interest prevailing from time to time:
 - (a) where the loan is a foreign loan, at a specified place outside Australia in respect of a specified class of transactions; or
 - (b) where the loan is not a foreign loan, in respect of a specified class of Commonwealth securities;the term shall, for the purposes of subparagraph (1)(d)(vi), be deemed not to be a term providing for a variation in the rate of interest payable in respect of the loan.
- (6) For the purposes of subparagraph (1)(d)(vii), the obligations and rights of the holder or owner of a convertible note shall not be deemed to vary in a manner referred to in that subparagraph by reason only that any dividend payable in respect of a share in the

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capital of a company to be allotted upon the exercise of the option to convert relating to the note, being a dividend payable during the period of 1 year after the allotment of the share, will or may vary according to the time when, in relation to the period to which the dividend relates, the option to convert is exercised.

82T Value of shares

(1) For the purposes of section 82SA, the value of a fully paid share as at the valuation date is:

(a) where:

(i) the share is included in a class of shares that, during the whole of the relevant valuation period, was listed for quotation in the official list of a stock exchange that was a prescribed stock exchange during the whole of that period, or in the official lists of 2 or more stock exchanges each of which was a prescribed stock exchange during the whole of that period; and

(ii) fully paid shares included in that class of shares were recorded by that stock exchange, or by one or more of those stock exchanges, as the case may be, as having been sold during that period;

an amount ascertained by dividing the total consideration paid or payable in respect of those sales by the total number of shares so recorded as having been sold; and

(b) in any other case—the amount that a person who is a qualified person in relation to the valuing of the share certifies that, on a true and fair view of the state of the company's affairs, would, in respect of a sale at the end of the relevant valuation period between a willing but not anxious seller and a willing but not anxious buyer, be expected to be the consideration paid for the share, on the assumption, in a case where the class of shares in which that share is included was not, at the end of the relevant valuation period, listed for quotation in the official list of a stock exchange that, at that time, was a prescribed stock exchange, that the memorandum, or memorandum and articles, of the company, or other instrument constituting or defining the constitution of the company, satisfied, at that time, such of the requirements of a stock exchange that, at that time, was a prescribed stock exchange as it would have been necessary to

satisfy to enable that class of shares to be listed for quotation
in the official list of that stock exchange.

Division 5—Partnerships

90 Interpretation

In this Division:

exempt income, in relation to a partnership, means the exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident.

net income, in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer who was a resident, less all allowable deductions except deductions allowable under section 290-150 or Division 36 of the *Income Tax Assessment Act 1997*.

non-assessable non-exempt income, in relation to a partnership, means the non-assessable non-exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident.

partnership loss, in relation to a partnership, means the excess (if any) of the allowable deductions, other than deductions allowable under section 290-150 or Division 36 of the *Income Tax Assessment Act 1997*, over the assessable income of the partnership calculated as if the partnership were a taxpayer who was a resident.

91 Liability of partnerships

A partnership shall furnish a return of the income of the partnership, but shall not be liable to pay tax thereon.

92 Income and deductions of partner

- (1) The assessable income of a partner in a partnership shall include:
 - (a) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
 - (b) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

- (2) Subject to section 830-45 of the *Income Tax Assessment Act 1997*, if a partnership loss is incurred by a partnership in a year of income, there shall be allowable as a deduction to a partner in the partnership:
- (a) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was a resident; and
 - (b) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

(2AA) However, if:

- (a) the partner is a limited partner in a partnership; and
- (b) the partnership is a VCLP, an ESVCLP, an AFOF or a VCMP during the year of income;

the amount allowable under subsection (2), in respect of the year of income, as a deduction must not exceed the amount worked out as follows:

Method statement

- Step 1. Work out the sum of the amounts that the partner has contributed (the *partner's contribution*) to the partnership.
- Step 2. Subtract the sum of all the amounts (if any) of the partner's contribution that are repaid to the partner.
- Step 3. Subtract the sum of all deductions allowed to the partner for losses of the partnership in previous years of income.
- Step 4. Subtract the sum of the amounts of all the debt interests issued by the partner to the extent that they are secured by the partner's interest in the partnership.

Example: A limited partner contributes \$100,000 to a VCLP, having borrowed \$80,000. Because the lender values the partner's interest in the partnership at \$70,000, the partner also provides, as additional security, other assets valued at \$10,000.

If none of the partner's contribution has been repaid and the partner has not been allowed deductions for partnership losses in previous

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years of income, the amount allowable to the partner for a partnership loss cannot exceed \$30,000.

- (2A) Subsection (2) does not apply to a partnership loss if the partner's interest in the partnership at the end of the year of income is:
- (a) a segregated exempt asset (as defined in the *Income Tax Assessment Act 1997*) of a life assurance company; or
 - (b) a segregated current pension asset (as defined in the *Income Tax Assessment Act 1997*) of a complying superannuation fund.
- (3) The exempt income of a partner in a partnership shall include:
- (a) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
 - (b) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.
- (4) The non-assessable non-exempt income of a partner in a partnership shall include:
- (a) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
 - (b) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

92A Deductions in respect of outstanding subsection 92(2AA) amounts

- (1) If:
- (a) the partner is a limited partner in a partnership; and
 - (b) the partnership is a VCLP, an ESVCLP, an AFOF or a VCMP during the year of income; and
 - (c) the amount allowable under subsection 92(2) as a deduction to the partner for partnership losses incurred by the

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partnership in the year of income is not reduced because of subsection 92(2AA); and

- (d) the partner has an outstanding subsection 92(2AA) amount for the year of income;

there is allowable as a deduction to the partnership an amount worked out as follows:

Method statement

- Step 1. Subtract the amount allowable under subsection 92(2) as a deduction to the partner for partnership losses incurred by the partnership in the year of income from the amount worked out using the method statement in subsection 92(2AA).
- Step 2. If the amount worked out under step 1 is greater than or equal to the outstanding subsection 92(2AA) amount for the year of income, the amount of the deduction allowable under this section is the outstanding subsection 92(2AA) amount.
- Step 3. If the amount worked out under step 1 is less than the outstanding subsection 92(2AA) amount for the year of income, the amount of the deduction allowable under this section is the amount worked out under step 1.

- (2) The partner has an outstanding subsection 92(2AA) amount for a year of income if:
- (a) an amount allowable under subsection 92(2) as a deduction to the partner for partnership losses incurred by the partnership in a previous year of income was reduced because of subsection 92(2AA); and
- (b) the difference between:
- (i) the sum of all reductions made under subsection 92(2AA) to amounts allowable under subsection 92(2) as deductions to the partner for partnership losses incurred by the partnership in previous years of income; and
- (ii) the sum of all amounts allowable under this section, in respect of previous years of income, as deductions to the partner in relation to those reductions;

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is greater than zero.

The amount of that difference is the partner's *outstanding subsection 92(2AA) amount* for the year of income.

- (3) To avoid doubt, a partner's outstanding subsection 92(2AA) amount for a year of income cannot form part of a tax loss for the purposes of Division 36 of the *Income Tax Assessment Act 1997*.

94 Partner not having control and disposal of share in partnership income

- (1) Subject to this section, where:

(a) a share in the net income of a partnership of a year of income is included in the assessable income of a partner in the partnership, not being:

- (i) a company;
(ii) a person in the capacity of a trustee; or
(iii) a person who was under the age of 18 years on the last day of the year of income of the person that corresponds with the year of income of the partnership; and

(b) the partnership is so constituted or controlled, or its operations are so conducted, that the partner has not the real and effective control and disposal of that share or of a part of that share;

this section applies to that share or that part of that share, as the case may be.

- (2) Subject to the succeeding provisions of this section, where:

(a) a partnership is so constituted or controlled, or its operations are so conducted, that a partner in the partnership, being a trustee of a trust estate, has not the real and effective control and disposal of his share in the net income of the partnership of a year of income or of a part of that share (which share or part of a share, as the case may be, is in this subsection referred to as *uncontrolled partnership income*); and

(b) in calculating in accordance with section 95 the net income of that trust estate or of any other trust estate, there is included in the assessable income of the trust estate any uncontrolled partnership income;

then:

(c) if:

- (i) a beneficiary, not being a company or a person who was under the age of 18 years on the last day of the year of income of the person that corresponds with the year of income of the partnership, is presently entitled to the whole of the income of the trust estate otherwise than in the capacity of a trustee; or
- (ii) there is no part of the net income of the trust estate that is included in the assessable income of a beneficiary in pursuance of section 97 or in respect of which the trustee is assessed and liable to pay tax in pursuance of section 98;

this section applies to the portion of the net income of the trust estate that was derived from uncontrolled partnership income;

- (d) if a beneficiary, not being a company or a person who was under the age of 18 years on the last day of the year of income of the person that corresponds with the year of income of the partnership, is presently entitled to a share of the income of the trust estate otherwise than in the capacity of a trustee, this section applies to so much of that share of the net income of the trust estate as bears to that share the same proportion as the portion of the net income of the trust estate that was derived from uncontrolled partnership income bears to the net income of the trust estate; and
- (e) if there is a part of the net income of the trust estate that is not included in the assessable income of a beneficiary in pursuance of section 97 and in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98, this section applies to so much of that part of the net income of the trust estate as bears to that part the same proportion as the portion of the net income of the trust estate that was derived from uncontrolled partnership income bears to the net income of the trust estate.

(5) For the purposes of this section:

(a) where:

- (i) the assessable income of a trust estate includes the net income or a share of the net income of another trust estate; and

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- (ii) the assessable income of the other trust estate by reference to which that net income is calculated included income of a particular class (including an amount that is to be deemed by an application or applications of this paragraph to be income of a particular class);

the assessable income of the first-mentioned trust estate shall be deemed to include income of that class of an amount equal to so much of the net income or share of the net income of the other trust estate that is included in the assessable income of the first-mentioned trust estate as bears to that net income or share of that net income the same proportion as the portion of the net income of the other trust estate that was derived from income of that class bears to the net income of the other trust estate; and

- (b) the portion of the net income of a trust estate that is derived from income of a particular class that is included in the assessable income of the trust estate is the amount remaining after deducting from the income of that class that is included in the assessable income of the trust estate:
 - (i) any prescribed deductions that relate exclusively to that income of that class;
 - (ii) so much of any other prescribed deductions (other than apportionable deductions) as, in the opinion of the Commissioner, may appropriately be related to that income of that class; and
 - (iii) the amount that bears to the prescribed deductions (being apportionable deductions) the same proportion as the amount that, but for this subparagraph, would be the portion of the net income of the trust estate that is derived from that income of that class bears to the sum of the net income of the trust estate and those last-mentioned prescribed deductions.

- (6) Where the assessable income of a trust estate includes, or, by virtue of paragraph (5)(a), is to be deemed to include, income of a particular class but the Commissioner is of the opinion that it would be unreasonable to treat each part or share of the net income of the trust estate that is included in the assessable income of a beneficiary, or on or in respect of which the trustee is assessed and liable to pay tax, as including a proportionate part of the portion of

the net income of the trust estate that is derived from income of that class, the amount:

- (a) that is the amount of a part or share of the net income of the trust estate to which this section applies by virtue of paragraph (2)(d) or (e); or
- (b) that is, by virtue of paragraph (5)(a), the amount of the income of that class that is to be deemed to be included in the assessable income of another trust estate;

is, in lieu of the amount that, but for this subsection, would be the amount of that part or share of that net income or the amount of that income of that class, as the case may be, such amount as the Commissioner considers reasonable in the circumstances.

- (8) Where the Commissioner is of the opinion that, by reason of special circumstances, it would be unreasonable that this section should apply to any income, this section does not apply to that income.
- (8A) In forming an opinion for the purposes of subsection (8) as to whether it is unreasonable that this section should apply in relation to any of the net income of a trust estate, the Commissioner shall take into consideration the extent (if any) to which that net income represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia.
- (9) Where the assessable income of a taxpayer, other than a taxpayer in the capacity of a trustee, includes income to which this section applies, the taxpayer shall be assessed and is liable to pay further tax, in accordance with subsection (10A) or (10B), upon the portion (in this section referred to as the *eligible portion*) of his taxable income that is derived from income to which this section applies.
- (10) For the purposes of subsection (9), the portion of the taxable income of a taxpayer that is derived from income to which this section applies is the amount remaining after deducting from the income to which this section applies that is included in his assessable income:
 - (a) any deductions allowed or allowable in his assessment that relate exclusively to the income to which this section applies that is included in his assessable income;

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- (b) so much of any other deductions allowed or allowable in his assessment (other than apportionable deductions) as, in the opinion of the Commissioner, may appropriately be related to the income to which this section applies that is included in his assessable income; and
 - (c) the amount that bears to the apportionable deductions allowed or allowable in his assessment the same proportion as the amount that, but for this paragraph, would be the portion of his taxable income that is derived from income to which this section applies bears to the sum of his taxable income and those apportionable deductions.
- (10A) Where Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* does not apply in relation to the income of a taxpayer of the year of income, the taxpayer is liable to pay further tax upon the eligible portion of his taxable income at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (9) in respect of the relevant part of the taxable income.
- (10B) Where Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies in relation to the income of a taxpayer of the year of income, the taxpayer is liable to pay further tax upon the relevant part of the eligible portion of his taxable income at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (9) in respect of the relevant part of the taxable income and is, in addition, liable to pay further tax upon the prescribed part of the eligible portion of his taxable income at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (9) in respect of the prescribed part of the taxable income.
- (10C) For the purposes of subsections (10A) and (10B):
- (a) the prescribed part of the eligible portion of the taxable income of a taxpayer of a year of income is:
 - (i) in a case to which subparagraph (ii) does not apply—the sum of:
 - (A) the amount ascertained by deducting from so much of the assessable primary production income of the taxpayer as is also income to which this section applies so much of the

deductions allowable in his assessment as constitutes primary production deductions and is also deductible in accordance with subsection (10) from income to which this section applies; and

- (B) the amount (if any) ascertained in accordance with the formula $\frac{A B}{C}$, where:

A is the amount shown in the following table:

Value of A for formula		
Item	Taxpayer's taxable non-primary production income	Value of A
1	Nil	Nil
2	Not more than \$5,000 (but more than nil)	Difference between basic taxable income and taxable primary production income
3	Between \$5,000 and \$10,000	\$10,000 taxable non-primary production income
4	At least \$10,000	Nil

B is the number of whole dollars in the amount ascertained by deducting from the eligible portion the amount calculated in accordance with sub-subparagraph (A); and

C is the number of whole dollars in the amount ascertained by deducting from the taxable income of the taxpayer of the year of income the taxable primary production income of the taxpayer of the year of income; and

- (ii) in a case where the taxpayer's primary production deductions for the year of income exceed the taxpayer's assessable primary production income for that year—the

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amount ascertained in accordance with the formula

$$\frac{A B}{C + D}, \text{ where:}$$

A is the amount shown in the following table:

Value of A for formula		
Item	Taxpayer's taxable non-primary production income	Value of A
1	Nil	Nil
2	Not more than \$5,000 (but more than nil)	Basic taxable income
3	Between \$5,000 and \$10,000	Non-primary production shade-out amount worked out under subsection 392-90(3) of the <i>Income Tax Assessment Act 1997</i>
4	At least \$10,000	Nil

B is the number of whole dollars in the eligible portion.

C is the number of whole dollars in the taxable income of the taxpayer of the year of income; and

D is the number of whole dollars in the difference between the taxpayer's primary production deductions for the year of income and the taxpayer's assessable primary production income for that year; and

- (b) the relevant part of the eligible portion of the taxable income of the taxpayer is the amount ascertained by deducting from the amount of that eligible portion so much of that eligible portion as is the prescribed part of that eligible portion.

(11) Where:

- (a) section 98 applies in relation to the net income of a trust estate or a share of that net income; and
- (b) this section applies to a portion (in this subsection referred to as the *relevant portion*) of that net income or of that share of that net income, as the case may be;

the trustee of the trust estate shall be assessed and is liable to pay further tax, in accordance with subsection (12A) or (12B), upon the

relevant portion of that net income or of that share of that net income, as the case may be.

(12) Where:

- (a) section 99 applies in relation to the net income of a trust estate or a part of that net income; and
- (b) this section applies to a portion (in this section referred to as the *eligible trust portion*) of that net income or of that part of that net income, as the case may be;

the trustee of the trust estate shall be assessed and is liable to pay further tax, in accordance with subsection (12A) or (12B), upon the eligible trust portion.

(12A) Where Division 16 does not apply in respect of the net income of a trust estate of which the eligible trust portion is a portion, the trustee is liable to pay further tax upon the eligible trust portion at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (11) or (12) in respect of the relevant part of the net income of a trust estate.

(12B) Where Division 16 applies in respect of the net income of a trust estate of which the eligible trust portion is a portion, the trustee is liable to pay further tax upon the relevant part of the eligible trust portion at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (11) or (12) in respect of the relevant part of the net income of a trust estate and is, in addition, liable to pay further tax upon the prescribed part of the eligible trust portion at the rate declared by the Parliament to be the rate of further tax payable in pursuance of subsection (11) or (12) in respect of the prescribed part of the net income of a trust estate.

(12C) For the purposes of subsections (12A) and (12B):

(a) the prescribed part of the eligible trust portion in relation to a trust estate in relation to a year of income is:

(i) in a case to which subparagraph (ii) does not apply—the sum of:

(A) the amount ascertained by deducting from so much of the assessable primary production income of the trust estate of the year of income as is also income that was taken into account in determining the amount of the eligible trust

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portion so much of the deductions allowable in the assessment of the trustee of the trust estate as constitutes relevant primary production deductions and was also deductible in accordance with subsection (5) in determining the amount of the eligible trust portion; and

- (B) the amount (if any) ascertained in accordance with the formula $\frac{A B}{C}$, where:

A is the amount of the notional net income from primary production of the trust estate of the year of income.

B is the number of whole dollars in the amount ascertained by deducting from the eligible trust portion the amount calculated in accordance with sub-subparagraph (A); and

C is the number of whole dollars in the amount ascertained by deducting from the net income of the trust estate of which the eligible trust portion is a portion the actual net income from primary production of the trust estate of the year of income; and

- (ii) in a case where the aggregate of the relevant primary production deductions allowable in calculating the net income of the trust estate of the year of income exceeds the assessable primary production income of the trust estate of the year of income—the amount ascertained in

accordance with the formula $\frac{A B}{C + D}$, where:

A is the amount of the notional net income from primary production of the trust estate of the year of income.

B is the number of whole dollars in the eligible trust portion.

C is the number of whole dollars in the net income of the trust estate of which the eligible trust portion is a portion; and

D is the number of whole dollars in the amount by which the net income of the trust estate of which the eligible trust portion is a portion would have been

increased if the aggregate of the relevant primary production deductions allowable in calculating the net income of the trust estate of the year of income had been equal to the assessable primary production income of the trust estate of the year of income; and

- (b) the relevant part of the eligible trust portion in relation to a trust estate is the amount ascertained by deducting from that eligible trust portion so much of that eligible trust portion as is the prescribed part of that eligible trust portion.

- (13) In this section:

prescribed deductions, in relation to a trust estate, means the deductions that are allowable in calculating in accordance with section 95 the net income of the trust estate.

share in the net income of a partnership, in relation to a partner, means:

- (a) so much of the individual interest of the partner in the net income of the partnership and of any income derived by the partner from the partnership otherwise than as a partner as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the net income of the partnership and of any income derived by the partner from the partnership otherwise than as a partner as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

- (14) In this section, ***actual net income from primary production, assessable primary production income, notional net income from primary production*** and ***relevant primary production deductions*** have the same respective meanings as in section 156.

- (15) In this section, the following terms have the same meanings that they have in Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997*:
 - (a) assessable primary production income;
 - (b) basic taxable income;
 - (c) non-primary production shade-out amount;
 - (d) primary production deductions;
 - (e) taxable non-primary production income;
 - (f) taxable primary production income.

Division 5A—Income of certain limited partnerships

Subdivision A—Preliminary

94A Object

The object of this Division is to provide for certain limited partnerships to be treated as companies for tax purposes.

94B Interpretation

In this Division:

corporate limited partnership has the meaning given by section 94D.

income tax law means:

- (a) this Act (other than this Division and Division 830 of the *Income Tax Assessment Act 1997*); and
- (b) an Act that imposes any tax payable under this Act; and
- (c) the *Income Tax Rates Act 1986*; and
- (d) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and
- (e) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c) or (d); and
- (f) regulations under an Act covered by any of the preceding paragraphs.

year of income means (except in paragraph 94L(b)) the year of income in which 19 August 1992 occurred or a later year of income.

94C Continuity of limited partnership not affected by changes in composition

For the purposes of this Division, a change in the composition of a limited partnership does not affect the continuity of the partnership.

Subdivision B—Corporate limited partnerships

94D Corporate limited partnerships

- (1) For the purposes of this Division, a limited partnership is a corporate limited partnership in relation to a year of income of the partnership if:
- (a) the year of income is the 1995-96 year of income or a later year of income; or
 - (b) the partnership was formed on or after 19 August 1992; or
 - (c) both:
 - (i) the partnership was formed before 19 August 1992; and
 - (ii) the partnership does not pass the continuity of business test set out in section 94E; or
 - (d) all of the following apply:
 - (i) the partnership was formed before 19 August 1992;
 - (ii) a change in the composition of the partnership occurs during the period:
 - (A) beginning on 19 August 1992; and
 - (B) ending at the end of the year of income;
 - (iii) the partners do not elect, in accordance with section 94F, that the partnership is not to be treated as a corporate limited partnership in relation to the year of income.
- (2) However, a partnership that is a VCLP, an ESVCLP, an AFOF or a venture capital management partnership cannot be a corporate limited partnership.

Note 1: This subsection can apply without the partnership meeting the applicable registration requirements under the *Venture Capital Act 2002*. It must be registered under that Act in order to be a VCLP, an ESVCLP or an AFOF, but it is possible for it to remain registered while the requirements are not met.

Note 2: VCLPs, ESVCLPs, AFOFs and VCMPs are taxed as ordinary partnerships under Division 5.

Note 3: If the partnership's registration as a VCLP, ESVCLP or AFOF is unconditional, some partners' share in capital gains and losses from CGT events relating to some investments may be disregarded: see Subdivision 118-F of the *Income Tax Assessment Act 1997*.

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- (3) A *venture capital management partnership* is a limited partnership that:
- (a) is a general partner of one or more of the following:
 - (i) one or more VCLPs;
 - (ia) one or more ESVCLPs;
 - (ii) one or more AFOFs; and
 - (b) only carries on activities that are related to being such a general partner.

A limited partnership ceases to be a venture capital management partnership if it ceases to meet the requirements of paragraphs (a) and (b).

Note: In this Act, the term “venture capital management partnership” is usually abbreviated to “VCMP”.

- (4) The place of residence of a VCMP is the place at which the partnership has its central management and control.
- (5) A limited partnership that is a foreign hybrid limited partnership in relation to a year of income because of subsection 830-10(1) of the *Income Tax Assessment Act 1997* is not a corporate limited partnership in relation to the year of income.

Note: As result, both the normal partnership provisions and special provisions relating to foreign hybrid limited partnerships will apply to the entity.

- (6) If, for the purpose of applying this Act and the *Income Tax Assessment Act 1997* in relation to a partner’s interest in a limited partnership, the partnership is a foreign hybrid limited partnership in relation to a year of income because of subsection 830-10(2) of that Act, the partnership is not a corporate limited partnership in relation to the partner’s interest in relation to the year of income.

Note: As result, both the normal partnership provisions and special provisions relating to foreign hybrid limited partnerships will apply to the entity, but only in relation to the partner’s interest.

94E Continuity of business test

In determining whether a limited partnership is a corporate limited partnership in relation to a year of income, the partnership passes the continuity of business test if, and only if:

- (a) at all times during the period:
 - (i) beginning on 19 August 1992; and

- (ii) ending at the end of the year of income;
the partnership carried on the same business as it carried on immediately before the beginning of that period; and
- (b) the partnership did not, at any time during that period, derive income from a business of a kind that it did not carry on, or from a transaction of a kind that it had not entered into in the course of its business operations, before that period.

94F Change in composition of limited partnership—election that partnership not be treated as an eligible limited partnership

An election referred to in paragraph 94D(1)(d) in relation to a limited partnership and in relation to a year of income has no effect unless:

- (a) the partnership passes the continuity of ownership test set out in section 94G; and
- (b) the election is made:
 - (i) within 6 months after the end of the later of the following years of income:
 - (A) the year of income to which the election relates;
 - (B) the year of income in which the *Taxation Laws Amendment Act (No. 6) 1992* received the Royal Assent; or
 - (ii) within such further period as the Commissioner allows.

94G Continuity of ownership test

In determining whether a limited partnership is a corporate limited partnership in relation to a year of income, the partnership passes the continuity of ownership test if, and only if:

- (a) at all times during the period:
 - (i) beginning on 19 August 1992; and
 - (ii) ending at the end of the year of income;more than 50% of the interests in the partnership were held by persons who, immediately before that period, held more than 50% of the interests in the partnership; or
- (b) the condition set out in paragraph (a) is not satisfied only because of the acquisition during so much of that period as occurred before 1 July 1993 of interests in the partnership,

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where the acquisitions are in response to, and in accordance with the terms of:

- (i) a prospectus, offer or invitation issued before 19 August 1992; or
- (ii) if that prospectus, offer or invitation was varied before 19 August 1992—that prospectus, offer or invitation as so varied.

Subdivision C—Corporate tax modifications applicable to corporate limited partnerships

94H Corporate tax modifications applicable to corporate limited partnerships

If a partnership is a corporate limited partnership in relation to a year of income, the income tax law has effect, in relation to the partnership and in relation to the year of income, subject to the changes set out in the following provisions of this Subdivision.

94J *Company* includes corporate limited partnership

A reference in the income tax law (other than the definitions of *dividend*, and *resident* or *resident of Australia*, in section 6 of this Act) to a company or to a body corporate includes a reference to the partnership.

94K *Partnership* does not include corporate limited partnership

A reference in the income tax law to a partnership does not include a reference to the partnership.

94L *Dividend* includes distribution of corporate limited partnership

A reference in the income tax law to a dividend or to a dividend within the meaning of section 6:

- (a) includes a reference to a distribution made by the partnership, whether in money or in other property, to a partner in the partnership; and
- (b) does not include a reference to a distribution to the extent to which the distribution is attributable to profits or gains

arising during a year of income in relation to which the partnership was not a corporate limited partnership.

94M Drawings etc. deemed to be dividends paid out of profits

- (1) If the partnership pays or credits an amount to a partner in the partnership:
 - (a) against the profits or anticipated profits of the partnership; or
 - (b) otherwise in anticipation of the profits of the partnership;(whether or not the amount of the profits or anticipated profits is ascertainable), the amount paid or credited is taken, for the purposes of the income tax law, to be a dividend paid by the partnership to the partner out of profits derived by the partnership.
- (2) If the partnership makes a subsequent distribution, the Commissioner must take such steps (if any) as are necessary to ensure that the partner is not subject to double taxation.

94N Private company does not include corporate limited partnership

A reference in the income tax law to a private company in relation to the year of income does not include a reference to the partnership.

94P Share includes interest in corporate limited partnership

A reference in the income tax law to a share includes a reference to an interest in the partnership.

94Q Shareholder includes partner in corporate limited partnership

A reference in the income tax law to a shareholder includes a reference to a partner in the partnership.

94R Liquidator may include partner in corporate limited partnership

For the purposes of the income tax law:

- (a) a reference to the liquidator of the partnership includes a reference to a partner in the partnership who carries out the winding-up of the partnership; and

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- (b) a reference to distributions made by a liquidator in the course of winding up the partnership includes a reference to distributions made by such a partner to himself or herself in the course of winding-up the partnership.

94S Continuity of corporate limited partnership not affected by changes in composition

For the purposes of the income tax law, a change in the composition of the partnership does not affect the continuity of the partnership.

94T Residence of corporate limited partnership

For the purposes of the income tax law, the partnership is:

- (a) a resident; and
- (b) a resident within the meaning of section 6; and
- (c) a resident of Australia; and
- (d) a resident of Australia within the meaning of section 6;

if and only if:

- (e) the partnership was formed in Australia; or
- (f) either:
 - (i) the partnership carries on business in Australia; or
 - (ii) the partnership's central management and control is in Australia.

94U Incorporation

For the purposes of the income tax law, the partnership is taken to have been incorporated:

- (a) in the place where it was formed; and
- (b) under a law in force in that place.

94V Obligations and offences

- (1) The application of the income tax law to the partnership as if the partnership were a company is subject to the following changes:
 - (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;

- (b) the partners are jointly and severally liable to pay any amount that would be payable by the partnership;
 - (c) any offence against the income tax law that would otherwise be committed by the partnership is taken to have been committed by each of the partners.
- (2) In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(c), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

94X Modification of loss provisions

Subdivisions 165-A and 165-B of the *Income Tax Assessment Act 1997* apply in relation to the partnership as if the provisions relating to voting power had not been enacted.

Division 6—Trust income

95 Interpretation

- (1) In this Division:

exempt income, in relation to a trust estate, means the exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

Note: See also Division 54 of the *Income Tax Assessment Act 1997* (in particular, the provisions in section 54-70 about trusts), which provides a tax exemption for certain payments under structured settlements and structured orders.

net income, in relation to a trust estate, means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income and were a resident, less all allowable deductions, except deductions under Schedule 2G and except also, in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, the deductions allowable under Division 36 of the *Income Tax Assessment Act 1997* in respect of such of the tax losses of previous years as are required to be met out of corpus.

A trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

non-assessable non-exempt income, in relation to a trust estate, means the non-assessable non-exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

- (2) For the purposes of this Division, a trust estate shall be taken to be a resident trust estate in relation to a year of income if:
- (a) a trustee of the trust estate was a resident at any time during the year of income; or
 - (b) the central management and control of the trust estate was in Australia at any time during the year of income.
- (3) In this Division, a trust estate that is not a resident trust estate in relation to a year of income is referred to as a non-resident trust estate in relation to that year of income.

95AA Division does not apply in relation to FHSA trust

This Division does not apply in relation to a trust estate that is an FHSA trust.

95A Special provisions relating to present entitlement

- (1) For the purposes of this Act, where a beneficiary of a trust estate is presently entitled to any income of the trust estate, the beneficiary shall be taken to continue to be presently entitled to that income notwithstanding that the income is paid to, or applied for the benefit of, the beneficiary.
- (2) For the purposes of this Act, where a beneficiary has a vested and indefeasible interest in any of the income of a trust estate but is not presently entitled to that income, the beneficiary shall be deemed to be presently entitled to that income of the trust estate.

95B Certain beneficiaries deemed not to be under legal disability

For the purposes of this Act, a beneficiary of a trust estate who is presently entitled to a share of the income of the trust estate in the capacity of a trustee of another trust estate shall, in respect of his present entitlement to that share, be deemed not to be under a legal disability.

96 Trustees

Except as provided in this Act, a trustee shall not be liable as trustee to pay income tax upon the income of the trust estate.

96A Application of Division in respect of interests in non-resident trust estates to which Part XI applies

- (1) An amount is not to be included under section 97 in the assessable income of a year of income of a beneficiary of a trust estate if:
 - (a) the beneficiary is a resident; and
 - (b) the trust estate is a non-resident trust estate in relation to that year of income; and
 - (c) section 529 applies, or but for Division 8 or 11A of Part XI would have applied, to the beneficiary in relation to each

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notional accounting period of the relevant trust that ended or began in that year of income.

(1A) An amount, other than an amount relating to an interest in a FIF to which Division 8 of Part XI applies, that, because of subsection (1), is not included under section 97 in assessable income is nevertheless taken to have been so included for the purposes of applying sections 99, 99A and 102AAU.

(2) If:

(a) the assessable income of the trust estate of a resident public unit trust of a year of income includes any foreign investment fund income; and

(b) the sum of:

(i) the values of all the interests of a beneficiary of the trust estate who is a natural person (otherwise than in the capacity of a trustee), and any associates of that beneficiary, in FIFs and resident public unit trusts; and

(ii) the values of all FLPs in which that beneficiary and any associates of that beneficiary had interests;

at the end of the year of income did not exceed \$50,000;

then:

(c) in calculating the beneficiary's share of the net income of the trust estate of the year of income, that net income is taken to be the amount that would have been that net income if that foreign investment fund income had not been included in that assessable income; and

(d) in calculating the beneficiary's share of the net income of any subsequent year of income, that net income is taken to be the amount that would have been that net income if section 23AK or section 613 applied as if no FIF attribution account credit arose for the relevant trust for the year of income mentioned in paragraph (c); and

(e) in determining under sections 99 and 99A the extent (if any) to which the trustee is to be assessed and liable to pay tax on the whole or part of the net income of the trust estate of the year of income or any later year of income, paragraphs (c) and (d) of this subsection are to be disregarded.

- (3) For the purposes of subsection (2), the value at the end of the year of income of a person's interest in a FIF or in a resident public unit trust, or of a FLP in which a person has an interest, is taken to be:
- (a) the cost incurred by the person in acquiring the interest in the FIF, resident public unit trust or FLP, as the case may be; or
 - (b) the market value of the interest in the FIF or resident public unit trust, or of the FLP, as the case may be, at the end of the year of income;
- whichever is the greater amount.

(3A) If:

- (a) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and
- (b) a statutory accounting period of a CFC coincides with that notional accounting period of the FIF; and
- (c) section 456 applies at the end of the statutory accounting period of the CFC to a taxpayer who is a beneficiary in the CFT; and
- (d) the FIF is the same entity as the CFC;

then the beneficiary's share of the net income of the CFT of the year of income is to be calculated as if the amount of foreign investment fund income had not been included in the CFT's assessable income.

(3B) If:

- (a) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and
- (b) each of 2 or more statutory accounting periods of a CFC occurs partly within that notional accounting period of the FIF; and
- (c) section 456 applies at the end of each of these statutory accounting periods of the CFC to a taxpayer who is a beneficiary in the CFT; and
- (d) the FIF is the same entity as the CFC;

then the beneficiary's share of the net income of the CFT of the year of income is to be calculated as if the amount of foreign

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investment fund income had not been included in the CFT's assessable income.

- (4) For the purposes of this section, a unit trust is a resident public unit trust in relation to a year of income if:
- (a) it is a public unit trust for the purposes of Division 6AAA at all times during the year of income; and
 - (b) either of the following conditions was satisfied at any time during the year of income:
 - (i) the central management and control of the unit trust was in Australia;
 - (ii) a person who was a resident or persons who were residents held more than 50% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust.

- (5) In this section:

CFC has the same meaning as in Part X.

CFT has the same meaning as in Part X.

interest, in relation to a resident public unit trust, means a unit in the trust or an entitlement to acquire such a unit.

statutory accounting period has the same meaning as in Part X.

- (6) Expressions used in this section that are also used in Part XI have, unless the contrary intention appears, the same meanings as in that Part.

96B Beneficiary of non-resident trust estate

- (1) If at any time during the 1992-93 year of income or a later year of income a taxpayer had an interest (including an interest that is to arise at a future time or is contingent on the happening of an event) in a non-resident trust estate in relation to the year of income, this section has effect for the purposes of the application of this Division to the taxpayer in relation to the trust estate in relation to the year of income.

- (2) The taxpayer is taken to be a beneficiary of the trust estate who is presently entitled to a share of the income of the trust estate of the year of income and who is not under a legal disability.
- (3) The taxpayer's share of the net income of the trust estate of the year of income is the amount calculated in accordance with section 96C.

96C Calculation of beneficiary's share of net income of non-resident trust estate

- (1) If all of the income, profits or gains derived by a non-resident trust estate during the year of income consisted of either or both of the following:
 - (a) income, profits or gains to which beneficiaries of the trust estate were presently entitled;
 - (b) income, profits or gains to which beneficiaries of the trust estate were not presently entitled but which were distributed to beneficiaries of the trust estate during the year of income or within 2 months after the end of the year of income;

the share of a taxpayer referred to in section 96B of the net income of the trust estate of the year of income is the amount worked out using the formula:

Net income \times Attribution percentage

In the formula:

Net income means the net income of the trust estate of the year of income.

Attribution percentage means the percentage of the total income, profits and gains derived by the trust estate during the year of income to which the taxpayer was presently entitled or to which the taxpayer was not presently entitled but which was distributed to the taxpayer during the year of income or within 2 months after the end of the year of income.

- (2) If subsection (1) does not apply in respect of a non-resident trust estate of the year of income, the share of a taxpayer referred to in section 96B of the net income of the trust estate of the year of income is the amount determined by calculating:
 - (a) the part of the taxpayer's share of the net income that is attributable to any interest or interests in the trust estate that

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the taxpayer had in the trust estate throughout the whole of the year of income; and

- (b) the part or parts of the taxpayer's share of the net income that is or are attributable to any interest or interests in the trust estate that the taxpayer had throughout a particular part or particular parts of the year of income;

and adding up the amounts so calculated.

- (3) The part of the taxpayer's share of the net income that is attributable to an interest or interests that the taxpayer had throughout the whole of the year of income is the amount worked out using the formula:

Net income \times Attribution percentage

- (4) The part of the taxpayer's share of the net income that is attributable to an interest that the taxpayer had throughout a particular part of the year of income is the amount worked out using the formula:

Net income \times Attribution percentage \times $\frac{\text{Number of days held}}{\text{Total number of days}}$

- (5) For the purposes of the formulas in subsections (3) and (4):

Net income means the net income of the trust estate of the year of income.

Note: See subsection (5A).

Attribution percentage means:

- (a) the percentage of the income of the trust estate represented by the share of the income to which the taxpayer was entitled, or was entitled to acquire, at the test time because of:
- (i) the taxpayer's interest or interests in the trust estate; and
 - (ii) any interest or interests in the trust estate that the taxpayer was entitled to acquire; or
- (b) the percentage of the corpus of the trust estate represented by the share of the corpus to which the taxpayer was entitled, or was entitled to acquire, at the test time because of:
- (i) the taxpayer's interest or interests in the trust estate; and
 - (ii) any interest or interests in the trust estate that the taxpayer was entitled to acquire;

or, if those percentages differ, the greater of those percentages.

Number of days held means the number of days in the part of the year of income throughout which the taxpayer had the interest.

Total number of days means the number of days in the year of income.

the test time means:

- (a) if the taxpayer had an interest or interests in the trust estate at the end of the year of income—the end of the year of income; or
 - (b) if the taxpayer ceased during the year of income to have any interest in the trust estate—the time immediately before the taxpayer ceased to have such an interest.
- (5A) In calculating the net income of the trust estate of the year of income for the purposes of subsections (3), (4) and (5), disregard:
- (a) Division 974 of the *Income Tax Assessment Act 1997*; and
 - (b) the operation of any provision of this Act to the extent to which that operation depends on an expression whose meaning is given by that Division.

- (6) If, apart from this subsection, the sum of the attribution percentages at a particular time in relation to a non-resident trust estate of all taxpayers who are residents would exceed 100%, the attribution percentage of each of those taxpayers is the percentage worked out using the formula:

$$\frac{\text{Individual percentage}}{\text{Total percentage}} \times 100$$

where:

Individual percentage means the percentage that, apart from this subsection, would be the attribution percentage of the taxpayer concerned.

Total percentage means the sum of the percentages that, apart from this subsection, would be the attribution percentages of all taxpayers that are residents.

Note: A temporary resident is taken not to be a resident for the purposes of this subsection: see section 768-975 of the *Income Tax Assessment Act 1997*.

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- (7) For the purposes of subsection (5):
- (a) the percentage of the income of the trust estate represented by the share of the income to which the taxpayer was entitled, or was entitled to acquire, at the test time because of the interest or interests referred to in subparagraph (a)(i) or (ii) of the definition of *attribution percentage* in that subsection; or
 - (b) the percentage of the corpus of the trust estate represented by the share of the corpus to which the taxpayer was entitled, or was entitled to acquire, at the test time because of the interest or interests referred to in subparagraph (b)(i) or (ii) of the definition of *attribution percentage* in that subsection;
- is to be worked out by:
- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust estate for the year of income;
 - (ii) the corpus of the trust estate as at the end of the year of income; and
 - (d) assuming that the share to which the taxpayer was entitled, or became entitled to acquire, at the test time because of the interest or interests was the same at all other times during the year of income; and
 - (e) ascertaining the percentage concerned:
 - (i) if the test time is a time other than the end of the year of income—at the end of the year of income instead of at the test time; and
 - (ii) on that assumption.
- (8) In this section:
- entitled to acquire* has the same meaning as in Part XI.
- (9) A reference in this section to income, profits or gains having been distributed to a beneficiary of a trust estate is a reference to an amount included in such income, profits or gains having been paid or credited to, or applied for the benefit of, such a beneficiary.

97 Beneficiary not under any legal disability

- (1) Subject to Division 6D, where a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate:

- (a) the assessable income of the beneficiary shall include:
 - (i) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
 - (ii) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia; and
- (b) the exempt income of the beneficiary shall include:
 - (i) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
 - (ii) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;except to the extent to which the exempt income to which that individual interest relates was taken into account in calculating the net income of the trust estate; and
- (c) the non-assessable non-exempt income of the beneficiary shall include:
 - (i) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
 - (ii) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

- (2) A reference in this section to income of a trust estate to which a beneficiary is presently entitled shall be read as not including a reference to income of a trust estate:
 - (a) to which a beneficiary is deemed to be presently entitled by virtue of the operation of subsection 95A(2) where the beneficiary:
 - (i) is a natural person;

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- (ii) is a resident at the end of the year of income;
 - (iii) is not, in respect of that income, a beneficiary in the capacity of a trustee of another trust estate; and
 - (iv) is not a beneficiary to whom subsection 97A(1) or (1A) applies in relation to the year of income; or
- (b) to which a beneficiary is presently entitled where the beneficiary:
- (i) is a non-resident at the end of the year of income;
 - (ii) is not a beneficiary to whom subsection (3) of this section or subsection 97A(1) or (1A) applies in relation to the year of income; and
 - (iii) is not, in respect of that income, a beneficiary in the capacity of a trustee of another trust estate.
- (3) Where:
- (a) a beneficiary of a trust estate is presently entitled to a share of the income of the trust estate;
 - (b) the beneficiary is a non-resident at the end of the year of income; and
 - (c) the beneficiary is:
 - (i) a body, association, fund or organization the income of which is exempt from tax by virtue of the operation of Subdivision 50-A or section 51-5, 51-10 or 51-30 of the *Income Tax Assessment Act 1997*; or
 - (ii) an organization the income of which is exempt from tax by virtue of a regulation in force under the *International Organisations (Privileges and Immunities) Act 1963*;
- that beneficiary is, for the purposes of the application of this Division in relation to that beneficiary in relation to that year of income, a beneficiary to whom this subsection applies.

97A Beneficiaries who are owners of farm management deposits

- (1) Where a beneficiary who is under a legal disability:
 - (a) is presently entitled to a share of the income of a trust estate derived during a year of income of the beneficiary;
 - (b) is the owner of a farm management deposit made during the year of income; and
 - (c) is a primary producer when the deposit is made;

this Division applies in relation to the beneficiary in relation to the year of income as if the beneficiary were not under any legal disability.

- (1A) Where a beneficiary who is deemed by subsection 95A(2) to be presently entitled to any income of a trust estate derived during a year of income of the beneficiary:
- (a) is not under a legal disability;
 - (b) is the owner of a farm management deposit made during the year of income; and
 - (c) is a primary producer when the deposit is made because the trustee of the trust estate is carrying on in Australia a primary production business;

the beneficiary is, for the purposes of the application of this Division in relation to that beneficiary in relation to that year of income, a beneficiary to whom this subsection applies.

- (2) In this section:

primary producer and *owner of a farm management deposit* have the same meanings as in Schedule 2G.

98 Liability of trustee

- (1) Where a beneficiary of a trust estate who is under a legal disability is presently entitled to a share of the income of the trust estate, the trustee of the trust estate shall be assessed and liable to pay tax in respect of:
- (a) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
 - (b) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;
- as if it were the income of an individual and were not subject to any deduction.
- (2) Where a beneficiary of a trust estate:
- (a) is deemed to be presently entitled to a share of the income of the trust estate of a year of income by virtue of the operation of subsection 95A(2);

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- (aa) is a natural person and is not, in respect of that share of the income of the trust estate, a beneficiary in the capacity of a trustee of another trust estate;
- (b) is not a beneficiary to whom subsection 97A(1) or (1A) applies in relation to the year of income; and
- (c) is not under a legal disability;

the trustee of the trust estate shall be assessed and liable to pay tax in respect of:

- (d) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (e) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

as if it were the income of an individual and were not subject to any deduction.

(2A) If:

- (a) a beneficiary of a trust estate who is presently entitled to a share of the income of the trust estate:
 - (i) is a non-resident at the end of the year of income; and
 - (ii) is not, in respect of that share of the income of the trust estate, a beneficiary in the capacity of a trustee of another trust estate; and
 - (iii) is not a beneficiary to whom section 97A applies in relation to the year of income; and
 - (iv) is not a beneficiary to whom subsection 97(3) applies; and
- (b) the trustee of the trust estate is not assessed and is not liable to pay tax under subsection (1) or (2) in respect of any part of that share of the net income of the trust estate;

subsection (3) applies to the trustee in respect of:

- (c) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (d) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

- (3) A trustee to whom this subsection applies in respect of an amount of net income is to be assessed and is liable to pay tax:
- (a) if the beneficiary is not a company—in respect of the amount of net income as if it were the income of an individual and were not subject to any deduction; or
 - (b) if the beneficiary is a company—in respect of the amount of net income at the rate declared by the Parliament for the purposes of this paragraph.

Note: If the trust estate's net income includes a net capital gain, and the beneficiary is a company, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

- (4) If:
- (a) a beneficiary of a trust estate (the *first trust estate*) who is presently entitled to a share of the income of the first trust estate:
 - (i) is, in respect of that share of the income of the first trust estate, a beneficiary in the capacity of a trustee of another trust estate; and
 - (ii) is not a beneficiary to whom subsection 97(3) applies; and
 - (b) a trustee of the other trust estate is a non-resident at the end of the year of income;

the trustee of the first trust estate is to be assessed and is liable to pay tax in respect of so much of that share of the net income of the first trust estate as is attributable to sources in Australia at the rate declared by the Parliament for the purposes of this subsection.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

98A Non-resident beneficiaries assessable in respect of certain income

- (1) Where the trustee of a trust estate is assessed and is liable to pay tax in respect of the whole or a part of a share of the net income of a trust estate of a year of income in pursuance of subsection 98(3), the assessable income of the beneficiary who is presently entitled to that share of the income of the trust estate shall include:

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- (a) so much of the individual interest of the beneficiary in the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (b) so much of the individual interest of the beneficiary in the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

- (2) Where subsection (1) applies in relation to a beneficiary in relation to a year of income:

- (a) there shall be deducted from the income tax assessed against the beneficiary the amount (in this subsection referred to as the *relevant amount*) of the tax paid by the trustee in respect of the beneficiary's interest in the net income of the trust estate (including, for a beneficiary that is a company, any tax paid in respect of that interest because of section 115-220 of the *Income Tax Assessment Act 1997*); and
- (b) if the relevant amount is greater than the amount of the income tax assessed against the beneficiary—the Commissioner shall pay to the beneficiary an amount equal to the difference between those 2 amounts.

Note: See Division 3A of Part IIB of, and section 105-65 in Schedule 1 to, the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay the entity. Division 3 of Part IIB allows the Commissioner to apply the amount owing as a credit against tax debts that the entity owes to the Commonwealth.

- (3) If a beneficiary of a trust estate who is presently entitled to a share of the income of the trust estate:

- (a) is not, in respect of that share of the income of the trust estate, a beneficiary in the capacity of a trustee of another trust estate; and

- (b) is a non-resident at the end of the year of income;

the assessable income of the beneficiary includes so much of the individual interest of the beneficiary in the net income of the trust estate as is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and is liable to pay tax under subsection 98(4).

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

- (4) To the extent that subsection (3) includes an amount in the assessable income of a beneficiary of a trust estate, the amount is not included by subsection (1) or section 100.

98B Deduction from beneficiary's tax

- (1) This section applies to a beneficiary of a trust estate for a year of income if the assessable income of the beneficiary of the year of income includes an amount covered by subsection (2).
- (2) This subsection covers an amount (the *assessable amount*) if:
- (a) the amount is included in the assessable income of the beneficiary under one of the following:
 - (i) section 97;
 - (ii) subsection 98A(3);
 - (iii) section 100; and
 - (b) the amount does not represent income of the trust estate to which the beneficiary is presently entitled in the capacity of a trustee of another trust estate; and
 - (c) the amount is reasonably attributable to an amount (the *taxed net income*) in respect of which the trustee of another trust estate is assessed and liable to pay tax (the *subsection 98(4) tax*) under subsection 98(4) (including any tax paid under subsection 98(4) in respect of the taxed net income because of section 115-222 of the *Income Tax Assessment Act 1997*).
- (3) A proportion of the subsection 98(4) tax is to be deducted from the income tax assessed against the beneficiary of the year of income. That proportion is the same as the proportion of the taxed net income that gave rise to the assessable amount.

Note: To work out the proportion of the taxed net income that gives rise to assessable income for a beneficiary of another trust estate, you would have regard to the share of the income of each interposed trust estate to which a beneficiary (including a beneficiary in the capacity of a trustee) is presently entitled.

Example: The P Trust has two non-resident trustee beneficiaries, the trustees of the S Trust and the H Trust. Each trustee is presently entitled to a 1/2 share of the income of the P Trust. The net income of the P Trust is \$100,000. The trustee of the P Trust pays tax of \$22,500 under subsection 98(4) in respect of the trustee of the S Trust's interest and

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\$22,500 under subsection 98(4) in respect of the trustee of the H Trust's interest.

The S Trust has a non-resident beneficiary, G, who is presently entitled to a 1/3 share of the income of the S Trust. The net income of the S Trust is \$30,000. Subsection 98A(3) includes \$10,000 in G's assessable income.

The taxed net income of the P trust is \$50,000. The proportion of that taxed net income that gave rise to the \$10,000 being included in G's assessable income is 1/3. This is because G had a 1/3 share of the income of the S Trust. \$7,500 (1/3 x \$22,500) is deducted from the income tax assessed against G.

If section 97, subsection 98A(3) or section 100 also includes amounts in the assessable income of any beneficiaries of the H Trust, each of those beneficiaries also works out the amount of the deduction against the income tax assessed against them in the same way.

- (4) If the amount to be deducted under subsection (3) is greater than the amount of the income tax assessed against the beneficiary, the Commissioner must pay to the beneficiary an amount equal to the difference between those 2 amounts.

Note: See Division 3A of Part IIB of, and section 105-65 in Schedule 1 to, the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay the entity. Division 3A of Part IIB allows the Commissioner to apply the amount owing as a credit against tax debts that the entity owes to the Commonwealth.

99 Certain trust income to be taxed as income of an individual

- (1) This section applies in relation to a trust estate in relation to a year of income only if section 99A does not apply in relation to that trust estate in relation to that year of income.
- (2) Where there is no part of the net income of a resident trust estate:
- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
 - (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

- (3) Where there is a part of the net income of a resident trust estate:
- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
 - (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

- (4) Where there is no part of the net income of a trust estate that is not a resident trust estate:
- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
 - (c) that is attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.

- (5) Where there is a part of the net income of a trust estate that is not a resident trust estate:
- (a) that is attributable to sources in Australia;
 - (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
 - (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.

99A Certain trust income to be taxed at special rate

- (2) This section does not apply in relation to a trust estate in relation to a year of income, being a trust estate:

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- (a) that resulted from:
 - (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;
- (b) that consists of the property of a person who has become bankrupt, being property that has vested in The Official Receiver in Bankruptcy, or in a registered trustee, under the *Bankruptcy Act 1966*;
- (c) that is administered under Part XI of the *Bankruptcy Act 1966*; or
- (d) that consists of property of a kind referred to in paragraph 102AG(2)(c);

if the Commissioner is of the opinion that it would be unreasonable that this section should apply in relation to that trust estate in relation to that year of income.

- (3) In forming an opinion for the purposes of subsection (2):
 - (a) the Commissioner shall have regard to the circumstances in which and the conditions, if any, upon which, at any time, property (including money) was acquired by or lent to the trust estate, income was derived by the trust estate, benefits were conferred on the trust estate or special rights or privileges were conferred on or attached to property of the trust estate, whether or not the rights or privileges have been exercised;
 - (b) if a person who has, at any time, directly or indirectly:
 - (i) transferred or lent any property (including money) to, or conferred any benefits on, the trust estate; or
 - (ii) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege, on or to property of the trust estate whether or not the right or privilege has been exercised;
- has not, at any time, directly or indirectly:

- (iii) transferred or lent any property (including money) to, or conferred any benefits on, another trust estate; or
 - (iv) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege, on or to property of another trust estate, whether or not the right or privilege has been exercised;
- the Commissioner shall have regard to that fact; and
- (c) the Commissioner shall have regard to such other matters, if any, as he thinks fit.
- (3A) For the purposes of the application of paragraph (3)(a) in relation to a trust estate of the kind referred to in paragraph (2)(a), a reference in that first-mentioned paragraph to the trust estate shall be read as including a reference to the person as a result of whose death the trust estate arose.
- (4) Where there is no part of the net income of a resident trust estate:
- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
 - (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;
- the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.
- Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.
- (4A) Where there is a part of the net income of a resident trust estate:
- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
 - (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the

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beneficiary was not a resident and is also attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

(4B) Where there is no part of the net income of a trust estate that is not a resident trust estate:

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that is attributable to sources out of Australia;

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

(4C) Where there is a part of the net income of a trust estate that is not a resident trust estate:

- (a) that is attributable to sources in Australia;
- (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
- (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98;

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

99B Receipt of trust income not previously subject to tax

- (1) Where, at any time during a year of income, an amount, being property of a trust estate, is paid to, or applied for the benefit of, a
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beneficiary of the trust estate who was a resident at any time during the year of income, the assessable income of the beneficiary of the year of income shall, subject to subsection (2), include that amount.

- (2) The amount that, but for this subsection, would be included in the assessable income of a beneficiary of a trust estate under subsection (1) by reason that an amount, being property of the trust estate, was paid to, or applied for the benefit of, the beneficiary shall be reduced by so much (if any) of the amount, as represents:
- (a) corpus of the trust estate (except to the extent to which it is attributable to amounts derived by the trust estate that, if they had been derived by a taxpayer being a resident, would have been included in the assessable income of that taxpayer of a year of income);
 - (b) an amount that, if it had been derived by a taxpayer being a resident, would not have been included in the assessable income of that taxpayer of a year of income;
 - (ba) an amount that is non-assessable non-exempt income of the beneficiary because of section 802-17 of the *Income Tax Assessment Act 1997*;
 - (c) an amount:
 - (i) that is or has been included in the assessable income of the beneficiary in pursuance of section 97; or
 - (ii) in respect of which the trustee of the trust estate is or has been assessed and liable to pay tax in pursuance of section 98, 99 or 99A; or
 - (iii) that is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and is liable to pay tax under subsection 98(4);
 - (d) an amount that is or has been included in the assessable income of any taxpayer (other than a company) under section 102AAZD; or
 - (e) if the beneficiary is a company—an amount that is or has been included in the assessable income of the beneficiary under section 102AAZD.
- (2A) An amount that is not included in a beneficiary's assessable income because of paragraph (2)(d) or (e) is not assessable income and is not exempt income.
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- (3) In paragraphs (2)(d) and (e):

company means a company other than a company in the capacity of a trustee.

99C Determining whether property is applied for benefit of beneficiary

- (1) In determining for the purposes of section 99B whether any amount has been applied for the benefit of a beneficiary of a trust estate, regard shall be had to all benefits that have accrued at any time to the beneficiary (whether or not the beneficiary had rights at law or in equity in or to those benefits) as a result of the derivation of, or in relation to, that amount, irrespective of the nature or form of the benefits.
- (2) Without limiting the generality of subsection (1), an amount shall be taken, for the purposes of section 99B, to have been applied for the benefit of a beneficiary if:
- (a) whether by re-investment, accumulation, capitalization or otherwise, and whether directly or indirectly, the amount has been so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the beneficiary;
 - (b) the derivation of the amount has operated to increase the value to the beneficiary of any property or rights of any kind held by or for the benefit of the beneficiary;
 - (c) the beneficiary has received or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) provided directly or indirectly out of that amount or out of property or money that was available for the purpose by reason of the derivation of the amount;
 - (d) the beneficiary has power, by means of the exercise by the beneficiary of any power of appointment or revocation or otherwise, to obtain, whether with or without the consent of any other person, the beneficial enjoyment of the amount; or
 - (e) the beneficiary has directly or indirectly assigned to another person his interest in the amount or is able, in any manner whatsoever, and whether directly or indirectly, to control the application of that interest.

99D Refund of tax to non-resident beneficiary

(1) Where:

- (a) a trustee of a trust estate has been assessed and was liable to pay tax in pursuance of subsection 99(2) or (3) or subsection 99A(4) or (4A) in respect of the net income or a part of the net income of the trust estate of a year of income (in this subsection referred to as the *relevant year of income*), being the year of income that commenced on 1 July 1978 or a subsequent year of income;
- (b) the amount (in this subsection referred to as the *relevant tax amount*) of the tax so assessed in respect of that net income or that part of that net income has been paid;
- (c) the trustee of the trust estate has, in accordance with the terms of the trust, paid an amount (in this subsection referred to as the *distributed amount*) of the income of the trust estate of the relevant year of income to a beneficiary of the trust estate;
- (d) before the expiration of 60 days after the date on which the payment was made, or within such further period as the Commissioner allows, the beneficiary, by writing signed by or on behalf of the beneficiary, makes an application to the Commissioner for a refund under this section in relation to the distributed amount; and
- (e) the beneficiary satisfies the Commissioner that the whole or a part (which whole or part, as the case may be, is in this subsection referred to as the *non-Australian distributed amount*) of the distributed amount:
 - (i) is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;
 - (ii) was taken into account in calculating the net income of the trust estate of the relevant year of income; and
 - (iii) is not income that, by the operation of section 100A, is deemed not to have been paid to or applied for the benefit of the beneficiary or to be income to which the beneficiary is not presently entitled;

the Commissioner shall, subject to subsection (2), refund to the beneficiary so much (if any) of the relevant tax amount as is attributable to the non-Australian distributed amount, reduced by so much of any refund or credit to which the trustee is or was

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entitled in respect of the relevant tax amount as is attributable to the non-Australian distributed amount.

- (2) The Commissioner may refuse to make a refund of tax in relation to an amount paid to a beneficiary of a trust estate if the Commissioner considers that the whole or a part of that amount was paid to the beneficiary by the trustee for the purpose or for purposes that included the purpose of enabling the beneficiary to become entitled to a refund of tax under this section in relation to that amount.

99E Later trust not taxed on income already taxed under subsection 98(4)

Sections 98, 99 and 99A do not apply to so much of the net income of a trust estate of a year of income as is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and is liable to pay tax under subsection 98(4).

99G Amounts covered by withholding requirement

Subsection 98(4) does not apply to so much of the net income of a trust estate as represents income to which a beneficiary is presently entitled and gives rise to an amount from which an entity is required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*.

99H Late payments

- (1) This section applies if:
 - (a) a beneficiary of a trust estate that is a managed investment trust is presently entitled to a share of the income of the trust estate of a year of income; and
 - (b) the beneficiary is a non-resident at the end of the year of income; and
 - (c) all or part of that share of the net income of the trust estate (the *late amount*) has not been paid to the beneficiary by the end of the period applicable under subsection 12-400(4) in Schedule 1 to the *Taxation Administration Act 1953*; and

Note: That subsection requires payments to be made before the end of 3 months after the end of the relevant year of income or within a longer period allowed by the Commissioner.

- (d) if the late amount had been paid to the beneficiary within that period, the payment would have been a fund payment made by the trustee of the managed investment trust.
- (2) This Division applies as if that portion of the beneficiary's income that represents the late amount were income to which no beneficiary was presently entitled.
- (3) In working out the net income of the trust estate for the year of income for the purposes of subsection (1), disregard these amounts (*excluded amounts*):
 - (a) a dividend (as defined in Division 11A of Part III) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953*;
 - (b) interest (as so defined) that is subject to, or exempted from, such a requirement;
 - (c) a royalty that is subject to, or exempted from, such a requirement;
 - (d) a capital gain or capital loss from a CGT event that happens in relation to a CGT asset that is not taxable Australian property;
 - (e) amounts that are not from a source in Australia;and disregard deductions relating to excluded amounts.

100 Beneficiary assessable in respect of certain trust income

- (1) The assessable income of any beneficiary who:
 - (a) is under a legal disability or is deemed to be presently entitled to any of the income of a trust estate by virtue of the operation of subsection 95A(2); and
 - (b) is a beneficiary in more than one trust estate or derives income from any other source;shall include:
 - (c) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was a resident; and

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- (d) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was not a resident and is also attributed to sources in Australia.

Note 1: If the net income of one or more of the trust estates includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

Note 2: An amount is not included in assessable income under this section to the extent that subsection 98A(3) already includes it: see subsection 98A(4).

(1A) If:

- (a) a beneficiary in a trust estate is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2); and
- (b) the beneficiary is not a beneficiary in any other trust estate and does not derive income from any other source; and
- (c) the beneficiary would receive a refund of tax offsets under Division 67 of the *Income Tax Assessment Act 1997* for a particular year of income if the following amounts were included in the assessable income of the beneficiary for that year:
 - (i) so much of the individual interest of the beneficiary in the net income of the trust estate for that year as is attributable to a period when the beneficiary was a resident;
 - (ii) so much of the individual interest of the beneficiary in the net income of the trust estate for that year as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia;

then those amounts are included in the assessable income of the beneficiary for that year.

(1B) If a beneficiary in a trust estate who is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2):

- (a) is a resident at the end of the year of income; and
- (b) is not a beneficiary in any other trust estate and does not derive income from any other source;

the assessable income of the beneficiary includes so much of the individual interest of the beneficiary in the net income of the trust estate as is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and is liable to pay tax under subsection 98(4).

Note 1: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

Note 2: A credit is available under section 98B for an appropriate part of the subsection 98(4) tax.

Note 3: An amount is not included in assessable income under this section to the extent that subsection 98A(3) already includes it: see subsection 98A(4).

(1C) If a beneficiary in a trust estate who is under a legal disability or is deemed to be presently entitled to any of the income of the trust estate by virtue of the operation of subsection 95A(2):

(a) is a resident at the end of the year of income; and

(b) is not a beneficiary in any other trust estate and does not derive income from any other source;

the assessable income of the beneficiary includes so much of the individual interest of the beneficiary in the net income of the trust estate as is represented by or reasonably attributable to a payment from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*.

Note: A credit is available under section 18-50 in Schedule 1 to the *Taxation Administration Act 1953* for an appropriate part of the amount withheld.

(2) There shall be deducted from the income tax assessed against a beneficiary to whom subsection (1) or (1A) applies the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

(3) However, an amount of tax is not to be deducted under subsection (2) from the income tax assessed against a beneficiary to the extent that the amount is deducted under section 98B from the income tax assessed against the beneficiary.

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100A Present entitlement arising from reimbursement agreement

(1) Where:

- (a) apart from this section, a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate; and
- (b) the present entitlement of the beneficiary to that share or to a part of that share of the income of the trust estate (which share or part, as the case may be, is in this subsection referred to as the *relevant trust income*) arose out of a reimbursement agreement or arose by reason of any act, transaction or circumstance that occurred in connection with, or as a result of, a reimbursement agreement;

the beneficiary shall, for the purposes of this Act, be deemed not to be, and never to have been, presently entitled to the relevant trust income.

(2) Where:

- (a) apart from this section, a beneficiary of a trust estate who is not under any legal disability would, by reason that income of the trust estate was paid to, or applied for the benefit of, the beneficiary, be deemed to be presently entitled to income of the trust estate; and
- (b) that income or a part of that income (which income or part, as the case may be, is in this subsection referred to as the *relevant trust income*) was paid to, or applied for the benefit of, the beneficiary as a result of a reimbursement agreement or as a result of any act, transaction or circumstance that occurred in connection with, or as a result of, a reimbursement agreement;

the relevant trust income shall, for the purposes of this Act, be deemed not to have been paid to, or applied for the benefit of, the beneficiary.

(3) In the preceding provisions of this section:

- (a) a reference to income of a trust estate to which a beneficiary is, apart from this section, presently entitled shall be read as not including a reference to:
 - (i) income of the trust estate to which the beneficiary is presently entitled in the capacity of a trustee of another trust estate, being income that was paid to, or applied

for the benefit of, the beneficiary before 6 March 1980;
or

- (ii) income that was paid to, or applied for the benefit of, the beneficiary before 12 June 1978; and
- (b) a reference to income of a trust estate that was paid to, or applied for the benefit of, a beneficiary of the trust estate shall be read as not including a reference to:
- (i) income of the trust estate that, before 6 March 1980, was paid to, or applied for the benefit of, the beneficiary in the capacity of a trustee of another trust estate; or
 - (ii) income of the trust estate that was paid to, or applied for the benefit of, the beneficiary before 12 June 1978.

(3A) Where:

- (a) apart from this section, a beneficiary (in this subsection referred to as the *trustee beneficiary*) of a trust estate is presently entitled to a share of the income of the trust estate in the capacity of a trustee of another trust estate (in this subsection referred to as the *interposed trust estate*);
- (b) apart from this subsection, the trustee beneficiary would, by virtue of subsection (1), be deemed not to be, and never to have been, presently entitled to that share or a part of that share of the income of the first-mentioned trust estate (which share or part is in this subsection referred to as the *relevant trust income*); and
- (c) apart from this section, a beneficiary of the interposed trust estate is or was, or beneficiaries of the interposed trust estate are or were, presently entitled, or deemed to be presently entitled, to any income of the interposed trust estate (in this subsection referred to as the *distributable trust income*) that is attributable to the relevant trust income;

subsection (1) does not apply, and shall be deemed never to have applied, in relation to the trustee beneficiary, in relation to any part of the relevant trust income to which the distributable trust income is attributable.

(3B) Where:

- (a) apart from this section, a beneficiary (in this subsection referred to as the *trustee beneficiary*) of a trust estate would, by reason that income of the trust estate was paid to, or applied for the benefit of, the trustee beneficiary, be deemed

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to be presently entitled to income of the trust estate in the capacity of a trustee of another trust estate (in this subsection referred to as the *interposed trust estate*);

(b) apart from this subsection, that income or a part of that income (which income or part is in this subsection referred to as the *relevant trust income*) would, by virtue of subsection (2), be deemed not to have been paid to, or applied for the benefit of, the trustee beneficiary; and

(c) apart from this section, a beneficiary of the interposed trust estate is or was, or beneficiaries of the interposed trust estate are or were, presently entitled, or deemed to be presently entitled, to any income of the interposed trust estate (in this subsection referred to as the *distributable trust income*) that is attributable to the relevant trust income;

subsection (2) does not apply, and shall be deemed never to have applied, in relation to the trustee beneficiary, in relation to any part of the relevant trust income to which the distributable trust income is attributable.

(3C) A reference in paragraph (3A)(c) or (3B)(c) to a beneficiary of a trust estate shall be read as not including a reference to a beneficiary who is under a legal disability.

(4) Where subsection (1) or (2) applies in relation to any income of a trust estate of a year of income:

(a) in the application of this Division in relation to the trust estate in relation to the year of income, section 99A shall be read as if subsections (2), (3) and (3A) of that section were omitted; and

(b) for the purposes of any application of section 99A in relation to the trust estate in relation to the year of income, the trust estate shall be deemed to be a resident trust estate.

(5) For the purposes of subsection (1), but without limiting the generality of that subsection, where:

(a) a reimbursement agreement was entered into at or after the time when a person became a beneficiary of a trust estate (whether the person became a beneficiary of the trust estate before or after the commencement of this section); and

(b) the amount (in this subsection referred to as the *increased amount*) of the share of the income of the trust estate to which the beneficiary is presently entitled exceeds the

amount (in this subsection referred to as the *original amount*) of the income of the trust estate to which the beneficiary would have been, or could reasonably be expected to have been, presently entitled if the reimbursement agreement had not been entered into or if an act, transaction or circumstance that occurred in connection with, or as a result of, the reimbursement agreement had not occurred;

the present entitlement of the beneficiary to so much of the increased amount as exceeds the original amount shall be taken to have arisen out of the reimbursement agreement.

- (6) For the purposes of subsection (2), but without limiting the generality of that subsection, where:
- (a) a reimbursement agreement was entered into at or after the time when a person became a beneficiary of a trust estate (whether the person became a beneficiary of the trust estate before or after the commencement of this section); and
 - (b) income of the trust estate was paid to, or applied for the benefit of, the beneficiary and the amount (in this subsection referred to as the *increased amount*) of that income exceeds the amount (in this subsection referred to as the *original amount*) that would have been, or could reasonably be expected to have been, paid to, or applied for the benefit of, the beneficiary if the reimbursement agreement had not been entered into or if an act, transaction or circumstance that occurred in connection with, or as a result of, the reimbursement agreement had not occurred;

so much of the increased amount as exceeds the original amount shall be taken to be income of the trust estate that was paid to, or applied for the benefit of, the beneficiary as a result of the reimbursement agreement.

- (6A) Where:
- (a) subsection (1) or (2) applies, or would but for subsection (3A) or (3B) apply, in relation to a beneficiary of a trust estate in relation to a reimbursement agreement in relation to any income of the trust estate; and
 - (b) as part of, under or in connection with the reimbursement agreement, the beneficiary incurred or incurs a loss or outgoing after 5 March 1980 in respect of which a deduction

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has been allowed or would, but for this subsection, be allowable;

then, notwithstanding any other provision of this Act, a deduction shall be deemed not to have been, or not to be, allowable, as the case may be, in respect of that loss or outgoing.

- (6B) Where subsection (6A) deems a deduction not to have been, or not to be, allowable in respect of a loss or outgoing incurred by a taxpayer in the acquisition of property that, for the purposes of the application of this Act and the *Income Tax Assessment Act 1997* in relation to the taxpayer is or was trading stock, then, notwithstanding any other provision of this Act or that Act, the cost or cost price of that property, for the purposes of the application of Subdivision B of Division 2 of Part III of this Act or Division 70 (Trading stock) or 385 (Primary production) of the *Income Tax Assessment Act 1997* in relation to that property in relation to the taxpayer, shall be taken to be, and at all times to have been, nil.
- (7) Subject to subsection (8), a reference in this section, in relation to a beneficiary of a trust estate, to a reimbursement agreement shall be read as a reference to an agreement, whether entered into before or after the commencement of this section, that provides for the payment of money or the transfer of property to, or the provision of services or other benefits for, a person or persons other than the beneficiary or the beneficiary and another person or other persons.
- (8) A reference in subsection (7) to an agreement shall be read as not including a reference to an agreement that was not entered into for the purpose, or for purposes that included the purpose, of securing that a person who, if the agreement had not been entered into, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the agreement had not been entered into.
- (9) For the purposes of subsection (8), an agreement shall be taken to have been entered into for a particular purpose, or for purposes that included a particular purpose, if any of the parties to the agreement entered into the agreement for that purpose, or for purposes that included that purpose, as the case may be.

- (10) A reference in subsection (7) to the payment of money to a person or persons shall be read as including a reference to the payment of money to a person or persons by way of loan.
- (11) A reference in this section to a person shall be read as including a reference to a person in the capacity of a trustee.
- (12) For the purposes of this section, an agreement that provides for a person to release, abandon, fail to demand payment of or postpone payment of, a debt owed by another person shall be deemed to be an agreement that provides for the payment of money to that other person.
- (13) In this section:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, but does not include an agreement, arrangement or understanding entered into in the course of ordinary family or commercial dealing.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of the definition of **agreement**.

property includes a chose in action and also includes an estate, interest, right or power, whether at law or in equity, in or over property.

101 Discretionary trusts

For the purposes of this Act, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

101A Income of deceased received after death

- (1) Where in the year of income, the trustee of the estate of a deceased person receives any amount which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the

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assessable income of that year of the trust estate and shall be deemed to be income to which no beneficiary is presently entitled.

- (2) Subsection (1) does not apply in relation to an amount received by the trustee of the estate of a deceased person to the extent to which, if it had been received by the deceased person during his lifetime, it would have been included in the assessable income of that person by virtue of section 83-10 or 83-80 of the *Income Tax Assessment Act 1997*.
- (3) To avoid doubt, if in the year of income an amount is included in the assessable income of a deceased taxpayer under Division 82 or 302 of the *Income Tax Assessment Act 1997* in respect of a payment received by the trustee of the estate of the deceased taxpayer, that amount shall be included in the assessable income of that year of income of the trust estate.
- (4) This section does not apply in relation to any amount received by the trustee of the estate of a deceased person if the amount is a farm management deposit (within the meaning of Schedule 2G), of which the deceased person was the owner, that has become repayable.

102 Revocable trusts

- (1) Where a person has created a trust in respect of any income or property (including money) and:
 - (a) he has power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in the income derived by the trustee during the year of income, or the property producing that income, or any part of that income or property; or
 - (b) income is, under that trust, in the year of income, payable to or accumulated for, or applicable for the benefit of a child or children of that person who is or are under the age of 18 years;the Commissioner may assess the trustee to pay income tax, under this section, and the trustee shall be liable to pay the tax so assessed.
- (2) The amount of the tax payable in pursuance of this section shall be the amount by which the tax actually payable on his own taxable income by the person who created the trust is less than the tax

which would have been payable by him if he had received, in addition to any other income derived by him, so much of the net income of the trust estate as:

- (a) is attributable to the property in which he has power to acquire the beneficial interest;
 - (b) represents the income, or the part of the income, in which he has power to acquire the beneficial interest; or
 - (c) is payable to or accumulated for, or applicable for the benefit of, a child or children of that person who is or are under the age of 18 years.
- (2A) Where any property the subject of a trust has been converted into other property, this section shall apply in the same way as if the trust had originally been created in respect of that other property.
- (2B) In the application of subsection (2) in determining the amount of tax that is payable by a trustee of a trust estate in pursuance of this section, the reference in that subsection to the net income of the trust estate shall be read as a reference to that net income reduced by:
- (a) so much (if any) of that net income as is attributable to a period when the person who created the trust was not a resident and is also attributable to sources out of Australia; and
 - (b) so much (if any) of that net income as is not covered by paragraph (a) and represents an amount included in the assessable income of any taxpayer under section 102AAZD.
- (3) Where this section is applied to the assessment of the income of a trust estate or part thereof derived in the year of income, no beneficiary shall be assessed in his individual capacity in respect of his individual interest in the income or part to which this section has been so applied, and the trustee shall not be assessed in respect of that income or part otherwise than under this section.

**Division 6AAA—Special provisions relating to
non-resident trust estates etc.**

Subdivision A—Preliminary

102AAA Object of Division

The object of this Division is to set out rules relating to the following:

- (a) the payment of interest on distributions from certain non-resident trust estates (Subdivision B);
- (b) the winding-up of certain non-resident trust estates in existence on 12 April 1989 (Subdivision C);
- (c) an accruals system of taxation of certain non-resident trust estates (Subdivision D).

102AAB Interpretation

In this Division, unless the contrary intention appears:

1 July 1990 net worth, in relation to a trust estate, means the market value, as at the beginning of 1 July 1990, of the assets of the trust estate, reduced by the liabilities of the trust estate as at the beginning of that day.

accounts has the same meaning as in Part X.

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 102AAK(1), (2), (5), (6), (8), (10) or (11).

arm's length amount, in relation to an actual transfer of property or services to a trust estate, means the amount that the trustee could reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

associate has the same meaning as in Part X.

attributable income, in relation to a trust estate, has the meaning given by section 102AAU.

attributable taxpayer has the meaning given by section 102AAT.

attribution account payment has the same meaning as in Part X.

attribution debit has the same meaning as in Part X.

Australian entity has the same meaning as in Part X.

Australian trust has the same meaning as in Part X.

base interest rate for a day has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

CFC has the same meaning as in Part X.

controlled foreign trust has the same meaning as in Part X.

corporate unit trust, in relation to a year of income, means a unit trust that is a corporate unit trust in relation to the year of income for the purposes of Division 6B.

de facto relationship means:

- (a) a relationship between 2 persons (whether of the same sex or different sexes) that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b) a relationship between 2 persons (whether of the same sex or different sexes) who, although not legally married to each other, live with each other on a genuine domestic basis in a relationship as a couple.

depreciation provision means:

- (a) any provision of Division 40 of the *Income Tax Assessment Act 1997* (other than Subdivision 40-E); or
- (b) any provision of Division 43 of that Act.

designated concession income has the same meaning as in Part X.

discretionary trust estate means a trust estate where:

- (a) both of the following conditions are satisfied:

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- (i) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion;
- (ii) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (A) the identities of those who may benefit under the trust;
 - (B) how beneficiaries are to benefit, as between themselves, under the trust; or
- (b) one or more of the beneficiaries under the trust have a contingent or defeasible interest in some or all of the corpus or income of the trust estate; or
- (c) the trustee of another trust estate, being a trust estate where both of the conditions in paragraph (a) are satisfied, benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the first-mentioned trust estate.

eligible designated concession income has the same meaning as in Part X.

entity means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in the capacity of trustee;
- (d) any other person.

exempt income, in relation to a trust estate, means the exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

IP time means 7.30 p.m., by standard time in the Australian Capital Territory, on 12 April 1989.

listed country has the same meaning as in Part X.

listed country trust estate has the meaning given by section 102AAE.

net income, in relation to a trust estate, in relation to a year of income, means:

- (a) if the trust estate is a corporate unit trust in relation to the year of income—the net income (within the meaning of Division 6B) of the corporate unit trust of the year of income; or
- (b) if the trust estate is a public trading trust in relation to the year of income—the net income (within the meaning of Division 6C) of the public trading trust of the year of income; or
- (c) in any other case—the net income (within the meaning of Division 6) of the trust estate.

non-attributable year of income, in relation to a trust estate, means a non-resident year of income of the trust estate where no amount calculated by reference to the attributable income of the trust estate of that year of income is included in the assessable income of any taxpayer under subsection 102AAZD(1).

non-discretionary trust estate means a trust estate other than a discretionary trust estate.

non-resident family trust has the meaning given by section 102AAH.

non-resident trust estate (except in section 102AAA), in relation to a year of income, means a trust estate that is not a resident trust estate in relation to the year of income.

non-resident year of income, in relation to a trust estate, means a year of income in relation to which the trust estate is a non-resident trust estate.

profits includes gains, whether of an income or capital nature.

property includes money.

public trading trust, in relation to a year of income, means a unit trust that is a public trading trust in relation to the year of income for the purposes of Division 6C.

public unit trust has the meaning given by section 102AAF.

resident trust estate, in relation to a year of income, means:

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- (a) a resident trust estate in relation to the year of income within the meaning of Division 6; or
- (b) a unit trust that is a corporate unit trust, or a public trading trust, in relation to the year of income; or
- (c) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the year of income.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a benefit, right, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

subject to tax has the same meaning as in Part X.

tax accounting period has the same meaning as in Part X.

tax law, in relation to a listed country or an unlisted country, has the same meaning as in Part X.

tax offset has the same meaning as in the *Income Tax Assessment Act 1997*.

transfer:

- (a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
- (b) in relation to services—includes allow, confer, give, grant, perform or provide.

trust estate, in relation to a transfer of property or services, means the trust estate or, as the case requires, the trustee of the trust estate.

underlying transfer, in relation to a transfer of property or services to a trust estate, means:

- (a) if that transfer was an actual transfer—the actual transfer; or
- (b) if that transfer was taken to have been made because of subsection 102AAK(1)—the actual transfer referred to in that subsection; or
- (c) if that transfer was taken to have been made because of subsection 102AAK(2)—the actual transfer referred to in paragraph 102AAK(2)(d); or
- (d) if that transfer was taken to have been made because of subsection 102AAK(5)—the actual transfer referred to in paragraph 102AAK(5)(b); or
- (e) if that transfer was taken to have been made because of the application of subsection 102AAK(6) or (8) to an actual transfer—the actual transfer; or
- (f) if that transfer was taken to have been made because of the application of subsection 102AAK(6) or (8) to a transfer that was taken to have been made because of subsection 102AAK(1)—the actual transfer referred to in subsection 102AAK(1); or
- (g) if that transfer was taken to have been made because of the application of subsection 102AAK(6) or (8) to a transfer that was taken to have been made because of subsection 102AAK(5)—the actual transfer referred to in paragraph 102AAK(5)(b); or
- (h) if that transfer was taken to have been made because of subsection 102AAK(10)—the actual transfer referred to in paragraph 102AAK(10)(b); or

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- (j) if that transfer was taken to have been made because of one or more applications of subsection 102AAK(11) to an actual transfer—the actual transfer; or
- (k) if that transfer was taken to have been made because of one or more applications of subsection 102AAK(11) to a transfer (in this paragraph called the *deemed transfer*) that was taken to have been made because of subsection 102AAK(1), (2), (5), (6), (8) or (10)—the actual transfer that, under a preceding paragraph of this definition, is the underlying transfer in relation to the deemed transfer.

underlying transferor, in relation to a transfer of property or services to a trust estate, means the entity who made the underlying transfer concerned.

unlisted country has the same meaning as in Part X.

weighted statutory interest rate, in relation to a year of income, means:

- (a) if there is only one base interest rate in relation to the year of income—that rate; or
- (b) if there are 2 or more base interest rates in relation to the year of income—the weighted average of the base rates for the year of income.

102AAC Each listed country and unlisted country to be treated as a separate foreign country

For the purposes of the application of section 6AB to this Division, each listed country and each unlisted country is to be treated as a separate foreign country.

102AAD Subject to tax—application of subsection 324(2)

Subsection 324(2) applies in relation to this Division in a corresponding way to the way in which it applies in relation to Part X.

102AAE Listed country trust estates

- (1) For the purposes of this Division, a trust estate is taken to be a listed country trust estate in relation to a year of income if, and

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only if, either of the following paragraphs applies to each item of income or profit derived by the trust estate in the year of income:

- (a) the income or profit is either:
 - (i) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (ii) designated concession income in relation to any listed country;
 - (b) both of the following conditions are satisfied:
 - (i) a part of the income or profit is either:
 - (A) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (B) designated concession income in relation to any listed country;
 - (ii) the remaining part, or each of the remaining parts, of the income or profit:
 - (A) is subject to tax in another listed country or in different listed countries, as the case may be, in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (B) is designated concession income in relation to any listed country.
- (2) For the purposes of the application of subparagraph (1)(b)(ii) to a trust estate, if a particular part of an item of income or profit (which part is in this subsection called the *item part*) derived by the trust estate is included, or would apart from Subdivision 50-A or section 51-5, 51-10 or 51-30 of the *Income Tax Assessment Act 1997* be included, in the assessable income of the trust estate of a year of income (in this subsection called the *trust's year of income*) and one of the following paragraphs applies:
- (a) both of the following conditions are satisfied:
 - (i) the trustee of the trust estate is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of the trust estate of the trust's year of income;

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- (ii) the whole or a part of the part or share of the net income is attributable to the item part;
- (b) all of the following conditions are satisfied:
 - (i) an amount is included in the assessable income of another taxpayer of the trust's year of income or the next following year of income (which taxpayer is in this subsection called the *actual taxpayer*) under subsection 92(1) or section 97, 98A or 100;
 - (ii) the actual taxpayer is:
 - (A) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the year of income concerned; or
 - (C) the trustee of a corporate unit trust in relation to the year of income concerned; or
 - (D) the trustee of a public trading trust in relation to the year of income concerned; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of a trust estate;
 - (iii) if sub-subparagraph (ii)(A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the item part;
 - (iv) if sub-subparagraph (ii)(E) applies—the whole or a part of the part or share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the item part;
- (c) both of the following conditions are satisfied:
 - (i) trustee beneficiary non-disclosure tax is payable under Division 6D on the whole or part (the *net income amount*) of a share of the net income of the trust estate of the trust's year of income;

- (ii) the whole or part of the net income amount is attributable to the item part;
the item part is to be treated as if it were subject to tax in a listed country in a tax accounting period ending before the end of the trust's year of income.
- (3) For the purposes of this section, where a part of a particular item of income or profits derived by an entity would, if it were a separate item of income or profits, be taken to be subject to tax in a listed country in a particular tax accounting period, that part is taken to be subject to tax in that listed country in that tax accounting period.

102AAF Public unit trusts

- (1) Subject to this section, for the purposes of this Division, a unit trust is a public unit trust at all times during a year of income if either of the following conditions are satisfied:
 - (a) at any time during the year of income:
 - (i) any of the units in the unit trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere; or
 - (ii) any of the units in the unit trust were offered to the public;
 - (b) at all times during the year of income, the units in the unit trust were held by not fewer than 50 persons.
- (2) In determining whether a unit trust is a public unit trust at all times during a year of income for the purposes of this Division, subsections 102G(2) to (8) (inclusive) and (10) apply:
 - (a) as if a reference in those subsections to Division 6B were a reference to this Division; and
 - (b) as if a reference in those subsections to subsection 102G(1) were a reference to subsection (1) of this section; and
 - (c) as if a reference in those subsections to a public unit trust in relation to a year of income were a reference to a public unit trust at all times during a year of income.
- (3) In determining whether a unit trust (in this subsection called the *first unit trust*) is a public unit trust at all times during a year of income for the purposes of this Division, the following provisions have effect:

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- (a) the following entities are taken to be one person:
 - (i) an entity, whether or not it holds units in the first unit trust; and
 - (ii) the entity or entities who are the associate or associates of the entity;
- (b) where any units in the first unit trust are held by the trustee of another trust that, apart from this paragraph, is a public unit trust at all times during the year of income—a person who has a beneficial interest in property of that other trust that consists of those units is taken to hold those units;
- (c) where any units in the first unit trust are held by the trustee of another trust that:
 - (i) apart from paragraph (b); or
 - (ii) by virtue of the application of paragraph (b);is a public unit trust at all times during the year of income—a person who has a beneficial interest in the property of that other trust that consists of those units (whether or not that beneficial interest is taken to be held by virtue of the application of this paragraph) is taken to hold those units.

102AAG When entity is in a position to control a trust estate

- (1) For the purposes of this Division, an entity is taken to be in a position to control a trust estate if, and only if:
 - (a) a group in relation to the entity had the power by means of the exercise by the group of any power of appointment or revocation or otherwise, to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust estate; or
 - (b) a group in relation to the entity was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust estate; or
 - (c) a group in relation to the entity was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (a) or (b); or
 - (d) a trustee of the trust estate was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or

- (e) a group in relation to the entity was able to remove or appoint the trustee, or any of the trustees, of the trust estate.
- (2) In subsection (1), a reference to a group in relation to an entity is a reference to:
 - (a) the entity acting alone; or
 - (b) an associate of the entity acting alone; or
 - (c) the entity and one or more associates of the entity acting together; or
 - (d) 2 or more associates of the entity acting together.

102AAH Non-resident family trusts

- (1) Subject to subsections (4) and (5), for the purposes of this Division, a trust estate is a non-resident family trust in relation to a natural person at a particular time if, and only if, at that time:
 - (a) the trust estate is either:
 - (i) a post-marital or post-relationship family trust in relation to the natural person; or
 - (ii) a family relief trust in relation to the natural person; and
 - (b) the trust is constituted by:
 - (i) a deed of trust or other instrument; or
 - (ii) an order or declaration of a court.
- (2) For the purposes of this section, a trust estate is a post-marital or post-relationship family trust in relation to a natural person at a particular time if:
 - (a) either of the following conditions is satisfied:
 - (i) the trust was created pursuant to:
 - (A) a decree or order of dissolution or annulment of marriage, being a dissolution or annulment that, because of the *Family Law Act 1975*, has effect, or continues to have effect in Australia or is recognised as valid in Australia; or
 - (B) a decree or order of judicial separation or a similar decree or order;
 - (ii) the trust was created in consequence of the break-down of a de facto relationship; and
 - (b) at that time, the only persons who benefit, or are capable (whether by the exercise of a power of appointment or

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otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the *primary potential beneficiaries*) are natural persons who:

- (i) are non-residents at that time; and
 - (ii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a child of the natural person;
 - (C) a child of the former spouse of the natural person, being a child who was such a child at a time when the former spouse was the spouse of the natural person;
 - (D) a child of the spouse of the natural person.
- (3) For the purposes of this section, a trust estate is a family relief trust in relation to a natural person at a particular time (in this subsection called the *test time*) if:
- (a) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the *primary potential beneficiaries*) are natural persons who:
 - (i) are identified by name in the trust deed or instrument, or in the court order or declaration, constituting the trust; and
 - (ii) are non-residents at that time; and
 - (iii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a parent of the natural person or of the natural person's spouse or former spouse;
 - (C) a child of the natural person or of the natural person's spouse or former spouse;
 - (D) a grandparent of the natural person;
 - (E) a grandchild of the natural person;
 - (F) a brother or sister of the natural person or of the natural person's spouse or former spouse;
 - (G) a child of a brother or sister mentioned in sub-subparagraph (F); and

- (b) the trust was established, and is operated, for the relief of persons who are in necessitous circumstances; and
- (c) any of the following conditions is satisfied:
 - (i) at the test time, the assets of the trust are not excessive having regard to the requirements, or likely requirements, of the primary potential beneficiaries;
 - (ii) no transfers of property or services to the trust estate were made during the period (in this paragraph called the *test period*) commencing at the IP time and ending at the test time;
 - (iii) immediately after each transfer of property or services to the trust estate made during the test period, the assets of the trust were not excessive having regard to the requirements, or likely requirements, of the beneficiaries at the time of the transfer.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining relationships for the purposes of subparagraph (3)(a)(iii).

- (4) Subsection (1) does not prevent a trust estate from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of a particular primary potential beneficiary at that time, one or more natural persons (which persons are in subsection (5) called the *secondary potential beneficiaries*) who:
 - (a) are non-residents at that time; and
 - (b) are children of the primary potential beneficiary;would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.
- (5) Subsections (1) and (4) do not prevent a trust estate from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of all of the primary potential beneficiaries and all of the secondary potential beneficiaries at that time, there are one or more funds, authorities or institutions in Australia covered by an item in any of the tables in Subdivision 30-B of the *Income Tax Assessment Act 1997*, or item 2 of the table in section 30-15 of that Act, that would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

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- (6) For the purposes of this section, if, at a particular time, an entity holds an interest in, or right to benefit under, a trust that is dependent on the death of one or more natural persons, then, the entity is taken to be an entity who, in the event of the death of that natural person or those natural persons immediately after that time, would benefit under the trust.
- (7) A reference in this section to a natural person does not include a reference to a natural person in the capacity of a trustee.

102AAJ Transfer of property or services

- (1) A reference in this Division to the transfer of property or services to a trust estate includes a reference to the transfer of such property or services by way of the creation of the trust estate.
- (2) For the purposes of this Division, where an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.
- (3) For the purposes of this Division, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.
- (4) Without limiting the generality of subsection (3), a reference in that subsection to the application of property or services for the benefit of an entity includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.
- (5) Unless the contrary intention appears, a reference in this Division to a transfer of property or services includes a reference to a transfer made before the commencement of this Division.
- (6) A reference in this Division to a transfer of property or services made before the IP time includes a reference to a transfer made at the IP time.

102AAK Deemed transfers of property or services to trust estate

- (1) For the purposes of this Division, where an entity (in this subsection called the *prime entity*) causes another entity to actually
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transfer property or services to a trust estate, the prime entity is taken to have transferred the property or services (instead of the other entity).

- (2) For the purposes of this Division, where:
- (a) the trustee of a trust estate issues units in the trust to an entity (in this subsection called the *first entity*) in the first entity's capacity as a manager, underwriter or dealer in relation to the marketing or placement of the units; and
 - (b) in the course of the marketing or placement of the units, the units are disposed of by the first entity to another entity (in this subsection called the *second entity*); and
 - (c) at a particular time (in this subsection called the *second entity's transfer time*), the second entity transfers property or services to the first entity as consideration for the acquisition of the units; and
 - (d) the first entity has actually transferred, or actually transfers, property or services (in this subsection called the *original property or services*) to the trust estate for the sole purpose of acquiring the units;

the second entity is taken to have transferred the original property or services (instead of the first entity) at the second entity's transfer time.

- (3) A reference in subsection (2) to a unit in a trust estate is a reference to an interest (however described) in any of the income or property of the trust estate.
- (4) Subsections (1) and (2) do not limit the operation of subsection (5).
- (5) Where, under a scheme:
- (a) an entity (in this subsection called the *scheme entity*) actually transfers property or services to another entity; and
 - (b) property or services are actually transferred to a trust estate at a particular time otherwise than by the scheme entity;

the Commissioner may, for the purposes of this Division, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the trust estate (instead of by any other entity) at that time to such extent as the Commissioner considers reasonable.

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- (6) For the purposes of this Division, if (apart from subsections (8), (10) and (11)) an entity, being a partnership, transfers property or services to a trust estate at a particular time:
- (a) each partner in the partnership is taken to have transferred a part of the property or services to the trust estate at that time; and
 - (b) the market value of the part transferred by a particular partner is calculated using the formula:
Market value \times Partner's interest
where:

Market value means the market value, immediately before the transfer, of the property or services transferred by the partnership.

Partner's interest means:
 - (i) the partner's percentage interest in the profits of the partnership as at that time; or
 - (ii) the partner's percentage interest in the property of the partnership as at that time;or, if they are different, whichever is the higher.
- (7) Nothing in paragraph (6)(a) affects the application of this Division to the transfer made by the partnership concerned.
- (8) For the purposes of this Division, if:
- (a) apart from this subsection, subsections (6), (10) and (11), an entity being the trustee of a trust estate (in this subsection called the *transferor trust estate*) transfers property or services (in this subsection called the *transferred property or services*) to another trust estate (in this subsection called the *transferee trust estate*) at a particular time (in this subsection called the *transfer time*); and
 - (b) the transferor trust estate was an Australian trust, or a controlled foreign trust, at the transfer time; and
 - (c) the transferor trust estate was a discretionary trust estate at the transfer time; and
 - (d) apart from this subsection, subsections (6), (10) and (11), one or more other entities transferred property or services to the transferor trust estate at or before the transfer time;

each of those other entities is taken to have transferred the transferred property or services to the transferee trust estate at the transfer time.

- (9) Nothing in subsection (8) affects the application of this Division to the transfer mentioned in paragraph (8)(a).
- (10) For the purposes of this Division, where:
- (a) any of the following subparagraphs applies:
 - (i) any of the following events occurs in relation to a company (which company is in this subsection called the *transferor*):
 - (A) the company passes a resolution for its winding-up;
 - (B) an order is made for the winding-up of the company;
 - (C) any similar event;
 - (ii) a partnership (in this subsection also called the *transferor*) ceases to exist for the purposes of this Act;
 - (iii) either of the following sub-subparagraphs applies in relation to the trustee of a trust estate (in this subsection also called the *transferor*):
 - (A) the trust estate commences to be wound-up;
 - (B) the trust estate ceases to exist for the purposes of this Act; and
 - (b) an actual transfer of property or services is made to a trust estate (in this subsection called the *transferee*) as a consequence of the transferor being wound-up or ceasing to exist;

the transferor is taken to have transferred to the transferee the property or services concerned.

- (11) For the purposes of this Division, where:
- (a) the following subparagraphs apply to an entity (in this subsection called the *defunct entity*):
 - (i) the defunct entity is a company, a partnership or the trustee of a trust estate;
 - (ii) the defunct entity transferred property or services to a trust estate (including a transfer that was taken to have been made because of another application or other applications of this subsection) at a particular time;

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- (iii) if the defunct entity is a company—any of the following events occurs:
 - (A) the company passes a resolution for its winding-up;
 - (B) an order is made for the winding-up of the company;
 - (C) any similar event;
- (iv) if the defunct entity is a partnership—the partnership ceases to exist for the purposes of this Act;
- (v) if the defunct entity is a trustee of a trust estate—either of the following sub-subparagraphs applies:
 - (A) the trust estate commences to be wound-up;
 - (B) the trust estate ceases to exist for the purposes of this Act; and

- (b) the Commissioner is satisfied that another entity (in this subsection called the *successor entity*) has benefited or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting (either directly or indirectly through one or more interposed companies, partnerships or trusts) by, or as a result of:
 - (i) a transfer of property or services made by the defunct entity; or
 - (ii) a transfer of property or services made as a consequence of the defunct entity being wound-up or ceasing to exist; and
- (c) the Commissioner is of the opinion that it is appropriate to apply this subsection to the successor entity;

the assessable income of the successor entity of the year of income in which the event, or the earliest event, mentioned in subparagraph (a)(iii), (iv) or (v) occurred and of each subsequent year of income is to be determined as if the successor entity had transferred to the trust estate mentioned in subparagraph (a)(ii), at the time mentioned in that subparagraph:

- (d) the whole of the property or services mentioned in that subparagraph; or
- (e) if the Commissioner thinks it appropriate—a part of the property or services referred to in that subparagraph.

102AAL Division not to apply to transfers by trustees of deceased estates

A reference in this Division to a transfer of property or services to a trust estate does not include a reference to a transfer made by the trustee of the estate of a deceased person under:

- (a) the terms of the deceased person's will or codicil; or
- (b) an order of a court that varied or modified the provisions of the deceased person's will or codicil;

unless:

- (c) the transfer was made in or as the result of the exercise (by the trustee or any other person) of a power of appointment or any other discretion; or
- (d) under subsection 102AAK(1), the property or services are taken to have been transferred by an entity other than the trustee, instead of by the trustee; or
- (e) under subsection 102AAK(5), the Commissioner treats the property or services as having been (to any extent) transferred by an entity other than the trustee, instead of by the trustee.

Subdivision B—Payment of interest by taxpayer on distributions from certain non-resident trust estates

102AAM Payment of interest by taxpayer on distributions from certain non-resident trust estates

- (1) For the purposes of this section, if:
 - (a) an amount is included in the assessable income of a taxpayer of a year of income (which year of income is in this section called the *current year of income*), being the year of income commencing on 1 July 1990 or a subsequent year of income, under section 99B in relation to a trust estate; and
 - (b) the whole or a part of the amount so included in the taxpayer's assessable income (which whole or part is in this section called the *distributed amount*) is attributable to:
 - (i) if the trust estate was a listed country trust estate in relation to a particular non-resident year of income of the trust estate (in this section called the *non-resident trust's year of income*)—so much of the income and

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profits of the trust estate of the non-resident trust's year of income as represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income; or

- (ii) if the trust estate was not a listed country trust estate in relation to a particular non-resident year of income of the trust estate (in this section also called the *non-resident trust's year of income*)—so much of the income and profits of the trust estate of the non-resident trust's year of income as has not been subject to tax in any listed country in a tax accounting period:
 - (A) ending before the end of the non-resident trust's year of income; or
 - (B) commencing during the non-resident trust's year of income;

then:

- (c) the distributed amount is the distributed amount of the non-resident trust's year of income; and
 - (d) the taxpayer is the original taxpayer in relation to the distributed amount of the non-resident trust's year of income.
- (1A) For the purposes of subsection (1), unless the contrary is established by the taxpayer:
- (a) a distributed amount in relation to a listed country trust estate in relation to a non-resident trust's year of income is taken to be wholly attributable to income and profits of the trust estate of that year of income that represent eligible designated concession income in relation to a listed country; and
 - (b) a distributed amount in relation to a trust estate that was not a listed country trust estate in relation to a non-resident trust's year of income is taken to be wholly attributable to income and profits of the trust estate of that year of income that have not been subject to tax in any listed country in a tax accounting period.
- (1B) This section does not apply to a distributed amount that is attributable to income or profits of the estate of a deceased person if the amount was paid to, or applied for the benefit of, the taxpayer within 3 years after the death of that person.
- (1C) This section does not apply to a distributed amount that was included in the assessable income of a taxpayer of a year of income
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under section 99B in relation to a trust estate if, at all times during the year of income, the trust:

- (a) was a public unit trust; and
 - (b) was not a controlled foreign trust.
- (2) Subject to this section, if the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is:
- (a) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (b) the trustee of a corporate unit trust in relation to the current year of income; or
 - (c) the trustee of a public trading trust in relation to the current year of income; or
 - (d) the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the current year of income;

the taxpayer is liable to pay interest to the Commissioner in respect of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$[\text{Distributed amount} \times \text{Applicable rate of tax}] - \text{FITO}$

where:

Distributed amount means the distributed amount of the non-resident trust's year of income.

Applicable rate of tax has the meaning given by subsection (10).

FITO (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the distributed amount of the non-resident trust's year of income.

- (3) Subject to this section, if:
- (a) the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of the trust estate; and

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- (b) the whole or a part (which whole or part is in this subsection called the *taxpayer's portion of the distributed amount of the non-resident trust's year of income*) of the part or share of the net income is attributable to the distributed amount of the non-resident trust's year of income;

the taxpayer is liable to pay interest to the Commissioner in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$\left[\begin{array}{l} \text{Taxpayer's portion of} \\ \text{the distributed amount} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{rate of tax} \end{array} \right] - \text{FITO}$$

where:

Taxpayer's portion of the distributed amount means the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

Applicable rate of tax has the meaning given by subsection (10).

FITO (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

- (4) Subject to this section, if:
- (a) the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is the trustee of a trust estate or a partnership; and
 - (b) the following conditions are satisfied in relation to another taxpayer (in this subsection called the *actual taxpayer*):
 - (i) an amount is included in the assessable income of the actual taxpayer of a year of income under subsection 92(1) or section 97, 98A or 100;
 - (ii) the actual taxpayer is:
 - (A) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a

- pooled superannuation trust in relation to the year of income; or
- (C) the trustee of a corporate unit trust in relation to the year of income; or
 - (D) the trustee of a public trading trust in relation to the year of income; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of a trust estate;
- (iii) if sub-subparagraph (ii)(A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the *taxpayer's portion of the distributed amount of the non-resident trust's year of income*) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the distributed amount of the non-resident trust's year of income;
- (iv) if sub-subparagraph (ii)(E) applies—the whole or a part (which whole or part is in this subsection also called the *taxpayer's portion of the distributed amount of the non-resident trust's year of income*) of the part or share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the distributed amount of the non-resident trust's year of income;

the actual taxpayer is liable to pay interest to the Commissioner in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$\left[\begin{array}{l} \text{Taxpayer's portion of} \\ \text{the distributed amount} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{rate of tax} \end{array} \right] - \text{FITO}$$

where:

Taxpayer's portion of the distributed amount means the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

Applicable rate of tax has the meaning given by subsection (10).

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FITO (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

(4A) If:

- (a) paragraph 102UK(2)(b) or 102UM(2)(b) has the effect that the whole or a part of a share of the net income of a trust estate (the *first trust estate*) is not included in the assessable income of the trustee of another trust estate (the *second trust estate*); and
- (b) the whole or the part of the share (which whole or part is in this subsection called the *taxpayer's portion of the distributed amount of the non-resident trust's year of income*) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the distributed amount of the non-resident trust's year of income; and
- (c) if paragraph 102UK(2)(b) or 102UM(2)(b) were ignored, the second trust estate would be an interposed trust mentioned in applying subparagraph (4)(b)(iii) or (iv) of this section; and
- (d) this subsection does not also apply to the trustee of a trust interposed between the first trust estate and the non-resident trust;

the trustee of the first trust estate is liable to pay interest to the Commissioner in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$\left(\begin{array}{l} \text{Taxpayer's portion of} \\ \text{the distributed amount} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{rate of tax} \end{array} \right) - \text{FITO}$$

where:

applicable rate of tax has the meaning given by subsection (10).

FITO (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the trustee of the first trust would be entitled, in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, if the taxpayer's portion of the distributed amount of the non-resident trust's income were an amount in

respect of which the trustee were liable to be assessed and to pay tax under section 99A.

taxpayer's portion of the distributed amount means the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

- (5) Interest payable by a taxpayer under this section is to be calculated:
- (a) in respect of the period commencing at whichever of the following times is the latest:
 - (i) the beginning of the first year of income of the taxpayer that begins after the end of the non-resident trust's year of income;
 - (ii) the beginning of the year of income of the taxpayer commencing on 1 July 1990;
 - (iii) if the taxpayer is a natural person (other than a natural person in the capacity of a trustee) who first commenced to be a resident of Australia at a time (in this subparagraph called the **first residence time**) on or after 1 July 1990—the beginning of the year of income of the taxpayer next following the year of income of the taxpayer in which the first residence time occurred; and ending at the end of the assessment year of income; and
 - (b) at the base interest rate.
- (6) Where the assessable income of a taxpayer of a year of income includes one or more of the following amounts in relation to one or more non-resident years of income of a particular trust estate (which amounts are in this subsection called the **principal amounts**):
- (a) the distributed amount of the non-resident trust's year of income;
 - (b) the taxpayer's portion of the distributed amount of the non-resident trust's year of income;
- the aggregate of the interest payable by the taxpayer in respect of the principal amounts is not to exceed the difference between:
- (c) the aggregate of the principal amounts; and
 - (d) so much of the tax payable in respect of the year of income as is attributable to the aggregate of the principal amounts (ignoring any tax offset under Part 3-6 of the *Income Tax Assessment Act 1997*).
-

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- (7) For the purposes of this section, the extent to which an amount (in this subsection called the **section 99B amount**) included in the assessable income of a taxpayer of a year of income under section 99B in relation to a trust estate is attributable to an amount (in this subsection called the **trust amount**) covered by subparagraph (1)(b)(i) or (ii) is to be determined in accordance with the following paragraphs:
- (a) in all cases—distributions of income and profits of the trust estate are to be taken to have been made in the following order:
 - (i) first, from income and profits of the earliest non-resident year of income;
 - (ii) then, successively from income and profits of successive subsequent years of income;
 - (b) if subparagraph (1)(b)(i) applies—the extent to which the amount (in this paragraph called the **adjusted section 99B amount**), being so much of the section 99B amount as is attributable to the income and profits of the trust estate of the non-resident trust's year of income, represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income is calculated using the formula:

$$\text{Adjusted section 99B amount} \times \frac{\text{Eligible designated concession income}}{\text{Total income}}$$

where:

Adjusted section 99B amount means the adjusted section 99B amount.

Eligible designated concession income means the number of dollars in the amount, being so much of the income and profits of the trust estate of the non-resident trust's year of income as represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income.

Total income means the number of dollars in the income and profits of the trust estate of the non-resident trust's year of income.

- (c) if subparagraph (1)(b)(ii) applies—the extent to which the amount (in this paragraph called the **adjusted section 99B amount**), being so much of the section 99B amount as is attributable to the income and profits of the trust estate of the non-resident trust's year of income, represents income and profits that have not been subject to tax in a listed country in a tax accounting period mentioned in that subparagraph is calculated using the formula:

$$\frac{\text{Adjusted section 99B amount}}{\text{Total income}} \times \frac{\text{Untaxed income}}{\text{Total income}}$$

where:

Adjusted section 99B amount means the adjusted section 99B amount.

Untaxed income means the number of dollars in the amount, being so much of the income and profits of the trust estate of the non-resident trust's year of income as is not subject to tax in any listed country in a tax accounting period mentioned in that subparagraph.

Total income means the number of dollars in the income and profits of the trust estate of the non-resident trust's year of income.

- (8) For the purposes of subsection (7), an amount of income or profits of a trust estate is to be taken to be distributed if the amount is paid to, or applied for the benefit of (within the meaning of section 99B), a beneficiary of the trust estate.
- (9) Where, apart from this subsection, the amount of interest that would be payable under this section by a taxpayer in respect of the distributed amount of a non-resident trust's year of income, or in respect of the taxpayer's portion of the distributed amount of a non-resident trust's year of income, is less than 50 cents, interest is not payable by the taxpayer under this section.
- (10) For the purposes of this section, the applicable rate of tax in relation to a taxpayer is:

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- (a) if the taxpayer is a company (other than a company in the capacity of a trustee)—the corporate tax rate for the year of tax to which the assessment year of income relates; or
 - (b) in any other case—the maximum rate specified in the table in Part I of Schedule 7 of the *Income Tax Rates Act 1986* that applies for the assessment year of income.
- (11) For the purposes of the application of this section to a taxpayer, the assessment year of income is:
 - (a) if subsection (2) or (3) applies—the current year of income; or
 - (b) if subsection (4) applies—the year of income referred to in subparagraph (4)(b)(i).
- (12) For a taxpayer who is not a full self-assessment taxpayer for the assessment year of income, the Commissioner must make an assessment of the interest payable by the taxpayer under this section.
- (13) Nothing in this Act precludes notice of an assessment made in respect of a taxpayer under subsection (12) from being incorporated in a notice of any other assessment made in respect of the taxpayer under this Act.
- (13A) If:
 - (a) a taxpayer is a full self-assessment taxpayer for the assessment year of income; and
 - (b) the taxpayer lodges a return for that year;then:
 - (c) the Commissioner is taken to have made an assessment of the interest payable by the taxpayer under this section for the year, equal to the amount specified in the return as the interest so payable; and

Note: If any interest is so payable, the return must specify the amount: see section 161AA.

 - (d) the assessment is taken to have been made on the day on which the return is lodged; and
 - (e) the return is taken to be a notice of that assessment given to the taxpayer by the Commissioner on that day.

- (14) Unless the contrary intention appears, in sections 170, 172, 174, 204, 254 and 255, but not in any other section of this Act, *income tax* or *tax* includes interest payable under this section.

Subdivision D—Accruals system of taxation of certain non-resident trust estates

102AAS Object of Subdivision

The object of this Subdivision is to set out rules relating to the following:

- (a) the determination of attributable taxpayer status (section 102AAT);
- (b) the calculation of the attributable income of a trust estate (sections 102AAU to 102AAZC (inclusive));
- (c) the inclusion of amounts in assessable income (sections 102AAZD, 102AAZE and 102AAZF);
- (d) the keeping of associated records (section 102AAZG).

102AAT Accruals system of taxation—attributable taxpayer

- (1) Subject to this Division, for the purposes of this Division, an entity is an attributable taxpayer in relation to a year of income of the entity (which year of income is in this section called the *entity's current year of income*) and in relation to a particular trust estate if, and only if:
- (a) either of the following subparagraphs applies:
 - (i) all of the following conditions are satisfied:
 - (A) the trust estate was a discretionary trust estate at any time during the entity's current year of income;
 - (B) the trust estate was not a public unit trust at all times during the entity's current year of income;
 - (C) the entity has transferred property or services to the trust estate at a time (in this subparagraph called the *transfer time*) before or during the entity's current year of income;
 - (D) if the underlying transfer was made in the course of carrying on a business—it is not the

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case that, at or about the time of the underlying transfer, identical or similar property or services were transferred by the underlying transferor in the ordinary course of business to ordinary clients or customers under arm's length transactions and in similar circumstances and subject to identical or similar terms and conditions as those that applied in relation to the underlying transfer of the property or services concerned;

- (E) if the underlying transfer was made under an arm's length transaction otherwise than in the course of carrying on a business—the entity was in a position, at any time after the transfer time and before the end of the entity's current year of income, to control the trust estate;
 - (F) if the transfer was made before the IP time and the trust estate was in existence, and was a discretionary trust estate, at the IP time—the entity was in a position, at any time after the IP time and before the end of the entity's current year of income, to control the trust estate;
- (ii) all of the following conditions are satisfied:
- (A) the trust estate was a non-discretionary trust estate, or a public unit trust, at all times during the entity's current year of income when the trust estate was in existence;
 - (B) the entity has transferred property or services to the trust estate after the IP time and before or during the entity's current year of income;
 - (C) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer;
 - (D) it is not the case that the sole purpose of the underlying transfer was the acquisition of units in the trust estate where the parties to the underlying transfer were at arm's length with each other in relation to the underlying transfer and the trust estate was a public unit trust at all

- times during the entity's current year of income when the trust estate was in existence; and
- (b) if the entity is a natural person (other than a natural person in the capacity of a trustee):
- (i) if:
- (A) the natural person first commenced to be a resident of Australia at a time (in this subparagraph called the *first residence time*) after the IP time and before the end of the entity's current year of income; and
- (B) the transfer, or each of the transfers, covered by paragraph (a) was made before the first residence time;
- the trust estate was not a non-resident family trust in relation to the natural person at all times:
- (C) after the beginning of the first year of income of the natural person after the first residence time; and
- (D) before the end of the entity's current year of income;
- when the trust estate was in existence; or
- (ii) in any other case—the trust estate was not a non-resident family trust in relation to the natural person at all times after the beginning of the year of income of the taxpayer commencing on 1 July 1990 and before the end of the entity's current year of income when the trust estate was in existence; and
- (c) it is not the case that:
- (i) the entity is a natural person (other than a natural person in the capacity of a trustee) who first commenced to be a resident of Australia at a time (in this paragraph called the *first residence time*) after the IP time and before the end of the entity's current year of income; and
- (ii) the transfer was made before the first residence time; and
- (iii) the entity was not in a position to control the trust estate at any time during the period:
- (A) commencing at the beginning of the first year of income of the entity after the first residence time; and

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(B) ending at the end of the entity's current year of income.

(2) For the purposes of this section, if:

- (a) an entity (in this subsection called the *transferor*) being a partnership is an attributable taxpayer in relation to the entity's current year of income and in relation to a particular trust estate (in this subsection called the *transferee trust estate*) because of one or more transfers (being actual transfers or transfers taken to have been made because of subsection 102AAK(1), (2) or (5)) of property or services made by the transferor to the transferee trust estate; or
- (b) an entity (in this subsection also called the *transferor*) being a trust estate is an attributable taxpayer in relation to the entity's current year of income and in relation to another trust estate (in this subsection also called the *transferee trust estate*) because of one or more transfers (being actual transfers or transfers taken to have been made because of subsection 102AAK(1), (2) or (5)) of property or services made by the transferor to the transferee trust estate;

the question whether any other entity is an attributable taxpayer in relation to the same year of income and in relation to the transferee trust estate is to be determined as if:

- (c) if paragraph (a) applies—subsection 102AAK(6) did not apply in relation to any of the transfers mentioned in that paragraph; or
 - (d) if paragraph (b) applies—subsection 102AAK(8) did not apply in relation to any of the transfers mentioned in that paragraph.
- (3) If:
- (a) apart from this subsection, an entity, being a natural person (other than a natural person in the capacity of a trustee), is not an attributable taxpayer in relation to the entity's current year of income and in relation to a trust estate; and
 - (b) apart from paragraph (1)(b), the entity would have been such an attributable taxpayer; and
 - (c) apart from subparagraph 102AAH(2)(b)(i) or (3)(a)(ii), the trust estate was not a non-resident family trust in relation to the natural person at some time after the entity's current year of income when the natural person was alive and the trust estate was in existence;

the following provisions have effect:

- (d) subsection (1) has effect as if paragraph (1)(b) had applied;
- (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

(4) If:

- (a) apart from this subsection, an entity is not an attributable taxpayer in relation to the entity's current year of income and in relation to a trust estate; and
- (b) apart from sub-subparagraph (1)(a)(i)(E) or (F) or paragraph (1)(c), the entity would have been such an attributable taxpayer; and
- (c) the entity was in a position to control the trust estate at some time after the entity's current year of income when the trust estate was in existence;

the following provisions have effect:

- (d) subsection (1) has effect as if sub-subparagraph (1)(a)(i)(E) or (F) or paragraph (1)(c), as the case may be, had applied;
- (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

102AAU Attributable income of a trust estate

- (1) Subject to this Subdivision, the attributable income of a non-resident trust estate of a year of income is:
 - (a) if the non-resident trust estate is not a listed country trust estate in relation to the year of income—the net income of the non-resident trust estate of the year of income; or
 - (b) if the non-resident trust estate is a listed country trust estate in relation to the year of income—the amount that would have been the net income of the non-resident trust estate of the year of income if the exempt income of the trust estate included all income and profits of the trust estate other than:
 - (i) eligible designated concession income in relation to any listed country in relation to the year of income; or
 - (ii) amounts included under section 529 in the assessable income of the trust estate of the year of income;
- reduced by:

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- (c) so much (if any) of the amount covered by paragraph (a) or (b) as represents:
 - (i) an amount:
 - (A) that is or has been included in the assessable income of a beneficiary under section 97; or
 - (B) in respect of which the trustee of the non-resident trust estate is or has been assessed and liable to pay tax under section 98, 99 or 99A; or
 - (C) on which trustee beneficiary non-disclosure tax is payable under Division 6D; or
 - (ii) an amount:
 - (A) that is paid to a beneficiary, being a resident of a listed country, during the period of 13 months commencing at the beginning of the year of income; and
 - (B) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (iii) an amount that consists of, or is attributable to, the franked part of a distribution, or the part of a distribution that has been franked with an exempting credit; or
 - (iv) an amount that is included in the assessable income of the trustee of the trust estate under subsection 207-35(1) or (3) of the *Income Tax Assessment Act 1997*; or
 - (v) if an amount is or has been included in the assessable income of any taxpayer under section 102AAZD because the taxpayer is an attributable taxpayer in relation to any year of income (in this subparagraph called the *taxpayer's year of income*) and in relation to a trust estate other than the non-resident trust estate—so much of an amount paid to the trustee of the non-resident trust estate as represents the attributable income of that other trust estate of the taxpayer's year of income; or
 - (vi) if:

- (A) an attribution account payment is made to the trustee of the trust estate during the year of income; and
 - (B) the making of the attribution account payment gives rise to an attribution debit, in relation to any taxpayer, for the entity making the payment;
the amount of the attribution debit; or
 - (viii) an amount of income or profits of the trust estate:
 - (A) that is subject to tax in any listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; and
 - (B) that is not eligible designated concession income in relation to any listed country in relation to the year of income; or
 - (ix) an excluded foreign investment fund income amount (see subsections (7) and (8)); and
 - (d) so much of any foreign tax or Australian tax paid by the trustee or a beneficiary as is attributable to so much of the amount covered by paragraph (a) or (b), as the case requires, as remains after the reduction or reductions covered by paragraph (c).
- (2) The attributable income of a resident trust estate of a year of income is 0.
- (3) For the purposes of sub-subparagraph (1)(c)(ii)(A), a beneficiary is to be taken to be a resident of a listed country if, and only if, the beneficiary is treated as a resident of the listed country for the purposes of the tax law of the listed country.
- (4) If the tax law of a listed country adopts some criterion other than treatment as a resident as the criterion for applying a worldwide source tax base to a beneficiary, then, subsection (3) has effect, in relation to that tax law, as if that criterion were the same as treatment as a resident of the listed country for the purposes of that tax law.
- (5) For the purposes of this section, where, because of section 101, a beneficiary is presently entitled to a particular amount, the amount is taken to have been paid to the beneficiary.
-

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- (6) For the purposes of this section, the extent to which an amount referred to in subparagraph (1)(c)(i) or (ii) (in this subsection called the **taxed amount**) represents the amount covered by paragraph (1)(b) (in this subsection called the **listed country trust amount**) is calculated using the formula:

$$\text{Taxed amount} \times \frac{\text{Listed country trust amount}}{\text{Net income}}$$

where:

Listed country trust amount means the number of dollars in the listed country trust amount.

Taxed amount means the taxed amount.

Net income means the number of dollars in the net income of the non-resident trust estate concerned of the year of income concerned.

- (7) For the purposes of subparagraph (1)(c)(ix), if:
- (a) the non-resident trust estate concerned is a CFT; and
 - (b) under section 529, the assessable income of a year of income of the CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and
 - (c) a statutory accounting period of a CFC coincides with that notional accounting period of the FIF; and
 - (d) wholly or partly because of the holding of an attribution tracing interest in the CFT, section 456 applies at the end of the statutory accounting period of the CFC to the attributable taxpayer in relation to whom the attributable income is being calculated; and
 - (e) the FIF is the same entity as the CFC;
- then the amount of foreign investment fund income is an excluded foreign investment fund income amount for the purpose of calculating the attributable income in relation to the attributable taxpayer.
- (8) For the purposes of subparagraph (1)(c)(ix), if:
- (a) the non-resident trust estate concerned is a CFT; and
 - (b) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund
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income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and

- (c) each of 2 or more statutory accounting periods of a CFC occurs partly within that notional accounting period of the FIF; and
- (d) wholly or partly because of the holding of an attribution tracing interest in the CFT, section 456 applies at the end of each of these statutory accounting periods of the CFC to the attributable taxpayer in relation to whom the attributable income is being calculated; and
- (e) the FIF is the same entity as the CFC;

then the amount of foreign investment fund income is an excluded foreign investment fund income amount for the purpose of calculating the attributable income in relation to the attributable taxpayer.

- (9) In subsections (7) and (8):

attribution tracing interest has the same meaning as in Part X.

CFT has the same meaning as in Part X.

FIF has the same meaning as in Part XI.

notional accounting period has the same meaning as in Part XI.

statutory accounting period has the same meaning as in Part X.

102AAV Double tax agreements to be disregarded

In calculating the attributable income of a trust estate, the *International Tax Agreements Act 1953* is to be disregarded, except for the purpose of references in this Act to that Act.

102AAW Certain provisions to be disregarded in calculating attributable income

- (1) For the purpose of applying this Act in calculating the attributable income of a trust estate, sections 23AI, 128D, 456, 457, and 459A of this Act and section 802-15 of the *Income Tax Assessment Act 1997* are to be disregarded.

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- (2) For the purpose of applying this Act in calculating the attributable income of a trust estate:
- (a) Division 974 of the *Income Tax Assessment Act 1997*; and
 - (b) the operation of any provision of this Act to the extent to which that operation depends on an expression whose meaning is given by that Division;
- are to be disregarded.

102AAY Modified application of trading stock provisions

When applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of the trust estate, Division 70 of the *Income Tax Assessment Act 1997* has effect as if the cost of the item of trading stock were the value to be taken into account at the start of the year of income.

102AAZ Modified application of depreciation provisions

- (1) For the purpose of determining the attributable income of a trust estate of a year of income (in this section called the *attributable year of income*), where property has been held by the trustee of the trust estate in a non-attributable year of income before the attributable year of income, then, in relation to the application of a depreciation provision to the property, subsection (2) applies.
- (2) Such amount as the Commissioner considers appropriate to take account of the holding of the property as mentioned in subsection (1) is, under the depreciation provision:
- (a) an allowable deduction to the trustee of the trust estate; or
 - (b) included in the assessable income of the trust estate;
- as the case requires, for the attributable year of income in substitution for any amount that would otherwise be so included or allowable.
- (4) For the purpose of exercising the Commissioner's power under subsection (2) in relation to deductions allowable under Division 40 of the *Income Tax Assessment Act 1997*, the Commissioner must assume that the property was used by the trustee of the trust estate during any non-attributable year of income wholly and exclusively for a taxable purpose (within the meaning of that Division).

102AAZA Modified application of Division 13 of Part III

In calculating the attributable income of a trust estate of a year of income:

- (a) for the purposes of section 136AC, if the trust estate is a non-resident trust estate in relation to the year of income—the trustee is taken to be a non-resident, within the meaning of that section, without regard to the assumption about the trustee’s residence that is made in whichever of the following provisions is applicable:
 - (i) the definition of *net income* in subsection 95(1);
 - (ii) the definition of *net income* in subsection 102D(1);
 - (iii) the definition of *net income* in section 102M;
 - (iv) section 295-10 of the *Income Tax Assessment Act 1997*; and
- (b) section 136AF applies as if:
 - (i) the reference in subsection 136AF(1) to the application of section 136AD in relation to a taxpayer were a reference both to:
 - (A) the application of that section in relation to any trust estate in calculating its attributable income or in relation to any CFC in calculating its attributable income under Division 7 of Part X; and
 - (B) the actual application of that section in relation to any taxpayer in calculating the taxable income of the taxpayer apart from this Division; and
 - (ii) the references in paragraphs 136AF(1)(a) and (b) to assessable income or allowable deductions in relation to the relevant taxpayer were references to assessable income, or to allowable deductions, taken into account in calculating the attributable income of the trust estate.

102AAZB General modifications—CGT

For the purposes of applying this Act in calculating the attributable income of a trust estate, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT) apply as if:

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- (a) sections 118-12 (about assets used to produce non-assessable income) and 855-50 (about a trust becoming a resident trust) were disregarded; and
- (b) the trust estate were a resident trust for CGT purposes.

102AAZBA Modified application of CGT—effect of certain changes of residence

For the purposes of applying this Act in calculating the attributable income of a trust estate of a year of income (in this section called the *attributable income year*), where:

- (a) disregarding the assumption in paragraph 102AAZB(b), at any time (in this section called the *residence-change time*) during the attributable income year or an earlier year of income, the trust estate ceased to be a resident trust for CGT purposes and became a non-resident trust estate; and
- (b) the trust estate owned a CGT asset at the residence-change time; and
- (c) a CGT event happens in relation to the asset during the attributable income year; and
- (d) section 104-170 of the *Income Tax Assessment Act 1997* (CGT event I2) applies to the asset in respect of the change of residence for the purposes of the application of this Act apart from this Subdivision;

then sections 411 to 414 (inclusive) apply to the asset as if:

- (e) those sections had effect for the purposes of calculating attributable income under this Subdivision instead of Part X; and
- (f) any reference in those sections to an eligible CFC were a reference to the trust estate; and
- (g) any reference in those sections to a commencing day asset were a reference to the asset; and
- (h) any reference in those sections relating to the eligible CFC's commencing day or the day following the eligible CFC's commencing day were a reference relating respectively to the residence-change time or a time immediately after the residence-change time; and
- (j) subsections 412(2) and (3), and paragraphs 414(3)(b) and (4)(b), referred only to the market value of the asset concerned.

102AAZC Modified application of loss provisions—pre-1990-91 losses

In calculating the attributable income of a trust estate of a year of income, no deductions are allowable under Division 36 of the *Income Tax Assessment Act 1997* in respect of tax losses of a year of income earlier than the year of income commencing on 1 July 1990.

102AAZD Assessable income of attributable taxpayer to include attributable income of trust estate to which taxpayer has transferred property or services

- (1) Subject to section 102AAZE and to this section, if:
- (a) an entity is an attributable taxpayer:
 - (i) in relation to the year of income of the taxpayer commencing on 1 July 1990 (which year of income is in this section called the *taxpayer's current year of income*) or in relation to a subsequent year of income of the taxpayer (which year of income is in this section also called the *taxpayer's current year of income*); and
 - (ii) in relation to a trust estate; and
 - (b) any part of a non-resident year of income of the trust estate occurs during the taxpayer's current year of income; and
 - (c) the taxpayer is a resident at any time during the taxpayer's current year of income;

the assessable income of the taxpayer of the taxpayer's current year of income includes:

- (d) if the taxpayer is a resident at all times during the taxpayer's current year of income—the whole of the notional attributable income of the trust estate of the taxpayer's current year of income; or
- (e) if the taxpayer is a resident for only part of the taxpayer's current year of income—the amount calculated using the formula:

$$\text{Notional attributable income} \times \frac{\text{Days in residency period}}{\text{Days in year of income}}$$

where:

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Notional attributable income means the notional attributable income of the trust estate of the taxpayer's current year of income.

Days in residency period means the number of whole days during the taxpayer's current year of income when the taxpayer was a resident.

Days in year of income means the number of whole days in the taxpayer's current year of income.

(2) A reference in subsection (1) to the notional attributable income of the trust estate of the taxpayer's current year of income is a reference to:

- (a) if there is a year of income of the trust estate that begins at the same time as the beginning of the taxpayer's current year of income—the attributable income of the trust estate of that year of income; or
- (b) in any other case—the amount obtained:
 - (i) by calculating, for each year of income of the trust estate (in this paragraph called the **trust's year of income**) any part of which occurs during the taxpayer's current year of income, the amount calculated using the formula:

$$\text{Attributable income} \times \frac{\text{Days in overlapping period}}{\text{Days in trust's year of income}}$$

where:

Attributable income means the attributable income of the trust estate of the trust's year of income.

Days in overlapping period means the number of whole days in the trust's year of income that occurred during the taxpayer's current year of income.

Days in trust's year of income means the number of whole days in the trust's year of income; and

- (ii) by adding together the amounts calculated under subparagraph (i).

- (3) If:
- (a) an amount is included in the assessable income of an attributable taxpayer of the taxpayer's current year of income under subsection (1); and
 - (b) before or during the taxpayer's current year of income, one or more entities other than the taxpayer have transferred property or services to the trust estate concerned; and
 - (c) the taxpayer gives to the Commissioner, in accordance with the approved form, such information in connection with the operation of this Division as is required by the form to be set out;

the Commissioner may reduce the amount included in the taxpayer's assessable income of the taxpayer's current year of income under subsection (1) having regard to:

- (d) the extent to which the attributable income of the trust estate is, in the opinion of the Commissioner, attributable to property or services transferred by the taxpayer; and
 - (e) such other matters as the Commissioner considers relevant.
- (4) If:

- (a) apart from this subsection, an amount would be included in the assessable income of an attributable taxpayer of the taxpayer's current year of income under subsection (1) in relation to a particular trust estate; and
- (b) the taxpayer could not reasonably be expected to obtain the information required to determine the attributable income of the trust estate;

the following provisions have effect:

- (c) no amount is to be included in the assessable income of the taxpayer of the taxpayer's current year of income under subsection (1) in relation to the trust estate;
- (d) the assessable income of the taxpayer of the taxpayer's current year of income includes the amount obtained:
 - (i) if any of the transfers that were taken into account in determining whether the taxpayer was an attributable taxpayer in relation to the taxpayer's current year of income and in relation to the trust estate were made by the taxpayer to the trust estate after the IP time—by calculating, for each such transfer, the amount calculated using the formula:

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$$\text{Adjusted value of the transfer} \times \left[\frac{\text{Weighted statutory interest rate} + 5\%}{\text{Weighted statutory interest rate} + 5\%} \right]$$

where:

Adjusted value of the transfer has the meaning given by subsection (5).

Weighted statutory interest rate means the weighted statutory interest rate in relation to the taxpayer's current year of income; and

- (ii) if any of the transfers that were taken into account in determining whether the taxpayer was an attributable taxpayer in relation to the taxpayer's current year of income and in relation to the trust estate were made by the taxpayer to the trust estate before the IP time—the amount calculated using the formula:

$$\text{Adjusted net worth of trust estate} \times \left[\frac{\text{Weighted statutory interest rate} + 5\%}{\text{Weighted statutory interest rate} + 5\%} \right]$$

where:

Adjusted net worth of trust estate has the meaning given by subsection (6).

Weighted statutory interest rate means the weighted statutory interest rate in relation to the taxpayer's current year of income; and

- (iii) by adding together the amounts calculated under subparagraphs (i) and (ii).
- (5) For the purposes of subsection (4), the adjusted value of a transfer of property or services made by an attributable taxpayer to a trust estate is:

- (a) if the transfer occurred during the taxpayer's current year of income—the amount calculated using the formula:

$$\frac{\text{Market value of transferred property or services}}{\text{Market value of transferred property or services}} \times \frac{\text{Days after transfer}}{\text{Days in year of income}}$$

where:

Market value of transferred property or services means the market value, immediately before the transfer, of the property or services.

Days after transfer means the number of whole days in the taxpayer's current year of income after the day on which the transfer took place.

Days in year of income means the number of whole days in the taxpayer's current year of income; or

- (b) if the transfer of the property or services occurred before the taxpayer's current year of income—the sum of:
 - (i) the market value, immediately before the transfer, of the property or services; and
 - (ii) the amount obtained:
 - (A) by calculating, in respect of the transfer, for each year of income preceding the taxpayer's current year of income, the amount ascertained using the formula in subparagraph (4)(d)(i); and
 - (B) by adding together the amounts calculated under sub-subparagraph (A).
 - (6) For the purposes of the application of subsection (4) in relation to a transfer of property or services made by an attributable taxpayer to a trust estate, the adjusted net worth of the trust estate is:
 - (a) if the taxpayer's current year of income is the year of income commencing on 1 July 1990—the 1 July 1990 net worth of the trust estate; or
 - (b) in any other case—the sum of:
 - (i) the 1 July 1990 net worth of the trust estate; and
 - (ii) the amount obtained:
 - (A) by calculating, in respect of the transfer, for each year of income preceding the taxpayer's current year of income, the amount ascertained using the formula in subparagraph (4)(d)(ii); and
 - (B) by adding together the amounts calculated under sub-subparagraph (A).
 - (7) If:
 - (a) subsection (4) applies to an attributable taxpayer in relation to the taxpayer's current year of income; and
 - (b) any of the transfers taken into account in determining whether the taxpayer was an attributable taxpayer in relation
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to the taxpayer's year of income and in relation to the trust estate concerned were made before the IP time; and

- (c) the taxpayer gives to the Commissioner, in accordance with the approved form, such information in connection with the operation of this Division as is required by the form to be set out;

the Commissioner may reduce the amount included in the taxpayer's assessable income of the taxpayer's current year of income under subsection (4) having regard to:

- (d) the extent to which the market value, as at the beginning of the taxpayer's current year of income, of the assets of the trust estate is, in the opinion of the Commissioner, attributable to property or services transferred by the taxpayer before the IP time; and
- (e) such other matters as the Commissioner considers relevant.

102AAZE Accruals system of taxation does not apply to small amounts

An amount is not to be included in the assessable income of the taxpayer of a year of income under section 102AAZD in relation to a trust estate that is a listed country trust estate in relation to the year of income if the amount obtained by:

- (a) identifying each trust estate in relation to which the taxpayer is an attributable taxpayer in relation to the year of income; and
- (b) calculating the attributable income of the year of income of each such trust estate; and
- (c) adding the amounts calculated under paragraph (b);

does not exceed the lesser of the following amounts:

- (d) \$20,000;
- (e) 10% of the total of the net incomes of each of those trust estates of the year of income.

102AAZF Only resident partners, beneficiaries etc. liable to be assessed as a result of attribution

Section 460 applies to an amount included in the assessable income of a taxpayer under section 102AAZD in a corresponding way to the way in which section 460 applies to an amount included in the

assessable income of a taxpayer under section 456 or 457 and, for the purposes of that corresponding application, references in sections 336, 338 and 460 to a Part X Australian resident are to be read as references to a resident within the meaning of section 6.

102AAZG Keeping of records

- (1) Subject to this section, a person who is an attributable taxpayer:
- (a) in relation to the year of income of the person commencing on 1 July 1990 or in relation to a subsequent year of income of the person; and
 - (b) in relation to a particular trust estate;
- must keep records (in Australia or elsewhere) containing particulars of:
- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to that year of income and in relation to that trust estate; and
 - (d) except where subsection 102AAZD(4) applies in relation to the trust estate and in relation to the year of income of the person—the basis of the calculation of the attributable income of the trust estate for each year of income of the trust estate any part of which occurred during the year of income of the person; and
 - (e) the basis of the calculation of the amounts (including nil amounts) included in the assessable income of the person of the year of income of the person under section 102AAZD.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) A person who contravenes subsection(1) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person who is required by this section to keep records must:
- (a) keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and

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- (b) keep the records so as to enable the person's liability under this Act to be readily ascertained.
- (4) This section does not require a person to keep a record of information if:
- (a) the person did not know, and had no reasonable grounds to suspect, that the person was an attributable taxpayer of the kind mentioned in subsection (1); or
 - (b) the person did not know that, and made all reasonable efforts to ascertain whether, the person was an attributable taxpayer as mentioned in subsection (1); or
 - (c) the person did not know, and made all reasonable efforts to obtain, the information.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.
- (5) Subject to subsections (6) and (7), the following provisions apply to a partnership as if the partnership were a person:
- (a) subsections (1) to (4) (inclusive) of this section;
 - (b) subsections 262A(4) and (5), in so far as those subsections apply to records kept under or for the purposes of this section;
 - (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part of that Act relates to the provisions covered by paragraph (a) or (b) of this subsection.
- (6) Where, by virtue of subsection (5), an offence is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.
- (7) In a prosecution of a person for an offence by virtue of subsection (6), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence was taken to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, an act or omission by virtue of which the offence is taken to have been committed.

Note 1: The defence under subsection (7) does not apply in relation to offences under Part 2.4 of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matters in subsection (7), see section 13.4 of the *Criminal Code*.

Division 6AA—Income of certain children

102AA Interpretation

- (1) In this Division, unless the contrary intention appears:

agreement means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

occupation includes any office, employment, trade, business, profession, vocation or calling, but does not include a course of education at a school, college, university or similar institution.

property means property whether real or personal, and includes money.

- (2) In this Division:

- (a) a reference to the derivation by a person of assessable income shall be read as including a reference to the inclusion of an amount in the assessable income of the person; and
- (b) a reference to the derivation by a person of any assessable income from particular property shall be read as including a reference to the inclusion of an amount in the assessable income of the person in respect of that property.

- (3) In this Division, a reference to the share of a beneficiary of the net income of a trust estate shall be read as a reference to a share of the beneficiary of the net income of a trust estate:

- (a) that is included in the assessable income of the beneficiary under section 97 or 100; or
- (b) in respect of which the trustee of the trust estate is liable to be assessed and to pay tax in pursuance of section 98.

- (4) A reference in this Division to income that is derived from particular property shall be read as including a reference to income that is derived from property that, in the opinion of the Commissioner, represents that property.

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102AB Application of Division

This Division applies in relation to the year of income that commenced on 1 July 1979 and in relation to all subsequent years of income.

102AC Persons to whom Division applies

- (1) For the purposes of this Division, a person is a prescribed person in relation to a year of income if:
 - (a) the person is less than 18 years of age on the last day of the year of income; and
 - (b) the person is not an excepted person in relation to the year of income.
- (2) Subject to this section, a person (in this subsection referred to as the *minor*) is an excepted person in relation to a year of income for the purposes of this Division if, and only if:
 - (b) the minor was engaged in a full-time occupation on the last day of the year of income;
 - (c) the minor is a person:
 - (i) in respect of whom a carer allowance under the *Social Security Act 1991* was payable in respect of a period that included the last day of the year of income;
 - (ii) to whom a disability support pension under that Act was payable in respect of a period that included the last day of the year of income; or
 - (iii) to whom a rehabilitation allowance under that Act was payable in respect of a period that included the last day of the year of income and who, immediately before becoming eligible to receive that allowance, was eligible to receive an invalid pension under that Act;
 - (d) the Commissioner:
 - (i) has received a certificate issued by a legally qualified medical practitioner certifying that the minor is:
 - (A) a disabled child, or a disabled adult, within the meaning of Part 2.19 of the *Social Security Act 1991*; or
 - (B) a person who has a continuing inability to work within the meaning of Part 2.3 of the *Social Security Act 1991* or is permanently blind; and

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- (ii) is satisfied that, on the last day of the year of income, the minor was a person of the kind mentioned in sub-paragraph (i)(A) or (B);
 - (e) a double orphan pension was payable in respect of the minor under the *Social Security Act 1991* in respect of a period that included the last day of the year of income;
 - (f) but for section 1003 of the *Social Security Act 1991*, a double orphan pension would have been payable in respect of the minor under that Act in respect of a period that included the last day of the year of income; or
 - (g) the Commissioner:
 - (i) has received a certificate issued by a legally qualified medical practitioner certifying that the minor is a person who, by reason of a permanent disability, is unlikely to be able to engage in a full-time occupation; and
 - (ii) is satisfied that, on the last day of the year of income, the minor was such a person.
- (3) Where:
- (a) a double orphan pension was payable, or would, but for section 1003 of the *Social Security Act 1991*, have been payable, in respect of a person under that Act in respect of a period during a year of income, being a period that included the last day of the year of income; and
 - (b) during the whole of the period referred to in paragraph (a), the person was wholly or substantially dependent for support on a relative or relatives of the person;
- that person shall not be taken by virtue of paragraph (2)(e) or (f) to be an excepted person in relation to the year of income.
- (4) Where:
- (a) the Commissioner is of the opinion that, during a period during a year of income, being a period that included the last day of the year of income, a person was a person who, by reason of a permanent disability, was unlikely to be able to engage in a full-time occupation; and
 - (b) during the whole of the period referred to in paragraph (a), the person was wholly or substantially dependent for support on a relative or relatives of the person;
- that person shall not be taken, by virtue of paragraph (2)(g), to be an excepted person in relation to the year of income.
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- (5) For the purposes of subsections (3) and (4), a person shall be taken to have been wholly or substantially dependent for support on a relative or relatives of the person during any period during which that person resided with a relative or relatives of the person unless the contrary is established to the satisfaction of the Commissioner.
- (6) Subject to this section, a person shall be taken, for the purposes of subsection (2), to have been engaged in a full-time occupation on the last day of a year of income if, and only if:
- (a) the person was, on the last day of the year of income, a person engaged in a full-time occupation; or
 - (b) in a case to which paragraph (a) does not apply—the person was engaged in a full-time occupation during the year of income for a period of not less than 3 months or for periods the aggregate of which is not less than 3 months.
- (7) Where:
- (a) during a period during a year of income, a person was engaged in a full-time occupation; and
 - (b) during the year of income and after the expiration of that period, the person was engaged in a course of full-time education at a school, college, university or similar institution;
- no regard shall be had to that period in determining whether the person is to be taken, by virtue of paragraph (6)(b), to have been engaged in a full-time occupation on the last day of the year of income.
- (8) A person shall not be taken to have been engaged in a full-time occupation on the last day of a year of income unless the Commissioner is satisfied that, on that day:
- (a) the person had the intention of engaging in a full-time occupation or full-time occupations during the whole or a substantial part of the next succeeding year of income; and
 - (b) the person did not have the intention of engaging in a course of full-time education at a school, college, university or similar institution at any time during the next succeeding year of income.

102AD Taxable income to which Division applies

The eligible taxable income of a year of income of a person who is a prescribed person in relation to the year of income is the amount (if any) remaining after deducting from the eligible assessable income of the person of the year of income:

- (a) any deductions allowable to the person in relation to the year of income that relate exclusively to that eligible assessable income;
- (b) so much of any other deductions (other than apportionable deductions) allowable to the person in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that eligible assessable income; and
- (c) the amount that bears to the apportionable deductions allowable to the person in relation to the year of income the same proportion as the amount that, but for this paragraph, would be the eligible taxable income of the person of the year of income bears to the sum of:
 - (i) the taxable income of the person of the year of income; and
 - (ii) the apportionable deductions allowable to the person in relation to the year of income.

102AE Eligible assessable income

- (1) For the purposes of this Division, the eligible assessable income of a year of income of a person is so much of the assessable income of the person of the year of income as is not excepted assessable income.
- (2) Subject to this section, an amount included in the assessable income of a person (in this subsection referred to as the *minor*) is excepted assessable income to the extent to which the amount:
 - (a) is employment income or business income;
 - (b) is derived by the minor from the investment of any property transferred to the minor:
 - (i) by way of, or in satisfaction of a claim for, damages in respect of:
 - (A) loss by the minor of parental support; or

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- (B) personal injury to the minor, any disease suffered by the minor or any impairment of the minor's physical or mental condition;
- (ii) pursuant to any law relating to worker's compensation;
- (iii) pursuant to any law relating to the payment of compensation in respect of criminal injuries;
- (iv) directly as the result of the death of another person and under the terms of a life assurance policy;
- (v) directly as the result of the death of another person and out of a provident, benefit, superannuation or retirement fund;
- (vi) directly as the result of the death of another person by an employer of the deceased person;
- (vii) out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances; or
- (viii) as the result of a family breakdown (see section 102AGA);
- (c) is derived by the minor from the investment of any property:
 - (i) that devolved upon the minor from the estate of a deceased person;
 - (ii) that was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred within 3 years after the date of the death of the deceased person; or
 - (iii) that was acquired by the minor as the beneficial owner of a verifiable prize in a legally authorized and conducted lottery;
- (d) not being business income, is included in the assessable income of the minor under section 92;
- (e) is included in the assessable income of the minor under section 97 or 100; or
- (f) is derived by the minor from the investment of any property that, in the opinion of the Commissioner, represents accumulations of:
 - (i) excepted assessable income derived by the minor during a year of income in relation to which this Division applies;

- (ii) assessable income derived by the minor during a year of income in relation to which this Division does not apply, being assessable income that would, in the opinion of the Commissioner, have been excepted assessable income if this Division were applicable in relation to the year of income during which the assessable income was derived; or
 - (iii) exempt income derived by the minor to which subparagraph (i) or (ii) would, in the opinion of the Commissioner, apply if that exempt income had been assessable income.
- (3) A reference in paragraph (2)(d) to an amount (not being business income) that is included in the assessable income of a person under section 92 in respect of the individual interest of the person in the net income of a partnership shall be read as a reference to so much of an amount so included in that assessable income as, in the opinion of the Commissioner, is attributable to so much of the assessable income of the partnership as would, in the opinion of the Commissioner, have been excepted assessable income if the assessable income of the partnership had been derived by that person.
- (4) A reference in paragraph (2)(e) to an amount included in the assessable income of a person under section 97 or 100 shall be read as not including a reference to any part to which this Division applies of an amount included in that assessable income under either of those sections.
- (5) Subject to subsections (6) and (7), a reference in paragraph (2)(a), in relation to a person (in this subsection referred to as the *minor*), to business income shall, in relation to any business income derived by the minor during a year of income from the carrying on of a business, be read as a reference to:
 - (a) in a case where during the year of income, the business was carried on by the minor either alone or in partnership with another person who was, or other persons each of whom was, under the age of 18 years on the first day of the year of income—so much of that business income as the Commissioner considers fair and reasonable having regard to:

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- (i) the extent to which, during the year of income, the minor had the real and effective conduct and control of the business and participated in the operations and activities of the business;
 - (ii) the extent to which the minor had the real and effective control over the disposal of income derived by the minor from the business during the year of income;
 - (iii) the extent to which the capital of the business consisted of property contributed by the minor, being property the income from which would, in the opinion of the Commissioner, be excepted assessable income in relation to the minor; and
 - (iv) such other matters (if any) as the Commissioner thinks fit; and
- (b) in any other case—the amount that, in the opinion of the Commissioner, is reasonable remuneration by way of salary or wages for any services rendered by the minor during the year of income in the production of assessable income of the business increased by such amount (if any) as, in the opinion of the Commissioner, is reasonable, having regard to the extent to which the capital of the business consisted of property contributed by the minor the income from which would, in the opinion of the Commissioner, be excepted assessable income in relation to the minor.
- (6) Subject to subsection (7), if any 2 or more parties to:
- (a) the derivation of the excepted assessable income mentioned in subsection (2); or
 - (b) any act or transaction directly or indirectly connected with the derivation of that excepted assessable income;
- were not dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction, the excepted assessable income is only so much (if any) of that income as would have been derived if they had been dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction.
- (7) Subsection (2) does not apply in relation to assessable income derived by a person directly or indirectly under or as a result of an agreement that was entered into or carried out by any person (whether before or after the commencement of this subsection) for

the purpose, or for purposes that included the purpose, of securing that that assessable income would not be eligible assessable income.

- (8) In determining whether subsection (7) applies in relation to an agreement, no regard shall be had to a purpose that is a merely incidental purpose.
- (9) Where:
- (a) any assessable income is derived by a person from the investment of any property transferred to the person by way of, or in satisfaction of a claim for, damages in respect of:
 - (i) loss by the person of parental support; or
 - (ii) personal injury to the person, any disease suffered by the person or any impairment of the person's physical or mental condition; and
 - (b) that property was transferred to that person otherwise than in pursuance of an order of a court;
- paragraph (2)(b) applies only to so much (if any) of that assessable income as the Commissioner considers fair and reasonable.
- (10) Where:
- (a) the assessable income of a person (in this subsection referred to as the *minor*) of a year of income:
 - (i) includes an amount derived by the minor from property that:
 - (A) was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person; and
 - (B) was so transferred within 3 years after the date of the death of the deceased person;but does not include any amount that:
 - (C) was derived by the minor from property that devolved upon the minor from the estate of that deceased person; or
 - (D) is included in the assessable income of the minor under section 97 or 100 in respect of the share of the minor of the net income of a trust estate that resulted from a will or codicil of that deceased person, an order of a court that varied

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- or modified the provisions of a will or codicil of that deceased person, a partial intestacy of that deceased person or an order of a court that varied or modified the application, in relation to the estate of that deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; or
- (ii) includes an amount derived by the minor from property that:
- (A) was transferred to the minor by another person out of property that devolved upon that other person from the estate of a deceased person; and
 - (B) was so transferred within 3 years after the date of death of the deceased person;
- and also includes an amount or amounts to which subparagraph (i)(C) or (D) applies; and
- (b) the amount to which subparagraph (a)(i) applies or the sum of the amounts to which subparagraph (a)(ii) applies, as the case may be, exceeds the amount that, in the opinion of the Commissioner, would have been included in the assessable income of the minor of the year of income in respect of an amount or amounts derived by the minor from property that, in the opinion of the Commissioner, would have devolved upon or for the benefit of the minor from the estate of that deceased person if that deceased person had died intestate; the amount of the assessable income of the minor of the year of income that would, apart from this subsection, have been excepted assessable income by virtue of subparagraph (2)(c)(ii) shall be reduced by the amount of that excess.

102AF Employment income and business income

- (1) A reference in this Division to employment income is to be read as a reference to:
- (a) work and income support related withholding payments and benefits; and
 - (b) payments made for services rendered or to be rendered; and
 - (c) compensation, sickness or accident payments:

- (i) made to an individual because of the individual's or another's incapacity for work; and
 - (ii) calculated at a periodical rate.
- (3) In this Division, a reference, in relation to a person in relation to a year of income, to business income shall be read as a reference to income derived by the person during the year of income from carrying on of a business either alone or together with another person or other persons.

102AG Trust income to which Division applies

- (1) Where a beneficiary of a trust estate is a prescribed person in relation to a year of income, this Division applies to so much of the share of the beneficiary of the net income of the trust estate of the year of income as, in the opinion of the Commissioner, is attributable to assessable income of the trust estate that is not, in relation to that beneficiary, excepted trust income.
- (2) Subject to this section, an amount included in the assessable income of a trust estate is excepted trust income in relation to a beneficiary of the trust estate to the extent to which the amount:
 - (a) is assessable income of a trust estate that resulted from:
 - (i) a will, codicil or an order of a court that varied or modified the provisions of a will or codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;
 - (b) is employment income;
 - (c) is derived by the trustee of the trust estate from the investment of any property transferred to the trustee for the benefit of the beneficiary:
 - (i) by way of, or in satisfaction of a claim for, damages in respect of:
 - (A) loss by the beneficiary of parental support; or
 - (B) personal injury to the beneficiary, any disease suffered by the beneficiary or any impairment of the beneficiary's physical or mental condition;

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- (ii) pursuant to any law relating to worker's compensation;
 - (iii) pursuant to any law relating to the payment of compensation in respect of criminal injuries;
 - (iv) directly as the result of the death of a person and under the terms of a policy of life insurance;
 - (v) directly as the result of the death of a person and out of a provident, benefit, superannuation or retirement fund;
 - (vi) directly as the result of the death of a person by an employer of the deceased person;
 - (vii) out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances; or
 - (viii) as the result of a family breakdown (see section 102AGA);
- (d) is derived by the trustee of the trust estate from the investment of any property:
- (i) that devolved for the benefit of the beneficiary from the estate of a deceased person;
 - (ii) that was transferred to the trustee for the benefit of the beneficiary by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred within 3 years after the date of the death of the deceased person; or
 - (iii) being a verifiable prize in a legally authorized and conducted lottery and being a prize of which the beneficiary is the beneficial owner; or
- (e) is derived by the trustee of the trust estate from the investment of any property that, in the opinion of the Commissioner, represents accumulations of:
- (i) assessable income derived by the trustee during a year of income in relation to which this Division applies, being assessable income that, in relation to the beneficiary, is excepted trust income;
 - (ii) assessable income derived by the trustee during a year of income in relation to which this Division does not apply, being assessable income that would, in the opinion of the Commissioner, have been excepted trust income in relation to the beneficiary if this Division were applicable in relation to the year of income during which the assessable income was derived; or

- (iii) exempt income derived by the trustee to which subparagraph (i) or (ii) would, in the opinion of the Commissioner, apply if that exempt income had been assessable income.
- (2A) Paragraph (2)(c) or subparagraph (2)(d)(ii) does not apply unless the beneficiary of the trust concerned will, under the terms of the trust, acquire the trust property (other than as a trustee) when the trust ends.
- (3) Subject to subsection (4), if any 2 or more parties to:
- (a) the derivation of the excepted trust income mentioned in subsection (2); or
 - (b) any act or transaction directly or indirectly connected with the derivation of that excepted trust income;
- were not dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction, the excepted trust income is only so much (if any) of that income as would have been derived if they had been dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction.
- (4) Subsection (2) does not apply in relation to assessable income derived by a trustee directly or indirectly under or as a result of an agreement that was entered into or carried out by any person (whether before or after the commencement of this subsection) for the purpose, or for purposes that included the purpose, of securing that that assessable income would be excepted trust income.
- (5) In determining whether subsection (4) applies in relation to an agreement, no regard shall be had to a purpose that is a merely incidental purpose.
- (5A) In the application of paragraph 102AF(1)(b) for the purposes of the application of paragraph (2)(b) of this section in relation to a beneficiary of a trust estate, payments made for services rendered or to be rendered shall not be taken to be employment income unless the services are rendered or to be rendered by the beneficiary.
- (6) Where:
- (a) any assessable income is derived by a trustee of a trust estate from the investment of any property transferred to the trustee

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for the benefit of a beneficiary of the trust estate by way of, or in satisfaction of a claim for, damages in respect of:

- (i) loss by the beneficiary of parental support; or
 - (ii) personal injury to the beneficiary, any disease suffered by the beneficiary or any impairment of the beneficiary's physical or mental condition; and
- (b) that property was transferred to the trustee otherwise than in pursuance of an order of a court;

paragraph (2)(c) applies only to so much (if any) of that assessable income as the Commissioner considers fair and reasonable.

(7) Where:

- (a) any assessable income is derived by a trustee of a trust estate from the investment of any property transferred to the trustee for the benefit of a beneficiary of the trust estate by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred to the trustee within 3 years after the date of death of the deceased person; and
- (b) the amount referred to in paragraph (a) or, if the assessable income of that beneficiary of the year of income includes any amount that:
 - (i) was derived by the beneficiary from property that was transferred to the beneficiary by another person out of property that devolved upon that other person from the estate of that deceased person and was so transferred within 3 years after the date of death of that deceased person;
 - (ii) was derived by the beneficiary from property that devolved upon the beneficiary from the estate of that deceased person; or
 - (iii) is included in that assessable income under section 97 or 100 in respect of the share of that beneficiary of the net income of another trust estate, being a trust estate that resulted from a will or codicil of that deceased person, an order of a court that varied or modified the provisions of a will or codicil of that deceased person, a partial intestacy of that deceased person or an order of a court that varied or modified the application, in relation to the estate of that deceased person, of the provisions

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of the law relating to the distribution of estates of persons who die intestate;

the sum of the amount referred to in paragraph (a) and the amount or amounts applicable by virtue of subparagraphs (i), (ii) and (iii) of this paragraph, exceeds the amount that, in the opinion of the Commissioner, would have been included in the assessable income of the beneficiary of the year of income in respect of an amount or amounts derived by the beneficiary from property that, in the opinion of the Commissioner, would have devolved directly upon that beneficiary if that deceased person had died intestate;

the amount of the assessable income of the trust estate that would, apart from this subsection, have been excepted trust income in relation to that beneficiary by virtue of subparagraph (2)(d)(ii) shall be reduced by the amount of that excess.

- (8) For the purposes of this section, where:
- (a) any property is transferred to the trustee of a trust estate; and
 - (b) the trustee has a discretion to pay or apply the income derived from that property to or for the benefit of specified beneficiaries or beneficiaries included in a specified class of beneficiaries;

that property shall be taken to have been transferred to the trustee for the benefit of each of those specified beneficiaries or for each of the beneficiaries in that specified class of beneficiaries, as the case may be.

102AGA Transfer of property as the result of a family breakdown

- (1) For the purposes of subparagraph 102AE(2)(b)(viii) or 102AG(2)(c)(viii), the transfer of property (the *subject property*) by a person (the *transferor*):
- (a) to the minor mentioned in subparagraph 102AE(2)(b)(viii);
or
 - (b) to the trustee mentioned in subparagraph 102AG(2)(c)(viii) for the benefit of the beneficiary mentioned in that subparagraph;
- is *as the result of a family breakdown* if the requirements of subsection (2) or (3) of this section are met.

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- (2) The transfer will be as the result of a family breakdown if:
- (a) a person ceases to live with another person as the spouse of that person; and
 - (b) at least one of the persons:
 - (i) is the parent; or
 - (iv) has legal custody or guardianship; of the minor or the beneficiary; and
 - (c) an order, determination or assessment of a court, person or body (whether or not in Australia) is made wholly or partly because the person has ceased to live as the spouse of the other person; and
 - (d) the effect of the order, determination or assessment is that a person (whether one of the spouses, the transferor or any other person) becomes subject to a legal obligation to maintain, transfer property to, or do some other thing for the benefit of, the minor or beneficiary or one of the spouses; and
 - (e) the transferor transfers the subject property to the minor, or to the trustee for the benefit of the beneficiary, in giving effect to the legal obligation (including in discharging the legal obligation if it falls on someone else, and whether or not the legal obligation could have been given effect in some other way).
- (3) The transfer will also be as a result of a family breakdown if:
- (a) when the minor or beneficiary is born, his or her parents are not living together as spouses; and
 - (b) an order, determination or assessment of a court, person or body (whether or not in Australia) is made wholly or partly because the parents are not living together as mentioned in paragraph (a); and
 - (c) the effect of the order, determination or assessment is that a person (whether one of the parents, the transferor or any other person) becomes subject to a legal obligation to maintain, transfer property to, or do some other thing for the benefit of, the minor or beneficiary or one of the parents of the minor or beneficiary; and
 - (d) the transferor transfers the subject property to the minor, or to the trustee for the benefit of the beneficiary, in giving effect to the legal obligation (including in discharging the legal obligation if it falls on someone else, and whether or

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not the legal obligation could have been given effect in some other way).

Division 6A—Alienation of income

102A Interpretation

- (1) In this Division:

associate, in relation to a person, means any person who is an associate, within the meaning of section 318, in relation to the person.

interest, in relation to property, means any legal or equitable estate or interest in the property.

property means any property whether real or personal.

right to receive income from property means a right to have income that will or may be derived from property paid to, or applied or accumulated for the benefit of, the person owning the right.

the prescribed date, in relation to a person who transfers to another person a right to receive income from property, means the day preceding the seventh anniversary of the date on which income from the property is first paid to, or applied or accumulated for the benefit of, the other person by reason of the transfer.

- (2) A reference in this Division to a transfer of an interest in property or of a right to receive income from property shall be read as a reference to any such transfer, whether made for valuable consideration or not.
- (3) For the purposes of this Division, any income that will or may be derived by a trust estate from a business carried on by the trustee of the trust estate shall be deemed to be income that will or may be derived from property.
- (4) For the purposes of this Division:
- (a) where a person:
 - (i) declares that he holds a right to receive income from property upon trust for another person; or
 - (ii) transfers such a right to a trustee to be held upon trust for another person;

the right shall be deemed to be transferred to that other person; and

(b) where a person:

(i) declares that he holds a right to receive income from property upon trust for 2 or more other persons in succession; or

(ii) transfers such a right to, or to a trustee to be held upon trust for, 2 or more other persons in succession;

the right shall be deemed to be separately transferred to each of those other persons for the respective periods for which the right is held upon trust for, or transferred to, those persons.

(5) Where an interest in property or a right to receive income from property is transferred by 2 or more persons jointly, each of those persons shall, for the purposes of this Division, be deemed to have transferred an interest in that property or a right to receive income from that property, as the case may be.

(6) In this Division, unless the contrary intention appears:

(a) a reference to the arm's length consideration in respect of a transfer of a right to receive income from property is a reference to the consideration that might reasonably be expected to have been received or receivable in respect of the transfer if the right had been transferred under an agreement between independent parties dealing at arm's length with each other in relation to the agreement and transfer; and

(b) a reference to the amount of consideration is, in a case where consideration is paid or given otherwise than in cash, a reference to the money value of the consideration.

102B Certain income transferred for short periods to be included in assessable income of transferor

(1) Subject to this section, where a right to receive income from property is transferred, otherwise than by a will or codicil, by a person (in this subsection referred to as the *transferor*) to an associate of the transferor for a period that will, or may for any reason other than the death of any person or the associate becoming under a legal disability, terminate before the prescribed date, any income that:

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- (a) is derived from the property;
 - (b) is paid to, or applied or accumulated for the benefit of:
 - (i) the associate; or
 - (ii) any other associate of the transferor to whom a right to receive income from the property has been transferred (whether by the first-mentioned associate or any other person) after the first-mentioned transfer; and
 - (c) would, if the first-mentioned transfer had not been made, have been included in the assessable income of the transferor;
- shall be treated for the purposes of this Act as if the first-mentioned transfer had not been made.
- (2) Subsection (1) (other than subparagraph (1)(b)(ii)) does not apply in relation to a transfer of a right to receive income from property where:
 - (a) the right was not a right that arose from the ownership by the transferor of an interest in the property;
 - (b) the right arose from the ownership by the transferor of an interest in the property and, before or at the time of the first-mentioned transfer, the transferor transferred that interest to the transferee or another person; or
 - (c) consideration has been received or is receivable in respect of the transfer and the amount of that consideration is not less than the arm's length consideration in respect of the transfer.
 - (3) Where, on a particular day, a person who has transferred to another person a right to receive income from property:
 - (a) in any case—transfers to the other person or to a third person an interest in the property, being the interest from the ownership of which by the transferor the right arose;
 - (b) in the case of a natural person—dies; or
 - (c) in the case of a company—ceases to exist;subsection (1) (other than subparagraph (1)(b)(ii)) does not apply, in relation to the transfer of the right to receive income, in relation to income that is derived from the property after that day.
 - (4) Subsection (1) does not apply in relation to income derived by a person in pursuance of a transfer to that person of a right to receive income from property where, by reason of subsection 51-50(3) of

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the *Income Tax Assessment Act 1997*, the income so derived by the person is not exempt from tax under section 51-30 of that Act.

(4A) Where:

- (a) subsection (1) (other than subparagraph (1)(b)(ii)) applies in relation to a transfer by a person of a right to receive income from property; and
- (b) consideration has been received or is receivable in respect of the transfer;

then, notwithstanding any other provision of this Act (other than a provision of Part IVA), the amount of the consideration shall not be included in the assessable income of the person of a year of income.

- (5) Nothing in any other provision of this Act prevents the amendment of an assessment at any time for the purpose of excluding from the assessable income of a person income that is, by virtue of subsection (1), to be included in the assessable income of another person.
- (6) Where there is excluded from the assessable income of a person an amount that, in pursuance of subsection (1) was previously treated as assessable income of that person, nothing in any other provision of this Act prevents the amendment of any assessment at any time to give effect to the inclusion in the assessable income of another person of an amount that, in pursuance of that subsection, was treated as not being so included for the purposes of the assessment.

102C Effect of certain transfers of rights to receive income from property

Where:

- (a) any income is paid to, or applied or accumulated for the benefit of, a person (in this section referred to as *the transferee*) by reason of the transfer to the person of a right to receive income from property; and
- (b) the income so paid, applied or accumulated is, by virtue of section 102B, to be included in the assessable income of another person (in this section referred to as *the transferor*);

then:

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- (c) for the purposes of the application of this Act other than this Division in relation to the transferor, an amount equal to the income so paid, applied or accumulated:
 - (i) shall be deemed to have been paid by the transferor to the transferee at the time at which the income was paid to, or applied or accumulated for the benefit of, the transferee; and
 - (ii) shall be deemed to have been so paid for the purpose for which the right was transferred; and
- (d) where, if the right had not been transferred, but the transferor had paid to the transferee, at the time at which the income was so paid to, or applied or accumulated for the benefit of, the transferee and for the purpose for which the right was transferred, an amount (in this paragraph referred to as *the notional amount*) equal to the amount of the income so paid, applied or accumulated, the notional amount or a part of the notional amount would have been included in the assessable income of the transferee—there shall be included in that assessable income an amount equal to the notional amount or that part of the notional amount, as the case may be.

102CA Consideration in respect of transfer to be included in assessable income of transferor in certain cases

- (1) Subject to this section, where:
 - (a) a right to receive income from property is transferred, otherwise than by a will or codicil, by a person to another person;
 - (b) consideration has been received or is receivable in respect of the transfer; and
 - (c) immediately after the transfer, subsection 102B(1) (other than subparagraph 102B(1)(b)(ii)) does not apply in relation to the transfer;the assessable income of the transferor of the year of income in which the right is transferred shall include the amount of the consideration.
- (2) Subsection (1) does not apply in relation to a transfer of a right to receive income from property where:
 - (a) the right was not a right that arose from the ownership by the transferor of an interest in the property; or

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- (b) the right arose from the ownership by the transferor of an interest in the property and, before or at the time of the first-mentioned transfer, the transferor transferred that interest to the transferee.
- (3) Where, by reason of subsection 51-50(3) of the *Income Tax Assessment Act 1997*, income derived by a person pursuant to a transfer to the person of a right to receive income from property is not exempt from tax under section 51-30 of that Act, subsection (1) does not apply in relation to the transfer.

Division 6B—Income of certain unit trusts

102D Interpretation

- (1) In this Division, unless the contrary intention appears:

arrangement means an agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

net income, in relation to a corporate unit trust, means the total assessable income of the corporate unit trust calculated under this Act as if the trustee were a taxpayer in respect of that income and were a resident, less all allowable deductions.

A corporate unit trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

prescribed trust estate means a trust estate that is, or has been, a corporate unit trust in relation to any year of income.

property includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

relevant year of income means the year of income that commenced on 1 July 1980 or a subsequent year of income.

unit, in relation to a prescribed trust estate, includes a beneficial interest, however described, in any of the income or property of the trust estate.

unitholder, in relation to a prescribed trust estate, means the holder of a unit or units in the prescribed trust estate.

unit trust dividend means:

- (a) any distribution made by the trustee of a prescribed trust estate, whether in money or in other property, to a unitholder; and
- (b) any amount credited by the trustee of a prescribed trust estate to a unitholder as a unitholder;

but does not include:

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- (c) moneys paid or credited, or property distributed, by the trustee of a prescribed trust estate to the extent to which the moneys are attributable, or the property is attributable, to profits arising during a year of income in relation to which the prescribed trust estate was not a corporate unit trust; or
 - (d) moneys paid or credited, or property distributed, by the trustee of a prescribed trust estate in respect of the cancellation, extinguishment or redemption of a unit to the extent to which:
 - (i) the moneys paid or credited or the property distributed represent or represents moneys paid to, or property transferred to, the trustee for the purpose of the creation or issue of that unit; and
 - (ii) the amount of the moneys paid or credited or the value of the property distributed, as the case may be, does not exceed the amount of the moneys paid to the trustee, or the value, at the time of transfer, of the property transferred to the trustee, for the purpose of the creation or issue of that unit.
- (2) A reference in this Division to an associate of a company or of the trustee of a unit trust (which company or trustee is in this subsection referred to as the *primary entity*) shall be read as a reference to a company or the trustee of a trust estate (which company or trustee is in this subsection referred to as the *associate*) where:
- (a) the affairs or operations of the primary entity are, or are able to be, controlled, either directly or indirectly, by the associate;
 - (b) the affairs or operations of the associate are, or are able to be, controlled, either directly or indirectly, by the primary entity; or
 - (c) the operations of the primary entity are, or are able to be, controlled, either directly or indirectly, by a person who controls or is able to control, or by persons who control or are able to control, either directly or indirectly, the operations of the associate.
- (3) A reference in subsection (2) to the affairs or operations of a primary entity or of an associate, shall, in a case where the primary entity or the associate is a trustee, include a reference to the administration of the trust estate by the trustee.
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Section 102E

102E Prescribed arrangements

- (1) A reference in this Division, in relation to a unit trust, to an arrangement that is a prescribed arrangement in relation to a company is a reference to an arrangement under which:
 - (a) a shareholder in the company was, by reason of being a shareholder in the company, to be granted a right or an option to acquire, either directly or indirectly through any interposed companies or trusts, a unit or units in the unit trust; and
 - (b) the units in the unit trust were to be held or dealt with, or the income or property of the unit trust was to be applied, during any year of income, in such a way that, in the opinion of the Commissioner, if section 102G were applied in relation to the unit trust in relation to the year of income, the unit trust would be a public unit trust in relation to the year of income.
- (2) Without limiting the generality of subsection (1), a reference in that subsection to an arrangement under which a shareholder in a company was, by reason of being a shareholder in the company, to be granted a right or an option to acquire a unit or units in a unit trust includes a reference to an arrangement under which a shareholder in the company was, by reason of being a shareholder in the company, to be given a preference or advantage in relation to:
 - (a) the allocation of a unit or units in the unit trust or the acceptance of moneys by any person in relation to the allocation of a unit or units in the unit trust; or
 - (b) the acquisition of a unit or units in the unit trust.
- (3) A reference in this Division, in relation to a unit trust (in this subsection and subsection (4) referred to as the *second unit trust*), to an arrangement that is a prescribed arrangement in relation to another unit trust (in this subsection and subsection (4) referred to as the *first unit trust*) is a reference to an arrangement under which:
 - (a) a unitholder in the first unit trust was, by reason of being a unitholder in the first unit trust, to be granted a right or an option to acquire, either directly or indirectly through any interposed companies or trusts, a unit or units in the second unit trust; and
 - (b) the units in the second unit trust were to be held or dealt with, or the property of the second unit trust was to be applied,

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during any year of income, in such a way that, in the opinion of the Commissioner, if section 102G were applied in relation to the second unit trust in relation to the year of income, the second unit trust would be a public unit trust in relation to the year of income.

- (4) Without limiting the generality of subsection (3), a reference in that subsection to an arrangement under which a unitholder in the first unit trust was, by reason of being a unitholder in the first unit trust, to be granted a right or an option to acquire a unit or units in the second unit trust includes a reference to an arrangement under which a unitholder in the first unit trust was, by reason of being a unitholder in the first unit trust, to be given a preference or advantage in relation to:
- (a) the allocation of a unit or units in the second unit trust or the acceptance of moneys by any person in relation to the allocation of a unit or units in the second unit trust; or
 - (b) the acquisition of a unit or units in the second unit trust.

102F Eligible unit trusts

- (1) For the purposes of this Division, a unit trust is an eligible unit trust in relation to a year of income if:
- (a) property that, at any time during the year of income or a preceding year of income, was property of the unit trust became property of the unit trust in pursuance of an arrangement that is a prescribed arrangement in relation to a company and, at any time before the property became property of the unit trust, the property was the property of the company or an associate of the company; or
 - (b) in pursuance of an arrangement that is a prescribed arrangement in relation to a company, the trustee of the unit trust has, at any time during the year of income or a preceding year of income, carried on a business that, at any time before that time, had been carried on by the company or an associate of the company.
- (2) For the purposes of this Division, a unit trust (in this subsection referred to as the **relevant unit trust**) is also an eligible unit trust in relation to a year of income if:
- (a) property that, at any time during the year of income or a preceding year of income, was property of the relevant unit

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trust became property of the relevant unit trust in pursuance of an arrangement that is a prescribed arrangement in relation to another unit trust and, at any time before the property became the property of the relevant unit trust, the property was the property of that other unit trust or of an associate of the trustee of that other unit trust; or

- (b) in pursuance of an arrangement that is a prescribed arrangement in relation to another unit trust, the trustee of the relevant unit trust has, at any time during the year of income or a preceding year of income, carried on a business that, at any time before that time, had been carried on by the trustee of that other unit trust or an associate of the trustee of that other unit trust;

and that other unit trust is in relation to the year of income, or was in relation to a preceding year of income, an eligible unit trust.

- (3) A reference in subsection (1) or (2), in relation to a company or trustee of a unit trust, to the property of an associate shall, in a case where the associate is the trustee of a trust estate, be read as a reference to property of that trust estate.
- (4) Ownership interests in a unit trust or a company that is part of a scheme for reorganising the affairs of stapled entities referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* is not property for the purposes of applying subsections (1) and (2).

102G Public unit trusts

- (1) For the purposes of this Division, but subject to the succeeding provisions of this section, a unit trust is a public unit trust in relation to a year of income if, at any time during the year of income:
- (a) any of the units in the unit trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere;
- (b) any of the units in the unit trust were offered to the public; or
- (c) the units in the unit trust were held by not fewer than 50 persons.
- (2) A unit trust shall not be taken to be a public unit trust in relation to a year of income by reason that units in the unit trust were offered to the public at any time during the year of income if the Commissioner is of the opinion that any of those units were offered

to the public for the purpose, or for purposes that included the purpose, of enabling the unit trust to be treated as a public unit trust for the purposes of this Division in relation to the year of income.

- (3) Notwithstanding subsection (1) but subject to subsection (4), a unit trust that, but for this subsection and subsection (6), would be a public unit trust in relation to a year of income shall be deemed not to be a public unit trust in relation to the year of income if, at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, a unit or units in the unit trust that entitled the holder or holders thereof to not less than 75% of:
- (a) the beneficial interests in the income of the unit trust; or
 - (b) the beneficial interests in the property of the unit trust.
- (4) Subject to subsection (6), where by virtue of subsection (3), a unit trust would, but for this subsection, be deemed not to be a public unit trust in relation to a year of income by reason that, at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, the unit or units referred to in subsection (3) and the Commissioner is of the opinion that, having regard to:
- (a) the length of the period or the aggregate of the lengths of the periods in the year of income during which one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, the unit or units referred to in subsection (3); and
 - (b) any other matters that the Commissioner considers relevant;
- it is reasonable that the unit trust should be treated as a public unit trust in relation to the year of income, the unit trust shall be deemed to be a public unit trust in relation to the year of income.
- (5) For the purposes of subsections (3) and (4), a person (in this subsection referred to as the *transferee*) to whom a right to acquire or become the holder of a unit in a unit trust is granted or transferred shall be deemed not to have such a right if the Commissioner is of the opinion, having regard to the financial circumstances of the transferee and to any other matters that the Commissioner considers relevant, that it was not intended by the person who granted or transferred the right to the transferee that the right would be exercised by the transferee.

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- (6) Notwithstanding any of the preceding provisions of this section but subject to subsection (7), a unit trust that, but for this subsection, would be a public unit trust in relation to a year of income, shall be deemed not to be a public unit trust in relation to that year of income if:
- (a) not less than 75% of the total of moneys paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders, was paid or credited to one person or persons not more than 20 in number; or
 - (b) the Commissioner is of the opinion that, by reason of:
 - (i) any provision in the instrument by which the trust was created, or any contract, agreement or instrument authorizing the variation or abrogation of the rights attaching to any of the units in the unit trust or relating to the conversion, cancellation, extinguishment or redemption of any such units;
 - (ii) any contract, agreement, option or instrument under which a person has power to acquire a unit or units in the unit trust; or
 - (iii) any power, authority, or discretion in a person in relation to the rights attaching to any of the units in the unit trust;the rights attaching to any of the units in the unit trust were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that:
 - (iv) units in the unit trust that entitled the holder or holders thereof to not less than 75% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust;would have been held by one person or persons not more than 20 in number;
 - (v) not less than 75% of the total of moneys paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders would have been paid or credited to one person or persons not more than 20 in number; or

- (vi) in the case where no moneys were paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders—if moneys had been so paid or credited by the trustee of the unit trust during the year of income, not less than 75% of the amount of those moneys would have been paid or credited to one person or persons not more than 20 in number.
- (7) A unit trust shall not be deemed by subsection (6) not to be a public unit trust in relation to a year of income by reason that rights attaching to any of the units in the unit trust were, at any time during the year of income, capable of being varied in the manner mentioned in paragraph (6)(b) if the Commissioner is of the opinion that the person or persons who were able to vary the rights in that manner intended not to vary the rights in that manner during the year of income.
- (8) For the purposes of subsections (1) and (2), units in a unit trust shall be taken to be offered to the public if and only if:
 - (a) an offer is made to the public or to a section of the public to subscribe for or purchase the units; or
 - (b) an invitation is issued to the public or to a section of the public to make offers to subscribe for or purchase the units.
- (9) For the purposes of this section, where any units in a unit trust are held by the trustee of another trust estate, a person who has a beneficial interest in property of that other trust estate that consists of those units (whether or not that beneficial interest is deemed to be held by virtue of the application of this subsection) shall be deemed to hold those units.
- (10) For the purposes of this section, a distribution of property of a unit trust to a unitholder shall be taken to be a payment of money to the unitholder of an amount equal to the value of the property.
- (11) For the purposes of this section:
 - (a) a person, whether or not he holds units in the unit trust concerned;
 - (b) his relatives; and
 - (c) in relation to any units in respect of which they are such nominees, his nominees and the nominees of any of his relatives;

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shall be deemed to be one person.

102H Resident unit trusts

For the purposes of this Division, a unit trust is a resident unit trust in relation to a year of income if, at any time during the year of income:

- (a) either of the following conditions was satisfied:
 - (i) any property of the unit trust was situated in Australia;
 - (ii) the trustee of the unit trust carried on business in Australia; and
- (b) either of the following conditions was satisfied:
 - (i) the central management and control of the unit trust was in Australia;
 - (ii) a person who was a resident or persons who were residents held more than 50% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust.

102J Corporate unit trusts

- (1) A unit trust is a corporate unit trust in relation to a relevant year of income if:
 - (a) where the relevant year of income is the year of income that commenced on 1 July 1980, the year of income that commenced on 1 July 1981 or the year of income commencing on 1 July 1982:
 - (i) the unit trust was established after 11 July 1980;
 - (ii) the unit trust is an eligible unit trust in relation to the relevant year of income;
 - (iii) the unit trust is a public unit trust in relation to the relevant year of income; and
 - (iv) either of the following conditions is satisfied:
 - (A) the unit trust is a resident unit trust in relation to the relevant year of income;
 - (B) the unit trust was a corporate unit trust in relation to a year of income preceding the relevant year of income; or

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- (b) where the relevant year of income is the year of income commencing on 1 July 1983 or a subsequent year of income:
 - (i) the unit trust is an eligible unit trust in relation to the relevant year of income;
 - (ii) the unit trust is a public unit trust in relation to the relevant year of income; and
 - (iii) either of the following conditions is satisfied:
 - (A) the unit trust is a resident unit trust in relation to the relevant year of income;
 - (B) the unit trust was a corporate unit trust in relation to a year of income preceding the relevant year of income.
- (2) Where a unit trust that was established on or before 11 July 1980 is an eligible unit trust in relation to the year of income that commenced on 1 July 1980, the year of income that commenced on 1 July 1981, or the year of income commencing on 1 July 1982 by virtue of a prescribed arrangement in relation to a company or unit trust that was entered into or carried out after 11 July 1980 then, whether or not the unit trust is also an eligible unit trust in relation to any of those years of income by virtue of a prescribed arrangement in relation to a company or unit trust that was entered into or carried out on or before 11 July 1980, the unit trust shall be taken, for the purposes of subparagraph (1)(a)(i), to have been established after 11 July 1980.

102K Taxation of net income of corporate unit trust

The trustee of a unit trust that is a corporate unit trust in relation to a relevant year of income shall be assessed and is liable to pay tax on the net income of the corporate unit trust of the relevant year of income at the rate declared by the Parliament for the purposes of this section.

102L Modified application of Act in relation to certain unit trusts

- (1) For the purpose of the application of this Act in relation to the imposition, assessment and collection of tax in respect of:
 - (a) the net income of a corporate unit trust; and
 - (b) the income or assessable income of a unitholder in a prescribed trust estate;

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the following provisions of this section have effect.

Note: Under Subdivision 713-C of the *Income Tax Assessment Act 1997*, this Act applies differently in relation to a corporate unit trust that chooses to form a consolidated group.

- (3) For the purposes of the application of sections 46A and 46B in accordance with subsection (2), the Commissioner may be satisfied, in relation to a unit trust dividend, that a transaction, operation, undertaking, scheme or arrangement was by way of dividend stripping or similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping if the Commissioner would have been satisfied, had the unit trust dividend been a dividend paid by a company, that the transaction, operation, undertaking, scheme or arrangement would have been a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping or, as the case requires, would have been similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping.
- (3A) For the purposes of subsections (2) and (3):
- (a) the reference in paragraph (2)(a) to a prescribed trust estate includes a reference to a trust estate that is a prescribed trust estate for the purposes of Division 6C;
 - (b) the reference in paragraph (2)(b) to a corporate unit trust includes a reference to a unit trust that is a public trading trust for the purposes of Division 6C; and
 - (c) references in those subsections to a unit trust dividend include references to a unit trust dividend within the meaning of Division 6C.
- (3B) Section 67AA applies, *mutatis mutandis*, in relation to the trustee of a corporate unit trust.
- (5) For the purposes of the application of the definition of *year of income* in subsection 6(1), the reference in that definition to a company (except a company in the capacity of a trustee) shall be read as including a reference to a corporate unit trust or, as the context requires, to the trustee of a corporate unit trust.
- (6) A reference in the definition of *person* in subsection 6(1) to a company shall be read as including a reference to a corporate unit trust or, as the context requires, to the trustee of a corporate unit trust.

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- (7) The reference in section 158 to the taxable income of a company except income in respect of which it is assessable as trustee shall be read as including a reference to the net income of a corporate unit trust.
- (10) A reference in subsection 44(1) or section 128B of this Act, in subsection 840-805(3) of the *Income Tax Assessment Act 1997*, in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225) or in subsection 12-390(10) in that Schedule, to a company or to a company that is a resident shall be read as including a reference to a prescribed trust estate or, as the context requires, to the trustee of a prescribed trust estate.
- (11) A reference in the definition of *paid* in subsection 6(1) or in subsection 44(1), section 128A or section 128B of this Act, or in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225), to a dividend shall be read as including a reference to a unit trust dividend.
- (12A) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* applies in respect of units in a prescribed trust estate in the same way as it applies in respect of shares.
- (13) A reference in subsection 44(1) to a shareholder in relation to a company shall be read as including a reference to a unitholder in a prescribed trust estate.
- (15) A reference in section 6B, Division 6 or subsection 128A(3) or 157(3) of this Act, Subdivision 840-M of the *Income Tax Assessment Act 1997* or Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* to a trust estate or to a trustee shall be read as not including a reference to a trust estate that is a corporate unit trust or to the trustee of a corporate unit trust, as the case may be.
- (18) For the purposes of subsection 44(1), a unit trust dividend paid by the trustee of a prescribed trust estate out of corpus of the trust estate shall, to the extent to which the unit trust dividend is attributable to profits derived by the trustee, be taken to be paid out of those profits.
- (19) For the purposes of section 128B, a unit trust dividend paid to a unitholder in a prescribed trust estate shall be deemed to be income

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derived by the unitholder at the time at which the unit trust dividend is paid.

Non-unit dividend

- (20) Subsections (2), (3), (3A) and (19) apply as if references in those subsections to a unit trust dividend included a reference to a non-unit dividend.
- (21) For the purposes of subsection 44(1), a non-unit dividend paid by the trustee of a prescribed trust estate out of corpus of the trust estate is taken, to the extent to which the non-unit dividend is attributable to a source in Australia, to be derived from a source in Australia.
- (21A) For the purposes of subsection 44(1), a non-unit dividend paid by the trustee of a prescribed trust estate out of corpus of the trust estate is taken, to the extent to which the non-unit dividend is attributable to a source outside Australia, to be derived from a source outside Australia.
- (22) If a provision of this Act that applies to a dividend:
- (a) is taken under this section to apply to a unit trust dividend; and
 - (b) applies to a non-share dividend in the same way as it applies to a dividend;
- that provision also applies to a non-unit dividend in the same way as it applies to a dividend.

Non-unit equity interest

- (23) If a provision of this Act that applies to a share:
- (a) is taken under this section to apply to a unit in a corporate unit trust; and
 - (b) applies to a non-share equity interest in a company in the same way as it applies to a share;
- that provision also applies to a non-unit equity interest in a corporate unit trust in the same way as it applies to a share.

Equity holder

- (24) Subsections (1), (2), (17) and (19) apply as if references in those subsections to a unitholder included a reference to an equity holder who is not a unitholder.
- (25) If a provision of this Act that applies to a shareholder:
- (a) is taken because of this section to apply to a unitholder in a corporate unit trust; and
 - (b) applies to an equity holder in a company who is not a shareholder in the same way as it applies to a shareholder;
- that provision also applies to an equity holder in a corporate unit trust who is not a unitholder in the same way as it applies to a shareholder.

Definitions

- (26) In this section:

equity holder in a prescribed trust estate means the holder of an equity interest in the prescribed trust estate.

equity interest in a prescribed trust estate means:

- (a) a unit in the prescribed trust estate; or
- (b) any other interest that would be an equity interest in the prescribed trust estate if references in Division 974 of the *Income Tax Assessment Act 1997* to a company included references to a prescribed trust estate or, as the context requires, to the trustee of a prescribed trust estate.

non-unit dividend means a unit trust distribution that is not a unit trust dividend.

non-unit equity interest in a prescribed trust estate means an equity interest in the prescribed trust estate that is not a unit in the prescribed trust estate.

unit trust distribution means a distribution, or an amount credited, that would be a unit trust dividend if references in the definition of **unit trust dividend** in subsection 102D(1) to a unitholder were references to an equity holder.

Division 6C—Income of certain public trading trusts

102M Interpretation

In this Division, unless the contrary intention appears:

arrangement has the same meaning as in the *Income Tax Assessment Act 1997*.

eligible investment business means one or more of:

- (a) investing in land for the purpose, or primarily for the purpose, of deriving rent; or
- (b) investing or trading in any or all of the following:
 - (i) secured or unsecured loans (including deposits with a bank or other financial institution);
 - (ii) bonds, debentures, stock or other securities;
 - (iii) shares in a company, including shares in a foreign hybrid company (as defined in the *Income Tax Assessment Act 1997*);
 - (iv) units in a unit trust;
 - (v) futures contracts;
 - (vi) forward contracts;
 - (vii) interest rate swap contracts;
 - (viii) currency swap contracts;
 - (ix) forward exchange rate contracts;
 - (x) forward interest rate contracts;
 - (xi) life assurance policies;
 - (xii) a right or option in respect of such a loan, security, share, unit, contract or policy;
 - (xiii) any similar financial instruments; or
- (c) investing or trading in financial instruments (not covered by paragraph (b)) that arise under financial arrangements, other than arrangements excepted by section 102MA.

eligible policy means:

- (a) an exempt life insurance policy (as defined in the *Income Tax Assessment Act 1997*); or

- (b) a complying superannuation/FHSA life insurance policy (as defined in that Act).

excluded rent means rent worked out by reference to the profits or receipts of an entity that uses any of the relevant land under an arrangement that is designed to result in the transfer of all, or substantially all, of what would otherwise be the profits of the entity to another party to the arrangement.

exempt entity, means:

- (a) a body or association to which item 1.1, 1.2, 1.3, 1.4 or 1.7 of the table in section 50-5 or section 50-10, 50-15, 50-25, 50-30, 50-40 or 50-45 of the *Income Tax Assessment Act 1997* applies;
- (aa) an STB (within the meaning of Division 1AB) the income of which is wholly exempt from tax;
- (b) the trustee of:
- (i) an exempt life assurance fund;
 - (ii) a fund to which item 1.5 or 1.6 of the table in section 50-5 or item 4.1 of the table in section 50-20 of the *Income Tax Assessment Act 1997* applies; or
 - (iii) a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust;
- (ba) an organisation that is exempted from income tax by regulations under the *International Organisations (Privileges and Immunities) Act 1963*;
- (c) a person or body that, by virtue of a provision of an Act other than this Act, is not liable to income tax; or
- (d) a government, or an authority of a government, that is not liable to income tax.

exempt life assurance fund means a fund maintained by a life assurance company solely in respect of a class of life assurance business that consists of business of, or in relation to, the issuing of, or the undertaking of liability under, eligible policies.

financial arrangement has the same meaning as in the *Income Tax Assessment Act 1997*.

land includes an interest in land and fixtures on land.

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net income, in relation to a public trading trust, means the total assessable income of the trust calculated under this Act as if the trustee were a taxpayer in respect of that income and were a resident, less all allowable deductions.

A public trading trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

prescribed trust estate means a trust estate that is, or has been, a public trading trust in relation to any year of income.

property includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

relevant year of income means the year of income that commenced on 1 July 1985 or a subsequent year of income.

trading business means a business that does not consist wholly of eligible investment business.

trustee, in relation to a fund referred to in paragraph (b) of the definition of **exempt entity**, means the person in whom the assets of the fund are vested, whether or not as trustee.

unit, in relation to a prescribed trust estate, includes a beneficial interest, however described, in any of the income or property of the trust estate.

unitholder, in relation to a prescribed trust estate, means the holder of a unit or units in the prescribed trust estate.

unit trust dividend means:

- (a) any distribution made by the trustee of a prescribed trust estate, whether in money or in other property, to a unitholder; and
- (b) any amount credited by the trustee of a prescribed trust estate to a unitholder as a unitholder;

but does not include:

- (c) money paid or credited, or property distributed, by the trustee of a prescribed trust estate to the extent to which the money or property is attributable to profits arising during a year of income in relation to which the prescribed trust estate was not a public trading trust; or

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- (d) money paid or credited, or property distributed, by the trustee of a prescribed trust estate in respect of the cancellation, extinguishment or redemption of a unit to the extent to which:
 - (i) the money paid or credited or the property distributed represents money paid to, or property transferred to, the trustee for the purpose of the creation or issue of that unit; and
 - (ii) the amount of the money paid or credited or the value of the property distributed, as the case may be, does not exceed the amount of the money paid to the trustee, or the value, at the time of transfer, of the property transferred to the trustee, for the purpose of the creation or issue of that unit.

102MA Arrangements not covered

- (1) For the purposes of paragraph (c) of the definition of *eligible investment business* in section 102M, the excepted arrangements are those specified in this section.

Note: This section does not affect an arrangement that satisfies paragraph (a) or (b) of that definition.

Leasing or property arrangement

- (2) A right or obligation arising under:
 - (a) an arrangement to which Division 42A (about leases of luxury cars) in Schedule 2E applies; or
 - (b) an arrangement to which Division 240 of the *Income Tax Assessment Act 1997* (about arrangements treated as a sale and loan) applies; or
 - (c) a financial arrangement in the form of a loan that is taken to exist by subsection 250-155(1) of the *Income Tax Assessment Act 1997*; or
 - (d) an arrangement that, in substance or effect, depends on the use of a specific asset that is:
 - (i) real property; or
 - (ii) goods or a personal chattel (other than money or a money equivalent); or
 - (iii) intellectual property;and gives a right to control the use of the asset; or

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- (e) an arrangement that is a licence to use:
 - (i) real property; or
 - (ii) goods or a personal chattel (other than money or a money equivalent); or
 - (iii) intellectual property.

Interest in partnership or trust estate

- (3) A right carried by an interest in a partnership or a trust estate, or an obligation that corresponds to such a right, if:
 - (a) there is only one class of interest in the partnership or trust estate; or
 - (b) the interest is an equity interest in the partnership or trust estate; or
 - (c) for a right or obligation relating to a trust estate—the trust estate is managed by a funds manager or custodian, or a responsible entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).

General insurance policies

- (4) A right or obligation under a general insurance policy.

Guarantees and indemnities

- (5) A right or obligation under a guarantee or indemnity unless:
 - (a) the financial arrangement is one where:
 - (i) its value changes in response to changes in a specified variable or variables (such as an interest rate, foreign exchange rate, credit rating, index or commodity or financial instrument price); and
 - (ii) there is no requirement for a net investment, or there is such a requirement but the net investment is smaller than would be required for other types of financial arrangement that would be expected to have a similar response to changes in market factors; or
 - (b) the guarantee or indemnity is given or entered into in relation to a financial arrangement.

Superannuation and pension income

- (6) A right to receive, or an obligation to provide, a financial benefit (as defined in the *Income Tax Assessment Act 1997*) if the right or obligation arises from a person's membership of a superannuation or pension scheme.

Retirement village arrangements

- (7) A right or obligation arising under:
- (a) a contract that gives rise to a right to occupy residential premises in a retirement village (as defined in the *A New Tax System (Goods and Services Tax) Act 1999*); or
 - (b) a contract under which a resident of such a retirement village is provided with general or personal services in the retirement village.

102MB Investing in land

Moveable property

- (1) For the purposes of this Division, investments in moveable property, being property that is:
- (a) incidental to and relevant to the renting of land; and
 - (b) customarily supplied or provided in connection with the renting of land; and
 - (c) ancillary to the ownership and use of land;
- are taken to be investments in land.

Safe harbour rule

- (2) For the purposes of this Division, an entity's investments in land are taken to be for the purpose, or primarily for the purpose, of deriving rent during a year of income if:
- (a) each of those investments is for purposes (other than the purpose of trading) that include a purpose of deriving rent; and
 - (b) at least 75% of the gross revenue from those investments for the year of income consists of rent (except excluded rent); and
 - (c) none of the remaining gross revenue from those investments for the year of income is:

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- (i) excluded rent; or
 - (ii) from the carrying on of a business that is not incidental and relevant to the renting of the land.
- (3) In working out the gross revenue referred to in paragraph (2)(b), payments for the provision of services that:
- (a) are incidental to and relevant to the renting of land; and
 - (b) are ancillary to the ownership and use of the land;
- are taken to be rent derived from the land.

Example: Payments as reimbursement for expenses incurred by the lessor in providing security services for a shopping centre would be covered by this subsection.

- (4) In working out the gross revenue referred to in subsection (2), disregard any capital gains and capital losses from a CGT event arising from a disposal or other realisation of ownership of land.

Meaning of entity

- (5) In this section:

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

102MC When trading business not carried on

A trustee of a unit trust that would, apart from this section, carry on a trading business at a time during a year of income is taken for the purposes of this Division not to carry on a trading business at a time during that year if, for that year, not more than 2% of the gross revenue of the trustee (as trustee of the unit trust) was income from things other than eligible investment business (except from the carrying on of a business that is not incidental and relevant to the eligible investment business).

102N Trading trusts

- (1) For the purposes of this Division, a unit trust is a trading trust in relation to a year of income if, at any time during the year of income, the trustee:
- (a) carried on a trading business; or

- (b) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business.
- (2) Despite paragraph (1)(b), a unit trust is not a trading trust only because it has acquired ownership interests (including a controlling interest) in, or controls:
 - (a) a foreign entity whose business, when considered together with the businesses of entities that the foreign entity controls or is able to control, directly or indirectly, consists primarily of investing in land outside Australia for the purpose, or primarily for the purpose, of deriving rent; or
 - (b) a foreign entity controlled, or able to be controlled, directly or indirectly, by an entity covered by paragraph (a).
- (3) In this section:

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

102NA Certain interposed trusts not trading trusts

- (1) A unit trust is not a trading trust for the purposes of this Division in relation to a year of income if:
 - (a) the trust is an interposed trust in relation to a scheme for reorganising the affairs of stapled entities referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* in relation to the year of income or an earlier year of income; and
 - (b) a roll-over was obtained by any entity under that Subdivision of that Act in relation to the scheme for the year of income or that earlier year of income; and
 - (c) the condition in subsection (2) is satisfied.
- (2) The trustee of the trust must not, at any time during the year of income:
 - (a) carry on a trading business; or
 - (b) control, or be able to control, directly or indirectly, the affairs or operations of another entity that carries on a trading business, other than:
 - (i) a company that was, before the scheme was completed, one of the stapled entities referred to in

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Subdivision 124-Q of the *Income Tax Assessment Act 1997*; or

- (ii) a subsidiary of one of those stapled entities that is a company, or an entity that is controlled or able to be controlled, directly or indirectly, by that company; or
- (iii) a trust whose trustee was, before the scheme was completed, assessed and liable to pay tax under Division 6B or this Division and that was, before the scheme was completed, one of those stapled entities; or
- (iv) an entity that is controlled or able to be controlled, directly or indirectly, by the trust referred to in subparagraph (iii);

in relation to the year of income or an earlier year of income.

- (3) In this section:

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

102P Public unit trusts

- (1) For the purposes of this Division, but subject to the succeeding provisions of this section, a unit trust is a public unit trust in relation to a year of income if, at any time during the year of income:
- (a) any of the units in the unit trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere;
 - (b) any of the units in the unit trust were offered to the public; or
 - (c) the units in the unit trust were held by not fewer than 50 persons.
- (2) For the purposes of this Division, but subject to the succeeding provisions of this section, a unit trust is also a public unit trust in relation to a year of income if:
- (a) at any time during the year of income, an exempt entity or exempt entities held, or had the right to acquire or become the holder or holders of, a unit or units in the unit trust that entitled the holder or holders to not less than 20% of:
 - (i) the beneficial interests in the income of the unit trust; or
 - (ii) the beneficial interests in the property of the unit trust;

- (b) not less than 20% of the total of money paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders was paid or credited to an exempt entity or exempt entities; or
- (c) by reason of:
 - (i) any provision in the instrument by which the trust was created, or any contract agreement or instrument authorising the variation or abrogation of the rights attaching to any of the units in the unit trust or relating to the conversion, cancellation, extinguishment or redemption of any such units;
 - (ii) any contract, agreement, option or instrument under which a person has power to acquire a unit or units in the unit trust; or
 - (iii) any power, authority or discretion in a person in relation to the rights attaching to any of the units in the unit trust;
the rights attaching to any of the units in the unit trust were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that:
 - (iv) units in the unit trust that entitled the holder or holders to not less than 20% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust;would have been held by an exempt entity or exempt entities;
 - (v) not less than 20% of the total of money paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders would have been paid or credited to an exempt entity or exempt entities; or
 - (vi) in the case where no money was paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders—if money had been so paid or credited by the trustee of the unit trust during the year of income, not less than 20% of the amount of that money would have been paid or credited to an exempt entity or exempt entities.

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- (3) A unit trust shall not be taken to be a public unit trust in relation to a year of income by reason that units in the unit trust were offered to the public at any time during the year of income if the Commissioner is of the opinion that any of those units were offered to the public for the purpose, or for purposes that included the purpose, of enabling the unit trust to be treated as a public unit trust for the purposes of this Division in relation to the year of income.
- (4) Subject to subsection (5), a unit trust that, but for this subsection and subsection (7), would be a public unit trust in relation to a year of income by virtue only of subsection (1) shall be deemed not to be a public unit trust in relation to the year of income if, at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, a unit or units in the unit trust that entitled the holder or holders thereof to not less than 75% of:
 - (a) the beneficial interests in the income of the unit trust; or
 - (b) the beneficial interests in the property of the unit trust.
- (5) Subject to subsection (7), where by virtue of subsection (4), a unit trust would, but for this subsection, be deemed not to be a public unit trust in relation to a year of income by reason that, at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, the unit or units referred to in subsection (4) and the Commissioner is of the opinion that, having regard to:
 - (a) the length of the period or the aggregate of the lengths of the periods in the year of income during which one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, the unit or units referred to in subsection (4); and
 - (b) any other matters that the Commissioner considers relevant;it is reasonable that the unit trust should be treated as a public unit trust in relation to the year of income, the unit trust shall be deemed to be a public unit trust in relation to the year of income.
- (6) For the purposes of subsections (4) and (5), a person (in this subsection referred to as the *transferee*) to whom a right to acquire or become the holder of a unit in a unit trust is granted or transferred shall be deemed not to have such a right if the Commissioner is of the opinion, having regard to the financial circumstances of the transferee and to any other matters that the

Commissioner considers relevant, that it was not intended by the person who granted or transferred the right to the transferee that the right would be exercised by the transferee.

- (7) Subject to subsection (8), a unit trust that, but for this subsection, would be a public unit trust in relation to a year of income by virtue only of subsection (1), shall be deemed not to be a public unit trust in relation to that year of income if:
- (a) not less than 75% of the total of money paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders was paid or credited to one person or persons not more than 20 in number; or
 - (b) by reason of:
 - (i) any provision in the instrument by which the trust was created, or any contract, agreement or instrument authorising the variation or abrogation of the rights attaching to any of the units in the unit trust or relating to the conversion, cancellation, extinguishment or redemption of any such units;
 - (ii) any contract, agreement, option or instrument under which a person has power to acquire a unit or units in the unit trust; or
 - (iii) any power, authority or discretion in a person in relation to the rights attaching to any of the units in the unit trust;
the rights attaching to any of the units in the unit trust were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that:
 - (iv) units in the unit trust that entitled the holder or holders thereof to not less than 75% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust;would have been held by one person or persons not more than 20 in number;
 - (v) not less than 75% of the total of money paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders would have been paid or

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credited to one person or persons not more than 20 in number; or

- (vi) in the case where no money was paid or credited by the trustee of the unit trust during the year of income to unitholders as unitholders—if money had been so paid or credited by the trustee of the unit trust during the year of income, not less than 75% of the amount of that money would have been paid or credited to one person or persons not more than 20 in number.
- (8) A unit trust shall not be deemed by subsection (7) not to be a public unit trust in relation to a year of income by reason that rights attaching to any of the units in the unit trust were, at any time during the year of income, capable of being varied in the manner mentioned in paragraph (7)(b) if the Commissioner is of the opinion that the person or persons who were able to vary the rights in that manner intended not to vary the rights in that manner during the year of income.
 - (9) For the purposes of subsections (1) and (3), units in a unit trust shall be taken to be offered to the public if and only if:
 - (a) an offer is made to the public or to a section of the public to subscribe for or purchase the units; or
 - (b) an invitation is issued to the public or to a section of the public to make offers to subscribe for or purchase the units.
 - (10) For the purposes of this section, where any units in a unit trust (except a foreign entity to which subsection 102N(2) applies) are held by the trustee of another trust estate, a person who has a beneficial interest in property of that other trust estate that consists of those units (whether or not that beneficial interest is deemed to be held by virtue of the application of this subsection) shall be deemed to hold those units.
 - (11) For the purposes of this section, a distribution of property of a unit trust to a unitholder shall be taken to be a payment of money to the unitholder of an amount equal to the value of the property.
 - (12) For the purposes of this section:
 - (a) a person, whether or not he or she holds units in the unit trust concerned;
 - (b) his or her relatives; and

- (c) in relation to any units in respect of which they are such nominees, his or her nominees and the nominees of any of his or her relatives;
shall be deemed to be one person.

102Q Resident unit trusts

For the purposes of this Division, a unit trust is a resident unit trust in relation to a year of income if, at any time during the year of income:

- (a) either of the following conditions was satisfied:
- (i) any property of the unit trust was situated in Australia;
 - (ii) the trustee of the unit trust carried on business in Australia; and
- (b) either of the following conditions was satisfied:
- (i) the central management and control of the unit trust was in Australia;
 - (ii) a person who was a resident or persons who were residents held more than 50% of:
 - (A) the beneficial interests in the income of the unit trust; or
 - (B) the beneficial interests in the property of the unit trust.

102R Public trading trusts

- (1) A unit trust is a public trading trust in relation to a relevant year of income if:
- (a) where the relevant year of income is the year of income that commenced on 1 July 1985, the year of income commencing on 1 July 1986 or the year of income commencing on 1 July 1987:
- (i) the unit trust was established after 19 September 1985;
 - (ii) the unit trust is a public unit trust in relation to the relevant year of income;
 - (iii) the unit trust is a trading trust in relation to the relevant year of income;
 - (iv) either of the following conditions is satisfied:
 - (A) the unit trust is a resident unit trust in relation to the relevant year of income;

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- (B) the unit trust was a public trading trust in relation to a year of income preceding the relevant year of income; and
 - (v) the unit trust is not a corporate unit trust within the meaning of Division 6B in relation to the relevant year of income; or
 - (b) where the relevant year of income is the year of income commencing on 1 July 1988 or a subsequent year of income:
 - (i) the unit trust is a public unit trust in relation to the relevant year of income;
 - (ii) the unit trust is a trading trust in relation to the relevant year of income;
 - (iii) either of the following conditions is satisfied:
 - (A) the unit trust is a resident unit trust in relation to the relevant year of income;
 - (B) the unit trust was a public trading trust in relation to a year of income preceding the relevant year of income; and
 - (iv) the unit trust is not a corporate unit trust within the meaning of Division 6B in relation to the relevant year of income.
- (2) Where:
- (a) a unit trust would, but for this subsection, be a unit trust established on or before 19 September 1985;
 - (b) the unit trust was not a trading trust on 19 September 1985; and
 - (c) the unit trust became a trading trust on a day after 19 September 1985;
- the unit trust shall be taken, for the purposes of this section, to have been established after 19 September 1985.
- (3) For the purposes of subsection (2), a unit trust is a trading trust on a particular day if, on that day, the trustee:
- (a) carries on a trading business; or
 - (b) controls or is able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business.
- (4) Where:

- (a) a unit trust would, but for this subsection, be a unit trust established on or before 19 September 1985;
- (b) if the year of income in which 19 September 1985 occurred had ended on that date, the unit trust would not have been a public unit trust in relation to that year of income; and
- (c) the Commissioner is satisfied that, at no time on or before that date, was it the intention of the trustee of the unit trust that the unit trust would become a public unit trust in relation to a year of income;

the unit trust shall be taken, for the purposes of this section, to have been established after 19 September 1985.

102S Taxation of net income of public trading trust

The trustee of a unit trust that is a public trading trust in relation to a relevant year of income shall be assessed and is liable to pay tax on the net income of the public trading trust of the relevant year of income at the rate declared by the Parliament for the purposes of this section.

102T Modified application of Act in relation to certain unit trusts

- (1) For the purpose of the application of this Act in relation to the imposition, assessment and collection of tax in respect of:
 - (a) the net income of a public trading trust; and
 - (b) the income or assessable income of a unitholder in a prescribed trust estate;

the following provisions of this section have effect.

Note: Under Subdivision 713-C of the *Income Tax Assessment Act 1997*, this Act applies differently in relation to a public trading trust that chooses to form a consolidated group.

- (3) For the purposes of the application of sections 46A and 46B in accordance with subsection (2), the Commissioner may be satisfied, in relation to a unit trust dividend, that a transaction, operation, undertaking, scheme or arrangement was by way of dividend stripping or similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping if the Commissioner would have been satisfied, had the unit trust dividend been a dividend paid by a company, that the transaction, operation, undertaking, scheme or arrangement would have been a transaction, operation, undertaking, scheme or arrangement by way

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of dividend stripping or, as the case requires, would have been similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping.

- (4) For the purposes of subsections (2) and (3):
- (a) the reference in paragraph (2)(a) to a prescribed trust estate includes a reference to a trust estate that is a prescribed trust estate for the purposes of Division 6B;
 - (b) the reference in paragraph (2)(b) to a public trading trust includes a reference to a unit trust that is a corporate unit trust for the purposes of Division 6B; and
 - (c) references in those subsections to a unit trust dividend include references to a unit trust dividend within the meaning of Division 6B.
- (6) For the purposes of the application of the definition of *year of income* in subsection 6(1), the reference in that definition to a company (except a company in the capacity of a trustee) shall be read as including a reference to a public trading trust or, as the context requires, to the trustee of a public trading trust.
- (7) A reference in the definition of *person* in subsection 6(1) to a company shall be read as including a reference to a public trading trust or, as the context requires, to the trustee of a public trading trust.
- (8) The reference in section 158 to the taxable income of a company except income in respect of which it is assessable as trustee shall be read as including a reference to the net income of a public trading trust.
- (11) A reference in subsection 44(1) or section 128B of this Act, in subsection 840-805(3) of the *Income Tax Assessment Act 1997*, in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except section 12-225) or in subsection 12-390(10) in that Schedule, to a company or to a company that is a resident shall be read as including a reference to a prescribed trust estate or, as the context requires, to the trustee of a prescribed trust estate.
- (12) A reference in the definition of *paid* in subsection 6(1) or 44(1), or in section 128A or 128B, of this Act, or in Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (except

section 12-225), to a dividend shall be read as including a reference to a unit trust dividend.

- (13A) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* applies in respect of units in a prescribed trust estate in the same way as it applies in respect of shares.
- (14) A reference in subsection 44(1) to a shareholder in relation to a company shall be read as including a reference to a unitholder in a prescribed trust estate.
- (16) A reference in section 6B, Division 6 or subsection 128A(3) or 157(3) of this Act, Subdivision 840-M of the *Income Tax Assessment Act 1997* or Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* to a trust estate or to a trustee shall be read as not including a reference to a trust estate that is a public trading trust or to the trustee of a public trading trust, as the case may be.
- (19) For the purposes of subsection 44(1), a unit trust dividend paid by the trustee of a prescribed trust estate out of corpus of the trust estate shall, to the extent to which the unit trust dividend is attributable to profits derived by the trustee, be taken to be paid out of those profits.
- (20) For the purposes of section 128B, a unit trust dividend paid to a unitholder in a prescribed trust estate shall be deemed to be income derived by the unitholder at the time at which the unit trust dividend is paid.

Non-unit dividend

- (21) Subsections (2), (3), (4) and (20) apply as if references in those subsections to a unit trust dividend included a reference to a non-unit dividend.
- (22) For the purposes of subsection 44(1), a non-unit dividend paid by the trustee of a prescribed trust estate out of corpus of the trust estate is taken, to the extent to which the non-unit dividend is attributable to a source in Australia, to be derived from a source in Australia.
- (22A) For the purposes of subsection 44(1), a non-unit dividend paid by the trustee of a prescribed trust estate out of corpus of the trust

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estate is taken, to the extent to which the non-unit dividend is attributable to a source outside Australia, to be derived from a source outside Australia.

- (23) If a provision of this Act that applies to a dividend:
- (a) is taken under this section to apply to a unit trust dividend; and
 - (b) applies to a non-share dividend in the same way as it applies to a dividend;
- that provision also applies to a non-unit dividend in the same way as it applies to a dividend.

Non-unit equity interest

- (24) If a provision of this Act that applies to a share:
- (a) is taken under this section to apply to a unit in a prescribed trust estate; and
 - (b) applies to a non-share equity interest in a company in the same way as it applies to a share;
- that provision also applies to a non-unit equity interest in a prescribed trust estate in the same way as it applies to a share.

Equity holder

- (25) Subsections (1), (2), (18) and (20) apply as if references in those subsections to a unitholder included a reference to an equity holder who is not a unitholder.
- (26) If a provision of this Act that applies to a shareholder:
- (a) is taken because of this section to apply to a unitholder in a prescribed trust estate; and
 - (b) applies to an equity holder in a company who is not a shareholder in the same way as it applies to a shareholder;
- that provision also applies to an equity holder in a prescribed trust estate who is not a unitholder in the same way as it applies to a shareholder.

Definitions

- (27) In this section:
- equity holder** in a prescribed trust estate means the holder of an equity interest in the prescribed trust estate.

equity interest in a prescribed trust estate means:

- (a) a unit in the prescribed trust estate; or
- (b) any other interest that would be an equity interest in the prescribed trust estate if references in Division 974 of the *Income Tax Assessment Act 1997* to a company included references to a prescribed trust estate or, as the context requires, to the trustee of a prescribed trust estate.

non-unit dividend means a unit trust distribution that is not a unit trust dividend.

non-unit equity interest in a prescribed trust estate means an equity interest in the prescribed trust estate that is not a unit in the prescribed trust estate.

unit trust distribution means a distribution, or an amount credited, that would be a unit trust dividend if references in the definition of **unit trust dividend** in subsection 102M(1) to a unitholder were references to an equity holder.

Division 6D—Provisions relating to certain closely held trusts

Subdivision A—Overview

102UA What this Division is about

- (1) The main purpose of this Division is to ensure that the trustee of a closely held trust with one or more trustee beneficiaries that are presently entitled to a share of the income or of a tax-preferred amount of the trust advises the Commissioner soon after the end of the year of income of certain details about those trustee beneficiaries. This will allow the Commissioner to check whether the assessable income of the trustee beneficiaries includes the correct share of net income, and whether the net assets of the trustee beneficiaries reflect the receipt of the tax-preferred amounts.
- (2) To achieve this purpose, the Division:
 - (a) provides for the trustee to correctly identify the trustee beneficiaries within a specified period after the end of the year of income; and
 - (b) if the trustee fails to do so, provides for taxation at a penalty rate (in the case of net income) or offences under the *Taxation Administration Act 1953* (in the case of tax-preferred amounts).
- (3) This Division also provides that, where the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the share of the net income of the closely held trust, there will also be taxation at a penalty rate.

Subdivision B—Interpretation

102UB Definitions—general

In this Division:

closely held trust has the meaning given by subsection 102UC(1).

correct TB statement has the meaning given by section 102UG.

present entitlement has a meaning affected by section 102UJ.

tax offset has the same meaning as in the *Income Tax Assessment Act 1997*.

tax-preferred amount has the meaning given by section 102UI.

TB statement period has the meaning given by section 102UH.

trustee beneficiary has the meaning given by section 102UD.

trustee beneficiary non-disclosure tax means tax payable under paragraph 102UK(2)(a) or 102UM(2)(a).

untaxed part, of a share of the net income of a closely held trust, has the meaning given by section 102UE.

102UC Closely held trust

(1) A *closely held trust* is:

- (a) a trust where an individual has, or up to 20 individuals have between them, directly or indirectly, and for their own benefit, fixed entitlements to a 75% or greater share of the income, or a 75% or greater share of the capital, of the trust; or
- (b) a discretionary trust;

except where the trust is an excluded trust.

Trustees of discretionary trusts treated as individuals

(2) For the purposes of paragraph (1)(a), if:

- (a) a trustee of a discretionary trust holds a fixed entitlement to a share of the income or capital of the trust mentioned in that paragraph directly or indirectly; and
- (b) no person holds that fixed entitlement directly or indirectly through the discretionary trust;

the trustee is taken to hold that fixed entitlement directly or indirectly as an individual and for the individual's own benefit.

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Individuals treated as single individual

- (3) For the purposes of paragraph (1)(a), all of the following are taken to be a single individual:
- (a) an individual, whether or not the individual holds fixed entitlements directly in the trust mentioned in that paragraph;
 - (b) the individual's relatives;
 - (c) in relation to any fixed entitlements in respect of which other individuals are nominees of the individual or of the individual's relatives—those other individuals.

Definitions

- (4) In this section:

discretionary trust means a trust that is not a fixed trust within the meaning of section 272-65 of Schedule 2F.

excluded trust means:

- (a) a trust to which paragraph (b), (c) or (d) of the definition of **excepted trust** in section 272-100 of Schedule 2F applies; or
- (b) a unit trust whose units are listed on the stock market operated by ASX Limited; or
- (c) a family trust; or
- (d) a trust in relation to which an interposed entity election has been made and is in force in accordance with section 272-85 of Schedule 2F; or
- (e) a trust that is covered by subsection 272-90(5) of Schedule 2F.

fixed entitlement has the meaning given by sections 272-5, 272-10, 272-15 and 272-40 of Schedule 2F.

indirectly has the meaning given by section 272-20 of Schedule 2F.

102UD Trustee beneficiary

A person is a **trustee beneficiary** of a closely held trust if the person is a beneficiary of the trust in the capacity of trustee of another trust.

102UE Meaning of *untaxed part*

- (1) The *untaxed part* of a share of the net income of a closely held trust is so much of that share as is not covered by subsection (2).
- (2) The share of the net income of the closely held trust is covered by this subsection to the extent that:
 - (a) the trustee of the closely held trust is assessed and liable to pay tax under subsection 98(4) in respect of the share; or
 - (b) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and liable to pay tax under subsection 98(4); or
 - (c) the share is represented by or reasonably attributable to an amount from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (d) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate was liable to pay trustee beneficiary non-disclosure tax.

102UG Correct TB statement

Share of net income case

- (1) This section applies if a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97 and the share comprises or includes an untaxed part.

Tax-preferred amount case

- (2) This section also applies if a trustee beneficiary of a closely held trust is presently entitled at the end of a year of income to a share of a tax-preferred amount of the trust.

Correct TB statement

- (3) If this section applies, the trustee of the closely held trust makes a **correct TB statement** about the share if the trustee correctly states, in the approved form:

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- (a) if the trustee beneficiary is a resident at the end of the year of income:
 - (i) the name and tax file number of the trustee beneficiary; and
 - (ii) the amount of the untaxed part of the share or the amount of the share of the tax-preferred amount; and
- (b) if the trustee beneficiary is a non-resident at the end of the year of income:
 - (i) the name and address of the trustee beneficiary; and
 - (ii) the amount of the untaxed part of the share or the amount of the share of the tax-preferred amount.

Note: If a closely held trust has multiple trustee beneficiaries, the requirements in subsection (3) will have to be met for each of them for the trustee of the closely held trust to avoid paying any trustee beneficiary non-disclosure tax.

102UH TB statement period

The *TB statement period*, for the trustee of a trust in relation to a year of income, is the period from the end of the year of income until the end of:

- (a) the period within which the trustee is required to give to the Commissioner the trust's return of income for the year of income; or
- (b) such further period as the Commissioner allows.

102UI Tax-preferred amount

The expression "tax-preferred amount" of a trust means:

- (a) income of the trust that is not included in its assessable income in working out its net income; or
- (b) capital of the trust.

102UJ Extended concept of present entitlement to capital of a trust

For the purposes of this Division, section 95A applies in relation to capital of a trust in the same way as it applies to income of the trust.

Subdivision C—Trustee beneficiary non-disclosure tax on share of net income

102UK Trustee beneficiary non-disclosure tax where no correct TB statement

- (1) Subject to subsection (2A), this section applies if:
- (a) a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97; and
 - (b) the share comprises or includes an untaxed part; and
 - (c) the trustee of the closely held trust is not covered by a determination under subsection (1A) for the year of income; and
 - (d) during the TB statement period in relation to the year of income, the trustee of the closely held trust does not make and give to the Commissioner a correct TB statement about the share.

Determination that a class of trustees is not required to give a correct TB statement

- (1A) The Commissioner may, by legislative instrument, determine that a specified class of trustees is not required to make a correct TB statement for a year of income.
- (1B) A determination under subsection (1A):
- (a) may be expressed to be subject to conditions; and
 - (b) may be for one or more years of income.

Consequences of section applying

- (2) If this section applies:
- (a) either:
 - (i) if the trustee of the closely held trust is the only person in the trustee group (see subsection (3))—the trustee is liable to pay tax; or
 - (ii) if the trustee of the closely held trust is not the only person in the trustee group—the persons in the trustee group are jointly and severally liable to pay tax;

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as imposed by the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007*, on the untaxed part; and

- (b) except for the purposes of sections 99, 99A and 99B and this Division, the untaxed part is not included in the assessable income of the trustee beneficiary under section 97.

Note: Provisions dealing with the payment etc. of the tax under paragraph (a) (known as trustee beneficiary non-disclosure tax) are set out in Subdivision D.

Amendment of incorrect statement

(2A) If:

- (a) during the TB statement period in relation to a year of income, the trustee of a closely held trust makes and gives to the Commissioner a statement, that the trustee believes on reasonable grounds is a correct TB statement, about a share of the net income of the trust; and
- (b) the statement is not a correct TB statement about the share, with the result that, apart from this subsection, this section applies; and
- (c) either:
- (i) the trustee could not reasonably have foreseen the event that caused the statement not to be a correct TB statement; or
 - (ii) the statement is not a correct TB statement because of an inadvertent error; and
- (d) either:
- (i) before any trustee beneficiary non-disclosure tax becomes due and payable on the untaxed part as a result of this section applying; or
 - (ii) before the end of 4 years after any such tax becomes due and payable;

the trustee advises the Commissioner in writing of any change that is necessary to make the statement a correct TB statement about the share;

this section does not apply, and is taken never to have applied, to the untaxed part.

Trustee group

- (3) The *trustee group* consists of the following:
- (a) the trustee of the closely held trust;
 - (b) if the trustee of the closely held trust is a company—the directors of the company.

102UL Exclusion of directors of closely held trust from liability to pay tax

- (1) This section applies if a director of a company that is the trustee of the closely held trust is included in the trustee group under section 102UK.

Director not taking part in statement decision because of illness or other good reason

- (2) If, because of illness or for some other good reason, the director did not take part in any decision not to make the correct TB statement, the director is not included in the trustee group.

Director otherwise not taking part in statement decision

- (3) If:
- (a) the director did not take part in any decision not to make the correct TB statement; and
 - (b) either:
 - (i) the director was not aware of the proposal to make such a decision; or
 - (ii) the director was aware and took reasonable steps to prevent the making of the decision;
- the director is not included in the trustee group.

Director taking part in statement decision

- (4) If:
- (a) the director took part in any decision not to make a correct TB statement; and
 - (b) the director voted against, or otherwise disagreed with the decision; and
 - (c) the director took reasonable steps to ensure that a correct TB statement would be made;

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the director is not included in the trustee group.

Where no statement decision

- (5) If:
- (a) no decision was made not to make a correct TB statement; and
 - (b) either:
 - (i) the director, because of illness or for some other good reason, was not involved in the management of the company during the TB statement period in relation to the year of income; or
 - (ii) the director took reasonable steps to ensure that a correct TB statement would be made;
- the director is not included in the trustee group.

102UM Trustee beneficiary non-disclosure tax where share is distributed to trustee of closely held trust

- (1) This section applies if:
- (a) a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97; and
 - (b) the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of the share; and
 - (c) trustee beneficiary non-disclosure tax is not payable by the trustee of the closely held trust on the untaxed part under paragraph 102UK(2)(a).

Consequences of section applying

- (2) If this section applies:
- (a) either:
 - (i) if the trustee of the closely held trust is the only person in the trustee group (see subsection (3))—the trustee is liable to pay tax; or
 - (ii) if the trustee of the closely held trust is not the only person in the trustee group—the persons in the trustee group are jointly and severally liable to pay tax;

as imposed by the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007*, on the whole or that part of the untaxed part; and

- (b) except for the purposes of sections 99, 99A and 99B and this Division, the whole or that part of the untaxed part is not included in the assessable income of the trustee beneficiary under section 97.

Note: Provisions dealing with the payment etc. of the tax under paragraph (a) (known as trustee beneficiary non-disclosure tax) are set out in Subdivision D.

Trustee group

- (3) The *trustee group* consists of the following:
- (a) the trustee of the closely held trust;
 - (b) if the trustee of the closely held trust is a company—the directors of the company.

Subdivision D—Payment etc. of trustee beneficiary non-disclosure tax

102UN Amount of trustee beneficiary non-disclosure tax reduced by notional tax offset

- (1) This section applies to trustee beneficiary non-disclosure tax that a trustee group would otherwise be liable to pay on the whole or part of a share of the net income of a closely held trust.
- (2) The amount of the trustee beneficiary non-disclosure tax is reduced by the amount of any tax offset to which the trustee of the closely held trust would be entitled in an assessment under section 99A if it were assumed that the trustee were assessed and liable to pay tax under that section on the whole or the part of the share of the net income.

102UO Payment of trustee beneficiary non-disclosure tax

Due date

- (1) Trustee beneficiary non-disclosure tax is due and payable at the end of:
- (a) 21 days after the TB statement period concerned ends; or

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- (b) such later day as the Commissioner, in special circumstances, allows.

Debt due

- (2) Trustee beneficiary non-disclosure tax, when it becomes due and payable, is a debt due to the Commonwealth and payable to the Commissioner.
- (3) Any unpaid trustee beneficiary non-disclosure tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner suing in his or her official name.

Application

- (4) Subsections (2) and (3) do not apply in relation to any trustee beneficiary non-disclosure tax that becomes due and payable on or after 1 July 2000.

Note: For provisions about collection and recovery of trustee beneficiary non-disclosure tax and other amounts on or after 1 July 2000, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

102UP Late payment of trustee beneficiary non-disclosure tax

If any of the trustee beneficiary non-disclosure tax which a person is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the 60th day after the day by which the trustee beneficiary non-disclosure tax was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
- (i) the trustee beneficiary non-disclosure tax;
- (ii) general interest charge on any of the trustee beneficiary non-disclosure tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

102UR Notice of liability

- (1) The Commissioner may give a person or persons, by post or otherwise, a notice specifying:
 - (a) the amount of any trustee beneficiary non-disclosure tax that the Commissioner has ascertained is payable by the person or persons; and
 - (b) the day on which that tax became or will become due and payable.

Effect of notice on liability etc.

- (2) The amount of the liability of a person or persons to trustee beneficiary non-disclosure tax, and the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice.

Amendment of notice

- (3) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

Inconsistency between notices

- (4) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

Objections

- (5) A person who is or persons who are dissatisfied with a notice made in relation to the person or persons may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

102URA Request for notice of liability

- (1) A person or persons may make a written request to the Commissioner to be given a notice under subsection 102UR(1) in respect of specified circumstances in which trustee beneficiary non-disclosure tax may be payable.

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Compliance with request

- (2) The Commissioner must, subject to subsection (3) of this section, comply with the request.

Further information

- (3) If the Commissioner considers that the notice cannot be given unless the person or persons give the Commissioner further information, the Commissioner must request the person or persons to give the Commissioner the information.

Failure to give information

- (4) If the person or persons do not give the information, the Commissioner is not required to comply with the request to give the notice.

102US Evidentiary effect of notice of liability

- (1) The production of:
- (a) a notice given under section 102UR; or
 - (b) a document that is signed by the Commissioner and appears to be a copy of such a notice;
- is conclusive evidence that:
- (c) the notice was duly given; and
 - (d) the amount of trustee beneficiary non-disclosure tax specified in the notice became due and payable by the person or persons to whom it was given on the day specified.
- (2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

102USA Recovery of trustee beneficiary non-disclosure tax from trustee beneficiaries providing incorrect information etc. to head trustee

- (1) This section applies if the requirements in subsections (2) and (3) are satisfied.

Requirement for payment of trustee beneficiary non-disclosure tax

- (2) A requirement for this section to apply is that:
- (a) the trustee of a closely held trust does not make a correct TB statement about a share of the net income of the trust of a year of income during the TB statement period in relation to the year of income; and
 - (b) as a result, the trustee becomes liable, or the persons in the trustee group become jointly and severally liable, under section 102UK to pay trustee beneficiary non-disclosure tax; and
 - (c) the trustee or any of the persons in the trustee group pays an amount (the **recoverable amount**), being some or all of the tax or any general interest charge under section 102UP in relation to the tax.

Requirement for refusal etc. to provide information or for incorrect statement

- (3) A requirement for this section to apply is that:
- (a) either:
 - (i) the trustee of the closely held trust was unable to make a correct TB statement about the share of the net income during the TB statement period because the trustee beneficiary in whose assessable income the share is included under section 97, when requested to do so, refused or failed to give information to the trustee; or
 - (ii) the trustee of the closely held trust purported to make a correct TB statement about the share of the net income during the TB statement period but the statement was not a correct TB statement because it contained incorrect information given to the trustee of the closely held trust by the trustee beneficiary in whose assessable income the share is included under section 97, and the trustee honestly believed on reasonable grounds that the information was correct; and
 - (b) the trustee of the closely held trust distributed to the trustee beneficiary an amount representing some or all of the share of the net income without withholding an amount under section 254 in respect of the recoverable amount.

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Consequences of section applying

- (4) If this section applies, the trustee or the person in the trustee group mentioned in paragraph (2)(c) may, in a court of competent jurisdiction, sue for the recoverable amount and recover it from the trustee beneficiary.

Subdivision E—Making correct TB statement about trustee beneficiaries of tax-preferred amounts

102UT Requirement to make correct TB statement about trustee beneficiaries of tax-preferred amounts

- (1) If, at the end of a year of income:
- (a) a trustee beneficiary of a closely held trust is presently entitled to a share of a tax-preferred amount of the trust; and
 - (b) the trustee of the closely held trust is not covered by a determination under subsection 102UK(1A) for the year of income;
- the trustee of the closely held trust must, during the TB statement period, make and send to the Commissioner a correct TB statement covering the share.
- (2) For the purposes of the *Taxation Administration Act 1953*, if the trustee contravenes the requirement in subsection (1) of this section to make and send a statement to the Commissioner, then, subject to subsection (3) of this section, the trustee is guilty of an offence against section 8C of that Act.
- (3) The trustee is not guilty of an offence against section 8C of the *Taxation Administration Act 1953* as a result of a contravention of the requirement if:
- (a) the trustee did not know all the information required to be included in the statement; and
 - (b) the trustee had taken reasonable steps to ascertain the information that he or she did not know; and
 - (c) if the trustee did know some of the information, he or she included it in a statement that he or she sent to the Commissioner during the TB statement period.

- (4) The only burden of proof that the trustee bears in respect of subsection (3) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

Subdivision F—Special provisions about tax file numbers

102UU Trustee beneficiary may quote tax file number to trustee of closely held trust

A trustee beneficiary in respect of:

- (a) a share of the net income of a closely held trust for a year of income that is included in the assessable income of the trustee beneficiary of the trust under section 97; or
- (b) a share of a tax-preferred amount of a closely held trust to which the trustee beneficiary of the trust is presently entitled at the end of a year of income;

may quote his or her tax file number to the trustee of the closely held trust in connection with that trustee making a correct TB statement about that share.

Note: Section 8WA of the *Taxation Administration Act 1953* makes it an offence for a person to require or request another person to quote the other person's tax file number unless provision is made by a taxation law for the other person to quote the number.

102UV Trustee of closely held trust may record etc. tax file number

- (1) This section applies if a trustee beneficiary in respect of:
- (a) a share of the net income of a closely held trust for a year of income that is included in the assessable income of the trustee beneficiary of the trust under section 97; or
 - (b) a share of a tax-preferred amount of a closely held trust to which the trustee beneficiary of the trust is presently entitled at the end of a year of income;
- quotes his or her tax file number to the trustee of the closely held trust in connection with that trustee making a correct TB statement about that share.
- (2) Section 8WB of the *Taxation Administration Act 1953* does not prohibit the trustee of the closely held trust from:
- (a) recording the tax file number or maintaining such a record; or

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(b) using the tax file number in a manner connecting it with the identity of the trustee beneficiary; or

(c) divulging or communicating the tax file number to a third person;

in connection with that trustee making a correct TB statement about that share.

Division 7—Private companies

102V Application of Division to non-share dividends

- (1) This Division:
 - (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.
- (2) Subsection (1) does not apply to section 103A.

103 Interpretation

- (1) In this Division, unless the contrary intention appears:

the relevant holding company or holding companies, in relation to another company in relation to a year of income of that other company, means:

 - (a) if the other company would, apart from subsection 103A(4D), be a subsidiary of a public company for the purposes of section 103A in relation to that year of income by virtue of subsection 103A(4)—the public company or public companies referred to in paragraph 103A(4)(a); or
 - (b) if the other company would, apart from subsection 103A(4D), be a subsidiary of a public company for the purposes of section 103A in relation to that year of income by virtue of subsection 103A(4B)—the listed company or listed companies referred to in paragraphs 103A(4B)(a) and (b).
- (2) For the purposes of this Division, a person is the nominee of another person in relation to shares if that first-mentioned person may be required to exercise his voting power in relation to those shares at the direction of, or holds those shares directly or indirectly on behalf of or for the benefit of, that second-mentioned person.
- (3) For the purposes of this Division, shares in a company shall be deemed to be held indirectly on behalf of or for the benefit of a

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person (not being a private company, trustee or partnership) if, in the event of the payment of a dividend on those shares, that person would, otherwise than as a shareholder of the company, receive the whole or a part of that dividend if there were successive distributions of the relative parts of that dividend to and by each of any private companies, trustees or partnerships interposed between the company paying the dividend and that person.

- (4) For the purposes of this Division, a company shall be taken to have been a listed company during a period that was included in a year of income of another company (in this subsection referred to as *the relevant year of income*) where:
 - (a) if the period was included in the year of income of the first-mentioned company (in this subsection referred to as *the corresponding year of income*) that corresponded with the relevant year of income—the first-mentioned company was by virtue of paragraph 103A(2)(a), a public company for the purposes of subsection 103A(1) in relation to the corresponding year of income; or
 - (b) if the period was included in the year of income of the first-mentioned company that immediately preceded or immediately followed the corresponding year of income—the first-mentioned company was, by virtue of paragraph 103A(2)(a), a public company for the purposes of subsection 103A(1) in relation to that preceding or following year of income, as the case may be.
- (5) A reference in this Division to a right, power, option, agreement or instrument shall be read as including a reference to a right, power, option, agreement or instrument that is not enforceable by legal proceedings whether or not it was intended to be so enforceable.
- (6) For the purposes of this Division, an arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement.

103A Private companies

- (1) For the purposes of this Division, a company is a private company in relation to the year of income if the company is not a public company in relation to the year of income.

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- (2) For the purposes of subsection (1), a company is, subject to the succeeding provisions of this section, a public company in relation to the year of income if:
- (a) shares in the company, not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits, were listed for quotation in the official list of a stock exchange, being a stock exchange in Australia or elsewhere, as at the last day of the year of income;
 - (b) at all times during the year of income, the company was a co-operative company as defined by section 117;
 - (c) the company has not, at any time since its formation, been carried on for the purposes of profit or gain to its individual members and was, at all times during the year of income, prohibited by the terms of its constituent document from making any distribution, whether in money, property or otherwise, to its members or to relatives of its members; or
 - (d) the company is:
 - (i) a mutual life assurance company;
 - (ii) a friendly society dispensary;
 - (iii) a body constituted by a law of the Commonwealth or of a State or Territory and established for public purposes, not being a company within the meaning of the law in force in a State or Territory relating to companies;
 - (iv) a company in which a Government or a body referred to in subparagraph (iii) had a controlling interest on the last day of the year of income; or
 - (v) in relation to the year of income, a subsidiary of a public company.
- (3) Subject to subsection (5), a company is not, by virtue of paragraph (2)(a) or (b), a public company for the purposes of subsection (1) in relation to the year of income where:
- (a) at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, shares representing not less than three-quarters of the value of the shares in the company, other than shares entitled to a fixed rate of dividend only;
 - (b) at any time during the year of income, not less than three-quarters of the voting power in the company was

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capable of being exercised by one person or by persons not more than 20 in number;

- (c) not less than three-quarters of:
 - (i) the amount of any dividend paid by the company during the year of income; or
 - (ii) if more than one dividend was paid by the company during the year of income—the total amount of all the dividends paid by the company during the year of income;was paid to one person or to persons not more than 20 in number; or
- (d) a dividend was not paid by the company during the year of income but the Commissioner is of the opinion that, if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than 20 in number.

(3A) Subject to subsection (3B), a company shall not be taken for the purposes of subsection (1) to be a public company in relation to a year of income by reason that a body constituted and established as mentioned in subparagraph (2)(d)(iii) (in this subsection referred to as the **public body**) had a controlling interest in the company on the last day of the year of income if:

- (a) by reason of:
 - (i) any of the provisions contained in the constituent document of the company as in force on the last day of the year of income; or
 - (ii) any right, power, option or agreement in existence on the last day of the year of income that related to the management or conduct of the affairs of the company, including any right, power, option or agreement that related to the issue, allotment or redemption of shares, or the grant, withdrawal or variation of rights in respect of shares;

the exercise by the public body of any right or power in connexion with the company (being a right or power relating to the exercise by the public body of a controlling interest in the company), whether on the last day of the year of income or at any later time, could have been prevented;

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- (b) rights or powers of the public body in connexion with the company were exercised during the year of income otherwise than for the benefit of the public body or were not exercised in circumstances where it might reasonably have been expected that they would have been exercised;
 - (c) any shares in the company that were held by the public body on the last day of the year of income were acquired by the public body for no consideration or for a consideration that, in the ordinary course of commercial dealing, would be considered inadequate;
 - (d) in pursuance of any agreement entered into before the end of the year of income, the public body agreed to dispose of all or any of the shares in the company that were held by the public body on the last day of the year of income, being a disposal that was to take place at any time after the last day of the year of income;
 - (e) a dividend was paid by the company at a time during the year of income when the public body had a controlling interest in the company, and less than one-half of the amount of that dividend was paid to the public body; or
 - (f) a dividend was not paid by the company at a time during the year of income when the public body had a controlling interest in the company but the Commissioner is of the opinion that, if a dividend had been paid by the company at such a time, less than one-half of the amount of the dividend would have been paid to the public body.
- (3B) Subsection (3A) does not apply in relation to a company in relation to a year of income if the Commissioner is satisfied that no shares in the company that were held by the public body referred to in that subsection on the last day of the year of income were allotted or transferred to the public body for the purpose, or for purposes that included the purpose, of enabling the company to be treated as a public company in relation to the year of income for the purposes of subsection (1), or in pursuance of an agreement entered into, or a course of conduct engaged in, for the purpose, or for purposes that included the purpose, of enabling the company to be so treated.
- (3C) Paragraph (3A)(c) does not apply to an acquisition that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.
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- (4) Subject to subsection (4D), a company is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if:
- (a) at all times during the year of income all the shares in the first-mentioned company were beneficially owned by a company which, or companies each of which, is a public company for the purposes of subsection (1) in relation to the year of income of that company (in this subsection referred to as *the corresponding year of income*) that corresponds with the first-mentioned year of income but which is not, or none of which is:
 - (i) a company to which paragraph (2)(c) applies in relation to the corresponding year of income; or
 - (ii) a subsidiary of a public company for the purposes of this section in relation to the corresponding year of income by reason of subsection (4B);
 - (b) the corresponding year of income, or each of the corresponding years of income, referred to in paragraph (a) ended on the same day as the year of income first-mentioned in that paragraph;
 - (c) at no time during the year of income was a person or were 2 or more persons in a position to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company so as to prevent the relevant holding company or holding companies from exercising for its or their own benefit the whole of the voting power in the first-mentioned company or from receiving for its or their own benefit the whole of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and
 - (d) no agreement was entered into before or during the year of income by virtue of which a person or 2 or more persons would be in a position after the year of income so to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company.
- (4A) For the purposes of paragraphs 4(c) and (d), a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of the relevant holding company or holding companies in connexion with the company first-mentioned in subsection (4) (in this subsection referred to as *the first-mentioned company*) if at

that time that person had or has a right, power or option (whether by virtue of any provision in the constituent document of the first-mentioned company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the relevant holding company or holding companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.

- (4B) Subject to subsection (4D), a company that is not, by virtue of subsection (4), a subsidiary of a public company for the purposes of this section in relation to the year of income is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if:
- (a) at all times during the year of income the voting power in the first-mentioned company was controlled, or was capable of being controlled, by a listed company or listed companies, either directly or through one or more companies, trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies;
 - (b) at all times during the year of income a listed company or listed companies had a right to receive, either directly or through one or more companies, trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies, more than one-half of any dividends that might be paid by the first-mentioned company and more than one-half of any distribution that might be made of capital of the first-mentioned company;
 - (c) at no time during the year of income was a person or were 2 or more persons in a position to affect rights of the listed company or listed companies in connexion with the first-mentioned company so as to prevent the listed company or listed companies from exercising for its or their own benefit control of the voting power in the first-mentioned company or from receiving for its or their own benefit more than one-half of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and
 - (d) no agreement was entered into before or during the year of income by virtue of which a person or 2 or more persons would be in a position after the year of income so to affect rights of the listed company or listed companies in connexion with the first-mentioned company.
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- (4C) For the purposes of paragraphs (4B)(c) and (d), a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of a listed company or listed companies in connexion with another company if at that time that person had, or has, a right, power or option (whether by virtue of any provision in the constituent document of the other company or of any company interposed between the listed company or listed companies and the other company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the listed company or listed companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.
- (4D) A company (in this subsection and subsection (4E) referred to as *the company concerned*) that would, apart from this subsection, be a subsidiary of a public company for the purposes of this section in relation to the year of income shall be deemed, for the purposes of this section, not to be a subsidiary of a public company in relation to the year of income if the Commissioner is satisfied that:
- (a) where the company concerned would, apart from this subsection, be such a subsidiary in relation to the year of income by virtue of subsection (4)—the affairs of the company concerned were managed or conducted in the year of income in the interests of persons other than the relevant holding company or holding companies; or
 - (b) where the company concerned would, apart from this subsection, be such a subsidiary in relation to the year of income by virtue of subsection (4B)—the affairs of the company concerned were managed or conducted in the year of income without proper regard to the interests of the relevant holding company or holding companies.
- (4E) In considering whether the affairs of the company concerned were managed or conducted in the year of income as mentioned in subsection (4D), the Commissioner shall have regard to:
- (a) the circumstances in which the relevant holding company or holding companies acquired a direct or indirect beneficial interest or interests in shares in the company concerned (whether the interest was, or the interests were, acquired before or during the year of income) and, in particular, whether those circumstances were capable of explanation by reference to ordinary commercial dealing;

- (b) the provisions of the constituent document of the company concerned as in force during the year of income that related to the management or conduct of the affairs of that company, including the provisions of the constituent document that related to the appointment or removal of directors, the issue, allotment or redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;
- (c) the nature and extent of any right, power, option or agreement in existence during the year of income that related to the management or conduct of the affairs of the company concerned, including any right, power, option or agreement that related to the appointment or removal of directors, the issue, allotment or redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;
- (d) whether rights of the relevant holding company or holding companies in connexion with the company concerned were exercised during the year of income otherwise than for the benefit of the relevant holding company or holding companies or were not exercised in circumstances where it might reasonably have been expected that they would have been exercised;
- (e) the nature and source of the income derived by the company concerned during the year of income and whether the derivation by that company of that income was capable of explanation by reference to ordinary commercial dealing;
- (f) the manner in which the moneys of the company concerned were applied during the year of income and, in particular, whether they were lent to, or invested or otherwise made available for the use or benefit of, a person or persons other than the relevant holding company or holding companies and, if any such moneys were so lent, invested or made available:
 - (i) the terms and conditions upon which the moneys were so lent, invested or made available;
 - (ii) whether the lending, investment or making available of those moneys was capable of explanation by reference to ordinary commercial dealing; and

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- (iii) the connexion (if any) between that person or those persons, the directors of the company concerned and the directors of, or the beneficial owners of the shares in, the company from which the company concerned received dividends before or during the year of income;
 - (g) the respective amounts of any dividends in respect of shares in the company concerned that were paid during the year of income or might reasonably be expected to be paid after that year by that company and the circumstances in which those dividends were, or might be expected to be, paid; and
 - (h) any other relevant matters.
- (5) Where a company would not, under the preceding provisions of this section, be a public company for the purposes of subsection (1) in relation to the year of income but the Commissioner is of the opinion that, having regard to:
 - (a) the number of persons who were, at any time during the year of income, capable of controlling the company and whether any of those persons was a public company;
 - (b) the market value of the shares issued by the company before the end of the year of income;
 - (c) the number of persons who beneficially owned shares in the company at the end of the year of income; and
 - (d) any other matters that he thinks relevant;it is reasonable that the company should be treated as a public company for the purposes of subsection (1) in relation to the year of income, the company shall be deemed to be a public company for those purposes in relation to the year of income.
- (5A) The Commissioner may, under subsection (5), form an opinion that it is reasonable that a company should be treated as a public company for the purposes of subsection (1) in relation to a year of income notwithstanding that the forming of such an opinion by the Commissioner would impose on the company a liability to pay a greater amount of income tax than the company would otherwise be liable to pay.
- (6) Notwithstanding anything in the preceding provisions of this section, the Commissioner may treat a company as not being, by virtue of paragraph (2)(a) or (b), a public company for the purposes of subsection (1) in relation to the year of income if the Commissioner is of the opinion that, by reason of:

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- (a) any provisions in the company's constituent document, or in any contract, agreement or instrument, authorizing the variation or abrogation of the voting rights or rights to dividends in respect of any shares in the company or relating to the conversion, exchange or redemption of any such shares;
- (b) any contract, agreement, option or instrument under which a person has power to acquire shares in the company; or
- (c) any power or authority in a person in relation to the voting rights or rights to dividends in respect of any shares in the company;

the voting rights or rights to dividends in respect of any shares in the company were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that:

- (d) not less than three-quarters of the voting power in the company would have been capable of being exercised by one person or by persons not more than 20 in number;
- (e) not less than three-quarters of:
 - (i) the amount of any dividend paid by the company during the year of income; or
 - (ii) if more than one dividend was paid by the company during the year of income—the total amount of all the dividends paid by the company during the year of income;would have been paid to one person or to persons not more than 20 in number; or
- (f) in the case where the company did not pay a dividend during the year of income—if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than 20 in number.

- (7) For the purposes of this section:
 - (a) a person, whether or not he holds shares in the company concerned;
 - (b) his relatives; and

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- (c) in relation to any shares in respect of which they are such nominees, his nominees and the nominees of any of his relatives;
- shall be deemed to be one person.

109 Excessive payments to shareholders, directors and associates deemed to be dividends

- (1) If a private company pays or credits to an associated person an amount (in this subsection called the *excessive amount*) that is, or purports to be:
 - (a) remuneration for services rendered by the associated person; or
 - (b) an allowance, gratuity or compensation in consequence of the retirement of the associated person from an office or employment held by the associated person in the company, or upon the termination of any such office or employment;so much (if any) of the excessive amount as exceeds an amount that, in the opinion of the Commissioner, is reasonable:
 - (c) is not an allowable deduction; and
 - (d) shall, for the purposes of this Act other than Division 11A of Part III, be deemed to be a dividend paid by the company:
 - (i) to the associated person as a shareholder in the company;
 - (ii) out of profits derived by the company; and
 - (iii) on the last day of the year of income of the company in which the excessive payment or credit is made.
- (2) For the purposes of this section:
 - (a) a transfer of property shall be deemed to be the payment of an amount equal to the value of the property; and
 - (b) a reference to an associated person, in relation to a company, is a reference to:
 - (i) a person who is, or has been, a shareholder in, or director of, the company; or
 - (ii) a person who is an associate, within the meaning of section 318, of a person who is, or has been, a shareholder in, or director of, the company.

Division 7A—Distributions to entities connected with a private company

Subdivision A—Overview of this Division

109B Simplified outline of this Division

The following is a simplified outline of this Division:

This Division treats 3 kinds of amounts as dividends paid by a private company:

- amounts paid by the company to a shareholder or shareholder's associate (see section 109C);
- amounts lent by the company to a shareholder or shareholder's associate (see sections 109D and 109E);
- amounts of debts owed by a shareholder or shareholder's associate to the company that the company forgives (see section 109F).

This treatment makes the amounts assessable income of the shareholder or associate (under section 44).

However, some payments, loans and forgiven debts are not treated as dividends. (See Subdivisions C and D.) Also, this Division does not apply to demerger dividends. (See Subdivision DA.)

An amount may be treated as a dividend even if it is paid or lent by the company to the shareholder or associate through one or more interposed entities. (See Subdivision E.)

If the total of the amounts is more than the company's distributable surplus, only the part of the total equal to the distributable surplus is treated as dividends. (See section 109Y.)

This Division applies to non-share equity interests and non-share dividends in the same way it applies to shares and dividends.

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Subdivision AA—Application of Division to non-share equity interests

109BA Application of Division to non-share dividends

This Division:

- (a) applies to a non-share equity interest in the same way as it applies to a share; and
- (b) applies to an equity holder in the same way as it applies to a shareholder; and
- (c) applies to a non-share dividend in the same way as it applies to a dividend.

Subdivision B—Private company payments, loans and debt forgiveness are treated as dividends

109C Payments treated as dividends

When private company is taken to pay a dividend

- (1) A private company is taken to pay a dividend to an entity at the end of the private company's year of income if the private company pays an amount to the entity during the year and either:
 - (a) the payment is made when the entity is a shareholder in the private company or an associate of such a shareholder; or
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the payment is made because the entity has been such a shareholder or associate at some time.

Note 1: Some payments do not give rise to dividends. See Subdivision D.

Note 2: A private company is treated as making a payment to a shareholder or shareholder's associate if an interposed entity makes a payment to the shareholder or associate. See Subdivision E.

Amount of dividend

- (2) The dividend is taken to equal the amount paid, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

What is a payment to an entity?

- (3) In this Division, **payment** to an entity means:
- (a) a payment to the extent that it is to the entity, on behalf of the entity or for the benefit of the entity; and
 - (b) a credit of an amount to the extent that it is:
 - (i) to the entity; or
 - (ii) on behalf of the entity; or
 - (iii) for the benefit of the entity; and
 - (c) a transfer of property to the entity.

Loans are not payments

- (3A) However, a loan to an entity is not a payment to the entity.

Note: Payments converted to loans before the private company's lodgment day are treated as loans (see subsection 109D(4A)).

Value of payment by transfer of property

- (4) The amount of a payment consisting of a transfer of property is the amount that would have been paid for the transfer by parties dealing at arm's length less any consideration given by the transferee for the transfer. (The amount of a payment is nil if the consideration given by the transferee equals or exceeds the amount that would have been paid at arm's length for the transfer.)

109D Loans treated as dividends

Loans treated as dividends in year of making

- (1) A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the **current year**) if:
- (a) the private company makes a loan to the entity during the current year; and
 - (b) the loan is not fully repaid before the lodgment day for the current year; and
 - (c) Subdivision D does not prevent the private company from being taken to pay a dividend because of the loan at the end of the current year; and
 - (d) either:

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- (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
- (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Note 1: Some repayments cannot be counted for the purpose of this subsection. See section 109R.

Note 2: A private company is treated as making a loan to a shareholder or shareholder's associate if an interposed entity makes a loan to the shareholder or associate. See Subdivision E.

Amount of dividend

- (1AA) The amount of the dividend taken under subsection (1) to have been paid is the amount of the loan that has not been repaid before the lodgment day for the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

Loans treated as dividends in year following that of making

- (1A) A private company is taken to pay a dividend to an entity at the end of the private company's year of income (the **current year**) if:
- (a) the private company made a loan to the entity during the previous year of income; and
 - (b) it made the loan in the course of a winding-up of the private company by a liquidator; and
 - (c) the loan is not fully repaid by the end of the current year; and
 - (d) either:
 - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
 - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Subdivision D (other than section 109R) does not apply to loans covered by this subsection.

Amount of dividend

- (2) The amount of the dividend taken under subsection (1A) to have been paid is the amount of the loan that has not been repaid at the end of the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

What is a loan?

- (3) In this Division, **loan** includes:
- (a) an advance of money; and
 - (b) a provision of credit or any other form of financial accommodation; and
 - (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and
 - (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

In which year of income is a loan made?

- (4) For the purposes of this Division, a loan is made to an entity at the time the amount of the loan is paid to the entity by way of loan or anything described in subsection (3) is done in relation to the entity.

Payment converted to loan before lodgment day

- (4A) If:
- (a) a private company makes a payment to an entity at a time in a year of income; and
 - (b) the payment is converted to a loan before the end of the private company's lodgment day for the year of income;
- for the purposes of this Division, treat the events mentioned in paragraphs (a) and (b) as the private company making a loan to the entity at the time mentioned in paragraph (a).

Loans made before 4 December 1997

- (5) If the terms of a loan made before 4 December 1997 are varied on or after that day by extending the term of the loan or increasing its

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amount, this Division applies to the loan as if it were made on the new terms when the variation occurred.

When is the lodgment day?

- (6) In this Division, the **lodgment day** for a private company's year of income is the earlier of:
- (a) the due date for lodgment of the private company's return of income for the year of income; and
 - (b) the date of lodgment of the private company's return of income for the year of income.

109E Amalgamated loan from a previous year treated as dividend if minimum repayment not made

Amalgamated loan treated as dividend in first year in which payment is less than minimum yearly repayment

- (1) A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the **current year**) if:
- (a) the private company made an amalgamated loan to the entity in an earlier year of income; and
 - (b) the amalgamated loan is not repaid at the end of the current year; and
 - (c) the amount (if any) paid to the private company during the current year in relation to the amalgamated loan falls short of the minimum yearly repayment of the amalgamated loan worked out under subsection (5) for the current year; and
 - (d) section 109Q does not apply in relation to the current year.

Note: The amalgamated loan does not give rise to a dividend for that year if the minimum yearly repayment is not made and the entity satisfies the Commissioner that treating the loan as a dividend would cause hardship. See section 109Q.

Amount of dividend

- (2) The amount of the dividend is taken to be the amount of the shortfall mentioned in paragraph (1)(c), subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

What is an amalgamated loan?

- (3) For the purposes of this Division, a private company is taken to make a loan (the **amalgamated loan**) to a single entity during a year of income if the private company makes one or more loans (**constituent loans**) to the entity during the year, each of which:
- (a) is not fully repaid before the lodgment day for the year; and
 - (b) would cause the company to be taken under section 109D to pay a dividend to the entity at the end of the year, apart from section 109N; and
 - (c) has the same maximum term for the purposes of that section.
- The amount of the amalgamated loan is the sum of the amounts of the constituent loans that have not been repaid before the lodgment day for the year of income in which the amalgamated loan is made.
- (3A) Subsection (3B) applies if:
- (a) a private company is taken to have made an amalgamated loan (the **old amalgamated loan**) during a year of income (the **original year of income**); and
 - (b) the maximum term of the old amalgamated loan under subsection 109N(3) was 7 years; and
 - (c) in a later year of income (the **later year of income**):
 - (i) a constituent loan taken account of by the old amalgamated loan becomes secured by a mortgage over real property; and
 - (ii) the term of the constituent loan is extended; and
 - (d) as a result of the mortgage, the maximum term of the constituent loan under subsection 109N(3) is 25 years; and
 - (e) the term of the constituent loan after the extension (including the period before the extension during which the constituent loan was in existence) does not exceed 25 years.
- (3B) For the purposes of this Division in relation to the later year of income and subsequent years of income:
- (a) treat the constituent loan as a new amalgamated loan that takes account of that constituent loan; and
 - (b) treat the new amalgamated loan as having been made just before the start of the later year of income; and
 - (c) treat the amount of the new amalgamated loan just before the start of the later year of income as the amount of the constituent loan that had not been repaid at that time; and
-

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- (d) unless paragraph (e) applies—reduce the amount of the old amalgamated loan just before the start of the later year of income by the amount of the new amalgamated loan at that time; and
- (e) if the constituent loan was the only constituent loan taken account of by the old amalgamated loan—disregard the old amalgamated loan.

Payments in relation to constituent loans treated as payments in relation to amalgamated loan

- (4) For the purposes of this Division, a payment to the private company in relation to a constituent loan in a year of income after the one in which the constituent loan was made is taken to be a payment in relation to the amalgamated loan that takes account of the constituent loan.

Minimum yearly repayment

- (5) The minimum yearly repayment of an amalgamated loan for a year of income is the amount worked out using the formula in subsection (6). However, the minimum yearly repayment of an amalgamated loan for a year of income is the amount worked out under the regulations, if they provide for working it out.

Formula for minimum yearly repayment

- (6) The formula for the minimum yearly repayment for a year of income is:

Amount of the loan not repaid by the end of the previous year of income \times Current year's benchmark interest rate

$$1 - \left(\frac{1}{1 + \frac{\text{Current year's benchmark interest rate}}{1}} \right)^{\text{Remaining term}}$$

where:

current year's benchmark interest rate is the benchmark interest rate for the year of income for which the minimum yearly repayment is being worked out.

remaining term is the difference between:

- (a) the number of years in the longest term of any of the constituent loans that the amalgamated loan takes account of; and
- (b) the number of years between the end of the private company's year of income in which the loan was made and the end of the private company's year of income before the year of income for which the minimum yearly repayment is being worked out;

rounded up to the next higher whole number if the difference is not already a whole number.

Note: Section 109R provides that certain payments relating to a loan are not to be taken into account for the purposes of working out the minimum yearly repayment.

Benchmark interest rate used to work out how much of a payment relating to amalgamated loan is a repayment

- (7) Work out the amount of an amalgamated loan repaid by the end of a year of income on the basis that interest is payable on the balance of the loan from time to time in a year of income at a rate equal to the benchmark interest rate for the year of income.

109F Forgiven debts treated as dividends

Forgiven debt treated as dividend

- (1) A private company is taken to pay a dividend to an entity at the end of the private company's year of income if all or part of a debt the entity owed the private company is forgiven in that year and either:
 - (a) the amount is forgiven when the entity is a shareholder in the private company, or an associate of such a shareholder; or
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the amount is forgiven because the entity has been such a shareholder or associate at some time.

Note: In some cases forgiving a debt does not give rise to a dividend. See section 109G.

Amount of dividend

- (2) The amount of the dividend equals the amount of debt forgiven, subject to section 109Y.

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Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

When is a debt forgiven?

- (3) An amount of a debt is **forgiven** for the purposes of this Division if and when the amount would be forgiven under section 245-35 (except subsection 245-35(4)) of Schedule 2C, assuming the amount were a commercial debt for the purposes of Division 245 of that Schedule.

Note: Division 245 of Schedule 2C applies to forgiveness of certain commercial debts.

Discharge of debt by transfer of property is not forgiveness

- (4) Despite subsection (3), an amount of debt is not forgiven for the purposes of this Division if the obligation to pay the amount is discharged by a payment to the creditor consisting of a transfer of property.

Note: Subsection 109C(4) explains how to work out the value of a payment consisting of a transfer of property.

Debt forgiveness by debt parking

- (5) An amount of debt an entity (the **debtor**) owes a private company is also **forgiven** for the purposes of this Division if:
- (a) the private company assigns the right to receive payment of the amount to another entity (the **new creditor**) who is either:
 - (i) an associate of the debtor; or
 - (ii) a party to an arrangement with the debtor about the assignment; and
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the new creditor will not exercise the assigned right.

Debt forgiveness by failure to rely on obligation to pay

- (6) An amount of debt an entity (the **debtor**) owes a private company is also **forgiven** for the purposes of this Division if a reasonable person would conclude (having regard to all the circumstances) that the private company will not insist on the entity paying the amount or rely on the entity's obligation to pay the amount. (The

amount is forgiven when a reasonable person would first reach that conclusion.)

Forgiveness of amalgamated loan debt

- (7) If a private company forgives an amount of debt resulting from a constituent loan taken into account in working out the amount of an amalgamated loan under subsection 109E(3), the private company is taken to forgive the same amount of the debt resulting from the amalgamated loan.

This section operates on only the earliest debt forgiveness

- (8) If the same debt is forgiven for the purposes of this Division at different times under different provisions of this section, this section operates on the first forgiveness only.

Example: Subsection (3) of this section provides that a debt is forgiven if it has not been paid by the time a statute of limitations prevents recovery of the debt. (It does this by applying subsection 245-35(2) of Schedule 2C.) The debt might already have been forgiven under subsection (6) of this section (because a reasonable person would have concluded earlier that the private company was not going to insist on payment). This section would apply to the forgiveness under subsection (6) but not the forgiveness under subsection (3).

Subdivision C—Forgiven debts that are not treated as dividends

109G Debt forgiveness that does not give rise to a dividend

Forgiveness of debt owed by company generally not treated as dividend

- (1) A private company is not taken under this Division to pay a dividend because a debt owed to it by another company is forgiven.

Note: This does not apply to a debt owed by a company as trustee. (See section 109ZE.)

Forgiveness of debts under Bankruptcy Act not treated as dividends

- (2) A private company is not taken under this Division to pay a dividend because a debt is forgiven because the debtor becomes a bankrupt or because of Part X of the *Bankruptcy Act 1966*.

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Forgiveness of loan debt does not give rise to dividend if loan gives rise to dividend under section 109D

- (3) A private company is not taken under section 109F to pay a dividend at the end of a year of income because of the forgiveness of an amount of a debt resulting from a loan if, because of the loan, the private company is taken:
- (a) under section 109D to pay a dividend at the end of that year or an earlier one; or
 - (b) under former subsection 108(1) to pay a dividend on the last day of that year or an earlier one.

Reduced dividend for forgiveness of loan debt if loan causes dividend under section 109E

- (3A) Subsection (3B) applies if:
- (a) a private company is taken under section 109F to pay a dividend at the end of a year of income because of the forgiveness of an amount of a debt resulting from a loan; and
 - (b) the private company is taken under section 109E to pay a dividend at the end of an earlier year of income in relation to the loan.
- (3B) The amount of the dividend mentioned in paragraph (3A)(a) is reduced by the amount of the dividend mentioned in paragraph (3A)(b) (but not below zero).

Note: There may be more than one reduction under this subsection if the private company has been taken under section 109E to pay more than one dividend in relation to the loan.

Commissioner may treat forgiveness as not giving rise to dividend

- (4) A private company is not taken under this Division to pay a dividend because of the forgiveness of a debt owed by an entity if the Commissioner is satisfied that:
- (a) the debt was forgiven because payment of the debt would have caused the entity undue hardship; and
 - (b) when the entity incurred the debt, the entity had the capacity to pay the debt; and
 - (c) the entity lost the ability to pay the debt in the foreseeable future as a result of circumstances beyond the entity's control.

Subdivision D—Payments and loans that are not treated as dividends

109H Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

This Subdivision sets out rules about payments and loans that are not treated as dividends.

The following sorts of payments are not treated as dividends:

- payments of genuine debts (section 109J);
- payments to other companies (section 109K);
- payments that are otherwise assessable or that are specifically excluded from assessable income (section 109L).

The following sorts of loans are not treated as dividends:

- loans to other companies (section 109K);
- loans that are otherwise assessable (section 109L);
- loans made in the ordinary course of business on ordinary commercial terms (section 109M);
- loans that meet criteria for minimum interest rate and maximum term (section 109N);
- certain loans and distributions by liquidators (section 109NA);
- loans that are for the purpose of funding the purchase of certain shares, rights or stapled securities under an employee share scheme (section 109NB).

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An amalgamated loan may not be treated as a dividend if the Commissioner is satisfied that doing so would cause undue hardship. (See section 109Q.)

This Subdivision also provides for some loan repayments and interest payments to private companies to be disregarded if they are made with the intention of borrowing a similar amount from a private company later. (See section 109R.)

109J Payments discharging pecuniary obligations not treated as dividends

A private company is not taken under section 109C to pay a dividend because of the payment of an amount, to the extent that the payment:

- (a) discharges an obligation of the private company to pay money to the entity; and
- (b) is not more than would have been required to discharge the obligation had the private company and entity been dealing with each other at arm's length.

109K Inter-company payments and loans not treated as dividends

A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to another company.

Note: This does not apply to a payment or loan to a company in its capacity as trustee. (See section 109ZE.)

109L Certain payments and loans not treated as dividends

- (1) A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to an entity, to the extent that the payment or loan would be included in the entity's assessable income apart from this Division (as it operates in conjunction with section 44).
- (2) In addition, a private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan that the private company made to an entity to the extent that a provision of this Act (other than this Division) has the effect that the payment or

loan is not included in the entity's assessable income even though it would otherwise be included.

109M Loans made in the ordinary course of business on arm's length terms not treated as dividends

A private company is not taken under section 109D to pay a dividend because of a loan made:

- (a) in the ordinary course of the private company's business; and
- (b) on the usual terms on which the private company makes similar loans to parties at arm's length.

109N Loans meeting criteria for minimum interest rate and maximum term not treated as dividends

Criteria

- (1) A private company that makes a loan to an entity in one of the private company's years of income is not taken under section 109D to pay a dividend at the end of the year of income because of the loan if, before the lodgment day for the year of income:
 - (a) the agreement that the loan was made under is in writing; and
 - (b) the rate of interest payable on the loan for years of income after the year in which the loan is made equals or exceeds the benchmark interest rate for the year; and
 - (c) the term of the loan does not exceed the term (the **maximum term**) for that kind of loan worked out under subsection (3).

Benchmark interest rate

- (2) The **benchmark interest rate** for the year of income is the Indicator Lending Rates—Bank variable housing loans interest rate last published by the Reserve Bank of Australia before the start of the year of income. However, the benchmark interest rate is the rate worked out under the regulations, if they provide for working it out.

Maximum term

- (3) The maximum term is:
 - (a) 25 years for a loan if:

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- (i) 100% of the value of the loan is secured by a mortgage over real property that has been registered in accordance with a law of a State or Territory; and
 - (ii) when the loan is first made, the market value of that real property (less the amounts of any other liabilities secured over that property in priority to the loan) is at least 110% of the amount of the loan; and
- (b) 7 years for any other loan.

However, the maximum term for a loan is the period worked out under the regulations, if they provide for working out the maximum term for that kind of loan.

- (3A) Reduce the maximum term under paragraph (3)(a) for a loan (the *new loan*) in accordance with subsection (3B) if:
- (a) the new loan results from the refinancing of another loan (the *old loan*); and
 - (b) the maximum term of the old loan under subsection (3) was 7 years; and
 - (c) the maximum term of the new loan under subsection (3) is 25 years (disregarding this subsection).
- (3B) The amount of the reduction is equal to the length of the period:
- (a) starting when the old loan was made; and
 - (b) ending when the old loan was refinanced.
- (3C) Reduce the maximum term under paragraph (3)(b) for a loan (the *new loan*) in accordance with subsection (3D) if:
- (a) the new loan results from the refinancing of another loan (the *old loan*); and
 - (b) the maximum term of the old loan under subsection (3) was 25 years; and
 - (c) the maximum term of the new loan under subsection (3) is 7 years (disregarding this subsection); and
 - (d) the length of the period:
 - (i) starting when the old loan was made; and
 - (ii) ending when the old loan was refinanced; exceeds 18 years.
- (3D) The amount of the reduction is the excess mentioned in paragraph (3C)(d).
-

Regulations may adopt rate as published from time to time

- (4) Regulations made for the purposes of subsection (2) may apply, adopt or incorporate a rate published in an instrument after they are made or take effect, or a rate contained in an instrument from time to time despite any other Act.

109NA Certain liquidator's distributions and loans not treated as dividends

A private company is not taken under section 109C or subsection 109D(1) to pay a dividend because of a distribution or loan made in the course of the winding-up of the company by a liquidator.

Note: However, if such a loan is not fully repaid by the end of the following year of income, the company will be taken to have paid a dividend under subsection 109D(1A).

109NB Loans to purchase shares under employee share schemes not treated as dividends

- (1) A private company is not taken under section 109D to pay a dividend because of a loan made solely for the purpose of enabling the shareholder or an associate of the shareholder to acquire:
- (a) qualifying shares or qualifying rights under an employee share scheme; or
 - (b) a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right because of Subdivision DB of Division 13A.
- (2) Expressions used in this section that are defined in Division 13A have the same meaning as in that Division.

109P Amalgamated loans not treated as dividends in the year they are made

A private company is not taken under section 109D to pay a dividend because of an amalgamated loan it makes.

Note: A shortfall in a minimum yearly repayment of an amalgamated loan may be treated as a dividend under section 109E.

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109Q Commissioner may allow amalgamated loan not to be treated as dividend

- (1) A private company is not taken under section 109E to pay a dividend at the end of one of its years of income (the *current year*) because of an amalgamated loan to an entity if:
 - (a) the amount paid to the private company by the entity in the current year in relation to the loan is less than the minimum yearly repayment of the loan for the current year worked out under subsection 109E(5); and
 - (b) the entity satisfies the Commissioner that:
 - (i) that amount was less than the minimum yearly repayment because of circumstances beyond the entity's control; and
 - (ii) the entity would suffer undue hardship if the private company were taken under section 109E to pay a dividend to the entity at the end of the current year because of the loan.
- (2) In deciding whether he or she is satisfied, the Commissioner must consider:
 - (a) the entity's capacity, at the end of the year of income in which the amalgamated loan was made, to repay the loan; and
 - (b) any circumstances that have reduced the entity's capacity to repay the loan; and
 - (c) whether the entity took all reasonable steps to make payments relating to the amalgamated loan during the current year equal to the minimum yearly repayment of the loan for the current year; and
 - (d) whether the entity has made payments relating to the loan as soon as possible after the current year equalling the difference between:
 - (i) the minimum yearly repayment for the current year; and
 - (ii) the amount of payments made during the current year relating to the loan.

109R Some payments relating to loans not taken into account

- (1) This section provides for some payments to a private company in relation to a loan the private company made to an entity not to be taken into account for the purpose of working out:
 - (a) how much of the loan has been repaid for the purposes of sections 109D and 109E (which treat amounts of loans that have not been repaid as dividends); or
 - (b) the minimum yearly repayment for the loan under subsection 109E(5).
- (2) A payment must not be taken into account if a reasonable person would conclude (having regard to all the circumstances) that when the payment was made the entity intended to obtain a loan from the private company of an amount similar to or larger than the payment.
- (3) Subsection (2) does not apply to a payment made by setting off against an amount payable in relation to the loan:
 - (a) a dividend payable by the private company to the entity; or
 - (b) work and income support related withholding payments and benefits payable by the private company to the entity; or
 - (ba) payments covered by section 12-55 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (c) if the entity has transferred property to the private company—an amount equalling the difference between:
 - (i) the amount that a party at arm's length from the entity would have paid for the transfer of the property to the party; and
 - (ii) the amount that the private company has already paid the entity (by way of set-off or otherwise) for the transfer.
- (4) Nor does subsection (2) apply to a payment made on behalf of the entity (the **borrower**) by another entity paying to the private company an amount that:
 - (a) is payable by the other entity to the borrower; and
 - (b) is assessable income of the borrower for the year of income in which the payment was made or an earlier year of income.
- (5) Subsection (2) does not apply to a payment if:

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- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
 - (b) the entity to which the old loan was made has another loan (the *primary* loan) from another entity; and
 - (c) the old loan becomes subordinated to the primary loan; and
 - (d) the refinancing of the old loan mentioned in paragraph (a) took place in connection with that subordination; and
 - (e) that subordination arose as a result of circumstances beyond the control of the entity to which the old loan was made; and
 - (f) the entity to which the old loan was made and the other entity dealt with each other at arm's length in relation to that subordination; and
 - (g) the private company and the other entity dealt with each other at arm's length in relation to that subordination.
- (6) Subsection (2) does not apply to a payment if:
- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
 - (b) the refinancing results in another loan (the *new loan*); and
 - (c) the maximum term of the old loan under subsection 109N(3) was 7 years; and
 - (d) the maximum term of the new loan under subsection 109N(3) is 25 years (reduced in accordance with subsection 109N(3B)).
- (7) Subsection (2) does not apply to a payment if:
- (a) the payment is made to refinance the loan mentioned in subsection (1) (the *old loan*); and
 - (b) the refinancing results in another loan (the *new loan*); and
 - (c) the maximum term of the old loan under subsection 109N(3) was 25 years; and
 - (d) the maximum term of the new loan under subsection 109N(3) is:
 - (i) unless subparagraph (ii) applies—7 years; or
 - (ii) if subsection 109N(3D) applies—7 years reduced in accordance with that subsection.

Subdivision DA—Demerger dividends not treated as dividends

109RA Demerger dividends not treated as dividends

This Division does not apply to a demerger dividend to which section 45B does not apply.

Subdivision DB—Other exceptions

109RB Commissioner may disregard operation of Division or allow dividend to be franked

- (1) The Commissioner may make a decision under subsection (2) if:
 - (a) this Division (disregarding this section) operates with the result that:
 - (i) a private company is taken to pay a particular dividend to a particular entity (the *recipient*) under this Division; or
 - (ii) a particular amount is included, as if it were a dividend, in the assessable income of a particular entity (also the *recipient*) in relation to a private company under Subdivision EA; and
 - (b) the result mentioned in paragraph (a) arises because of an honest mistake or inadvertent omission by any of the following entities:
 - (i) the recipient;
 - (ii) the private company;
 - (iii) any other entity whose conduct contributed to that result.
- (2) The Commissioner may decide in writing that:
 - (a) the result mentioned in paragraph (1)(a) should be disregarded (see subsection (4)); or
 - (b) the dividend mentioned in subparagraph (1)(a)(i) may be franked in accordance with Part 3-6 of the *Income Tax Assessment Act 1997* (see subsection (6)).
- (3) In making a decision under subsection (2) (or refusing to make such a decision), the Commissioner must have regard to the following:

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- (a) the circumstances that led to the mistake or omission mentioned in paragraph (1)(b);
 - (b) the extent to which any of the entities mentioned in paragraph (1)(b) have taken action to try to correct the mistake or omission and if so, how quickly that action was taken;
 - (c) whether this Division has operated previously in relation to any of the entities mentioned in paragraph (1)(b), and if so, the circumstances in which this occurred;
 - (d) any other matters that the Commissioner considers relevant.
- (4) The Commissioner may make a decision under subsection (2) subject to any of the following kinds of condition:
- (a) a condition that the recipient or another entity must make specified payments to the private company or another entity within a specified time;
 - (b) a condition that a specified requirement in this Division must be met within a specified time.
- (5) This Division is taken not to operate with the result mentioned in paragraph (1)(a) if:
- (a) the Commissioner makes a decision under paragraph (2)(a); and
 - (b) if the Commissioner makes the decision subject to a condition under subsection (4)—the condition is satisfied.
- (6) If the Commissioner makes a decision under paragraph (2)(b), subparagraph 202-45(g)(i) of the *Income Tax Assessment Act 1997* does not make the dividend mentioned in subparagraph (1)(a)(i) unfrankable.
- (7) Despite subsection 33(3A) of the *Acts Interpretation Act 1901*, each decision made under subsection (2) must relate only to one amount that would (disregarding this section):
- (a) be taken to be a dividend paid by the private company; or
 - (b) be included, as if it were a dividend, in the assessable income of an entity.

109RC Dividend may be franked if taken to be paid because of family law obligation

- (1) This section applies if a dividend is taken to be paid under this Division because of a family law obligation.
- (2) Subparagraph 202-45(g)(i) of the *Income Tax Assessment Act 1997* does not make the amount of the dividend unfrankable.
- (3) The dividend can be franked in accordance with Part 3-6 of the *Income Tax Assessment Act 1997* only if:
 - (a) the dividend is franked at the private company's benchmark franking percentage for the franking period in which the dividend is taken to be paid; or
 - (b) if the private company does not have a benchmark franking percentage for the period—the dividend is franked at a franking percentage of 100%.
- (4) For the purposes of subsection (3), if the recipient of the dividend is not a member of the private company for the purposes of Part 3-6 of the *Income Tax Assessment Act 1997*, treat that recipient as such a member.

109RD Commissioner may extend period for repayments of amalgamated loan

- (1) The Commissioner may make a decision under subsection (2) if:
 - (a) section 109E operates with the result that a private company is taken to pay a particular dividend to a particular entity (the *recipient*); and
 - (b) the shortfall mentioned in paragraph 109E(1)(c) arises because the recipient is unable to pay the private company the minimum yearly repayment mentioned in that paragraph because of circumstances beyond the recipient's control.
- (2) The Commissioner may decide in writing that the result mentioned in paragraph (1)(a) should be disregarded (see subsection (4)) if the recipient pays the private company the amount of the shortfall within a specified time.
- (3) In making a decision under subsection (2) (or refusing to make such a decision), the Commissioner must have regard to the following:

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- (a) the nature of the circumstances mentioned in paragraph (1)(b);
 - (b) any other matters that the Commissioner considers relevant.
- (4) This Division is taken not to operate with the result mentioned in paragraph (1)(a) if:
- (a) the Commissioner makes a decision under subsection (2); and
 - (b) the recipient pays the private company the amount of the shortfall within the specified time.
- (5) Despite subsection 33(3A) of the *Acts Interpretation Act 1901*, each decision made under subsection (2) must relate only to one amount that would be taken to be a dividend paid by the private company (disregarding this section).

Subdivision E—Payments and loans through interposed entities

109S Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

This Subdivision allows a private company to be taken under Subdivision B to pay a dividend to an entity (the **target entity**) if an entity interposed between the private company and the target entity makes a payment or loan to the target entity under an arrangement involving the private company.

This result is achieved by treating the private company as making a payment or loan of an amount determined by the Commissioner to the target entity (according to whether the interposed entity made a payment or loan to the target entity). (See sections 109V (for payments) and 109W (for loans).)

The arrangement must involve the private company and one or more interposed entities in making payments or loans or giving loan guarantees for the purpose of the target entity receiving a payment or loan from an interposed entity. (See sections 109T, 109U and 109UA.)

If the target entity repays a fraction of the loan made by the interposed entity, the target entity is treated as repaying the same fraction of the loan taken to have been made by the private company. (See subsection 109W(3).)

Some provisions that prevent payments or loans from giving rise to dividends do not apply to payments or loans this Subdivision treats a private company as making. (See section 109X.)

109T Payments and loans by a private company to an entity through one or more interposed entities

- (1) This Division operates as if a private company makes a payment or loan to an entity (the *target entity*) as described in section 109V or 109W if:
 - (a) the private company makes a payment or loan to another entity (the *first interposed entity*) that is interposed between the private company and the target entity; and
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the private company made the payment or loan solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
 - (c) either:
 - (i) the first interposed entity makes a payment or loan to the target entity; or
 - (ii) another entity interposed between the private company and the target entity makes a payment or loan to the target entity.

This section operates regardless of certain factors

- (2) For the purposes of this section, it does not matter:

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- (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the payment or loan from the private company; or
- (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company paid or lent the first interposed entity.

This section does not operate if the payment or loan to the first interposed entity is treated as a dividend

- (3) This Division does not operate as described in subsection (1) (and sections 109V and 109W) if the private company is taken under Subdivision B (as it applies apart from this Subdivision) to pay a dividend as a result of the payment or loan to the first interposed entity.

109U Payments and loans through interposed entities relying on guarantees

- (1) This Division operates as if a private company makes a payment to an entity (the *target entity*) as described in section 109V if:
 - (a) during a year of income the private company guarantees a loan made by another entity (the *first interposed entity*); and
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the private company gave the guarantee solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
 - (c) either:
 - (i) the first interposed entity that is a private company makes a loan to the target entity; or
 - (ii) another entity that is a private company interposed between the private company and the target entity makes a payment or loan to the target entity; and
 - (d) the amount of the payment or the loan is greater than the amount worked out using the formula:

Distributable surplus – Subsection 109Y(3) amount
- (2) The amount of the payment from the private company to the target entity (as worked out under section 109V) is to be reduced by the amount worked out using the formula:

Distributable surplus – Subsection 109Y(3) amount

- (3) In the formulas in paragraph (1)(d) and subsection (2):

distributable surplus means the distributable surplus (worked out under subsection 109Y(2)) for the interposed entity that made the payment or loan to the target entity for the year of income.

subsection 109Y(3) amount means the total of any amounts calculated under subsection 109Y(3) in relation to that interposed entity for the year of income (apart from as a result of the operation of this section).

This section operates regardless of certain factors

- (4) For the purposes of this section, it does not matter:
- (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the guarantee from the private company; or
 - (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company guaranteed.

109UA Certain liabilities under guarantees treated as payments

- (1) Section 109T operates as if one entity (the ***first entity***) makes a payment to a second entity if the first entity guarantees a loan the second entity makes to a third entity (the ***target entity***) and, as a result of the guarantee, the first entity has a liability (other than a contingent liability) to make a payment to the second entity.

Example: A private company guarantees a loan that a bank makes to a shareholder in the private company and the shareholder defaults on the loan. As a result, the company has a presently existing liability to make a payment to the bank. Section 109T operates as if the private company had made a payment to the bank, so the company is treated by section 109V as making a payment to the shareholder (because the bank is interposed between company and shareholder).

- (2) The amount of the payment (as worked out under section 109V) is to be reduced by any amount treated as a dividend as a result of the operation of section 109U in relation to the payment or loan made by the interposed entity to the target entity.

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- (3) A private company is not taken under this Division to pay a dividend because of the operation of subsection (1) in relation to a guarantee if the Commissioner is satisfied that:
 - (a) the target entity would suffer undue hardship if the private company were taken to pay a dividend to the entity because of the liability; and
 - (b) when the target entity entered into the loan, the entity had the capacity to pay the loan.
- (4) This section does not limit the operation of section 109T.
- (5) Subsection (1) does not apply if:
 - (a) as a result of the first entity's liability mentioned in that subsection, the target entity has a liability (other than a contingent liability) to make a payment to the first entity; and
 - (b) because of section 109N, the liability to make a payment to the first entity is not treated under this Division as giving rise to a dividend paid to the first entity.

109V Amount of private company's payment to target entity through one or more interposed entities

Private company taken to pay if target entity is paid

- (1) If the target entity is paid an amount by the interposed entity, this Division operates as if the private company had paid the amount (if any) determined by the Commissioner to the target entity when the interposed entity paid the target entity.

Determining the amount of the private company's payment

- (2) In determining the amount of the payment the private company is taken to have made, the Commissioner must take account of:
 - (a) the amount the interposed entity paid the target entity; and
 - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

109W Private company's loan to target entity through one or more interposed entities

Private company taken to lend if target entity receives loan

- (1) If the target entity is lent an amount by the interposed entity, this Division operates as if the private company had made a loan (the **notional loan**) of the amount (if any) determined by the Commissioner to the target entity when the interposed entity made the loan to the target entity.

Note: Subsection 109D(4) specifies the time at which a loan is made.

How big is the notional loan?

- (2) In determining the amount of the notional loan, the Commissioner must take account of:
- (a) the amount the interposed entity lent the target entity; and
 - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

Notional repayments of notional loan

- (3) When working out whether the private company is taken under section 109D to pay a dividend as a result of the notional loan, and the amount of any such dividend, assume that the target entity repays an amount of the notional loan equal to the amount worked out using the formula:

$$\text{Repayment made by target entity to lender} \times \frac{\text{Amount of notional loan}}{\text{Amount actually lent to target entity}}$$

where:

amount actually lent to target entity is the amount the interposed entity lent to the target entity.

repayment made by target entity to lender is the amount of any repayment made by the target entity of the loan the interposed entity made to the target entity.

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109X Operation of Subdivision D in relation to payment or loan

Payment or loan not affected by being made through interposed entity

- (1) Despite sections 109K and 109L, a private company may be taken under section 109C or 109D to pay a dividend as a result of this Subdivision treating the private company as making a payment or loan to an entity (the **target entity**), even if:
 - (a) the private company is treated that way because it makes a payment or loan to an entity that is a company interposed between the private company and the target entity; or
 - (b) some or all of the amount paid or lent by a private company to an entity interposed between the private company and the target entity is included in the interposed entity's assessable income for a year of income.
- (2) Subsections (3) and (4) apply if a notional loan arises under section 109W because an entity interposed between the private company and the target entity makes a loan (the **actual loan**) to the target entity.
- (3) For the purposes of section 109N, treat the agreement under which the actual loan was made as the agreement under which the notional loan was made.
- (4) For the purposes of section 109E:
 - (a) treat the notional loan as an amalgamated loan from the private company to the target entity; and
 - (b) treat the amount of the notional loan worked out under subsection 109W(1) as the amount of the amalgamated loan; and
 - (c) treat the agreement under which the actual loan was made as the agreement under which the amalgamated loan was made; and
 - (d) treat repayments by the target entity of the amount of the notional loan worked out under subsection 109W(3) as payments by the target entity to the private company in relation to the amalgamated loan.

Subdivision EA—Unpaid present entitlements

109XA Payments, loans and debt forgiveness by a trustee in favour of a shareholder etc. of a private company with an unpaid present entitlement

Payments

- (1) Section 109XB applies if:
 - (a) a trustee makes a payment to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the *actual transaction*); and
 - (b) the payment is a discharge of or a reduction in a present entitlement of the shareholder or associate that is wholly or partly attributable to an amount that is an unrealised gain; and
 - (c) either:
 - (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
 - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

Loans

- (2) Section 109XB applies if:
 - (a) a trustee makes a loan to a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) (the *actual transaction*); and

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- (b) either:
- (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
 - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place, and the whole of the amount has not been paid to the company before the earlier of those dates.

Forgiven debts

- (3) Section 109XB applies if:
- (a) all or part of a debt owed to a trustee by a shareholder or an associate of a shareholder of a private company is forgiven (except where the shareholder or associate is a company) (the **actual transaction**); and
 - (b) either:
 - (i) the company is presently entitled to an amount from the net income of the trust estate at the time the actual transaction takes place, and the whole of that amount has not been paid to the company before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes place; or
 - (ii) the company becomes presently entitled to an amount from the net income of the trust estate after the actual transaction takes place, but before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for the year of income of the trust in which the actual transaction takes

place, and the whole of the amount has not been paid to the company before the earlier of those dates.

Amount involved in the actual transaction

- (4) The amount involved in the actual transaction is the lesser of:
- (a) the amount actually involved in the actual transaction; and
 - (b) the amount worked out using the formula:

Unpaid present entitlement – Previous transactions

where:

previous transactions means the sum of:

- (a) the amounts that, because of previous applications of section 109UB (as in force before the commencement of this section) have been taken to be loans; and
- (b) the amounts that, because of previous applications of this Subdivision, have been included in an entity's assessable income;

in relation to the unpaid present entitlement.

unpaid present entitlement means:

- (a) in a case mentioned in subparagraph (1)(c)(i), (2)(b)(i) or (3)(b)(i)—the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph; and
- (b) in a case mentioned in subparagraph (1)(c)(ii), (2)(b)(ii) or (3)(b)(ii)—the amount of the present entitlement that remained unpaid on the earlier of the dates mentioned in that subparagraph.

The amount of the actual transaction where the entitlement is only partly attributable to an unrealised gain

- (5) For the purposes of subsection (4), where the actual transaction was a payment and that payment was only partly attributable to an amount that is an unrealised gain, the amount of the actual transaction is taken to be the amount of the payment that was attributable to the amount that is the unrealised gain.

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Creation of a present entitlement is not a payment

- (6) The creation of a present entitlement to the capital or income of a trust estate is not, of itself, a payment for the purposes of this Subdivision.

Meaning of unrealised gain

- (7) In this section:

unrealised gain, in relation to a trust estate and an actual payment, means any unrealised gain, whether of a capital or income nature, but does not include an unrealised gain to the extent that it has been or would be included in the assessable income of the trust, apart from this Division, for:

- (a) a year of income before the year in which the actual payment was made; or
- (b) the year of income in which the actual payment was made; or
- (c) the year of income following the year in which the actual payment was made.

109XB Amounts included in assessable income

- (1) An amount is included, as if it were a dividend, in the assessable income of the shareholder or associate referred to in subsection 109XA(1), (2) or (3) if:
- (a) had the actual transaction been done by a private company (the **notional company**); and
 - (b) had the shareholder or associate been a shareholder of the notional company at the time the actual transaction took place;

an amount (the **Division 7A amount**) would have been included in the shareholder's or associate's assessable income because of a provision of this Division outside this Subdivision.

- (2) Subject to section 109Y, the amount that is included under subsection (1) is the Division 7A amount.

Note: There are some modifications of this Division for the purposes of working out the Division 7A amount: see section 109XC.

109XC Modifications

Modifications for this Subdivision only

- (1) The modifications in this section have effect for the purposes of the operation of this Subdivision.

General modifications

- (2) This Division (but not this Subdivision) applies to an actual transaction done by a trustee of a trust estate with these modifications:
 - (a) a reference (except in section 109Y) to an amount paid to a private company has effect as a reference to an amount paid to the trustee; and
 - (b) a reference to a year of income of a private company has effect as a reference to the corresponding year of income of the trust estate; and
 - (c) a reference to the ordinary course of a private company's business has effect as a reference to the ordinary course of the trust estate's business.

Modified operation of section 109J

- (4) Section 109J does not apply to a payment to the extent that it is a discharge of or a reduction in a present entitlement.

Modified operation of section 109R

- (6) For the purposes of applying section 109R to an actual transaction:
 - (a) a reference in that section to obtaining a loan from a private company has effect as a reference to obtaining a loan from the trustee; and
 - (b) a reference in that section to property transferred to a private company has effect as a reference to property transferred to the trustee; and
 - (c) a reference in that section to an amount paid by a private company for a transfer of property has effect as a reference to an amount paid by the trustee for a transfer of property.

Modified operation of section 109Y

- (7) Section 109Y applies to the Division 7A amount in this way:
-

Part III Liability to taxation

Division 7A Distributions to entities connected with a private company

Section 109Y

- (a) assume that the private company referred to in subsection 109XA(1), (2) or (3) had been taken to have paid a dividend to the shareholder or associate referred to in that subsection equal to the Division 7A amount; and
- (b) assume that the dividend was taken to have been paid at the end of the year of income of the company in which the actual transaction took place; and
- (c) a reference in that section to a private company's distributable surplus has effect as a reference to the distributable surplus of the private company referred to in paragraph (a).

Certain provisions do not apply

- (8) Subsection 109D(1A), sections 109K, 109NA and 109NB and paragraphs 109R(3)(a), (b) and (ba) do not apply to an actual transaction.

Subdivision F—General rules applying to all amounts treated as dividends

109Y Proportional reduction of dividends so they do not exceed distributable surplus

Reduction of amounts of dividends

- (1) If, apart from this section, the sum of all the dividends a private company is taken under this Division to pay at the end of the year of income would be more than the company's distributable surplus for that year, the amount of each of those dividends is the amount worked out under subsection (3).

Distributable surplus

- (2) A private company's *distributable surplus* for its year of income is the amount worked out using the formula:

$$\text{Net assets} - \frac{\text{Non-commercial loans}}{\text{value}} - \frac{\text{Paid-up share}}{\text{value}} - \frac{\text{Repayments of non-commercial loans}}{\text{value}}$$

where:

net assets means the amount (if any), at the end of the company's year of income, by which the company's assets (according to the company's accounting records) exceed the sum of:

- (a) the present legal obligations of the company to persons other than the company; and
- (b) the following provisions (according to the company's accounting records):
 - (i) provisions for depreciation;
 - (ii) provisions for annual leave and long service leave;
 - (iii) provisions for amortisation of intellectual property and trademarks;
 - (iv) other provisions prescribed under regulations made for the purposes of this subparagraph.

If the Commissioner considers that the company's accounting records significantly undervalue or overvalue its assets or undervalue or overvalue its provisions, the Commissioner may substitute a value that the Commissioner considers is appropriate.

non-commercial loans is the total of any amounts the company is taken under former section 108, 109D or 109E to have paid as dividends in earlier years of income as are shown as assets in the company's accounting records at the end of the year of income.

paid-up share value is the paid-up share capital of the company at the end of its year of income.

repayments of non-commercial loans means the total of:

- (a) any repayments to the company of loans or amounts that have been taken by former section 108, or section 109D or 109E to be dividends; and
- (b) amounts set off against loans that have been taken by former section 108, or section 109D or 109E to be dividends, other than such amounts that are set off as a result of:
 - (i) a dividend (being a later dividend for the purposes of section 109ZC or a subsequent dividend for the purposes of former subsection 108(2)) being paid by the company to the extent of the unfranked part of the dividend; or
 - (ii) a loan, or a part of a loan, being forgiven.

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- (3) The amount of a dividend that a private company is taken under this Division to pay is worked out using the formula:

$$\text{Provisional dividend} \times \frac{\text{Distributable surplus for year of income}}{\text{Total of provisional dividends}}$$

where:

provisional dividend is the amount of the dividend that the private company would be taken to pay apart from this section.

total of provisional dividends is the sum of all the dividends the private company is taken under this Division to pay at the end of the year of income apart from this section.

Requirement for private company to provide statement

- (4) If this section sets the amount of a dividend taken under this Division to be paid by a private company to an entity at the end of a year of income, the private company must give the entity a written statement as soon as possible after the end of the year of income.

What the statement must contain

- (5) The statement must set out:
- (a) the private company's distributable surplus for the year of income; and
 - (b) the total amount the company would be taken under this Division to pay as dividends in the year of income apart from this section.

109Z Characteristics of dividends taken to be paid under this Division

If a private company is taken under this Division to have paid a dividend to an entity, the dividend is taken for the purposes of this Act to be paid:

- (a) to the entity as a shareholder in the private company; and
- (b) out of the private company's profits.

109ZA No dividend taken to be paid for withholding tax purposes

If a private company is taken under this Division to have paid a dividend to an entity, disregard the dividend for the purposes of:

- (a) Division 11A of Part III (which deals with withholding tax on dividends paid to non-residents and some other people); and
- (c) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (which deals with PAYG withholding).

109ZB Amount treated as dividend is not a fringe benefit

- (1) This Division applies to a loan of an amount to an entity by a private company, even if the loan is made:
 - (a) to the entity in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
 - (b) in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that a loan is not a fringe benefit for the purposes of that Act.

- (2) This Division applies to a private company's forgiveness of a debt owed by an entity to the private company, even if:
 - (a) the entity owed the debt in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
 - (b) the forgiveness occurs in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that the forgiveness of a debt is not a fringe benefit for the purposes of that Act.

- (3) However, this Division does not apply to a payment made to a shareholder, or an associate of a shareholder, in their capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee.

Section 109ZC

109ZC Treatment of dividend that is reduced on account of an amount taken under this Division to be a dividend

- (1) This section sets out special rules for dealing with a dividend (the *later dividend*) distributed by a private company if some or all of the later dividend is set off against some or all of an amount taken under this Division to be a dividend previously paid by the company.

Example: Some or all of a dividend distributed by a private company to a shareholder might be set off to reduce a loan the company had previously made to the shareholder that was treated as a dividend under Subdivision B.

- (1A) This section also sets out special rules for dealing with a dividend (also the *later dividend*) distributed by a private company if:
- (a) the private company distributes the later dividend to a shareholder in the company; and
 - (b) the shareholder applies the amount of the dividend to repay all or part of a loan:
 - (i) that was obtained from the private company by an associate of the shareholder; and
 - (ii) in relation to which a dividend was previously taken under this Division to have been paid by the private company.

- (2) The amount of the later dividend set off or applied is taken not to be a dividend for the purposes of this Act, except Part 3-6 of the *Income Tax Assessment Act 1997* (which deals with franking of distributions). However, if the amount set off or applied exceeds the amount of the later dividend that is not either the franked part of that dividend, or the part of that dividend that has been franked with an exempting credit, the excess is still a dividend.

Note: This prevents double taxation by ensuring that the entity's assessable income does not include the amount of the later dividend that is not paid to the entity (except to the extent that that amount is franked).

- (3) An amount that is taken not to be a dividend under subsection (2) is not assessable income and is not exempt income.

Subdivision G—Defined terms

109ZD Defined terms

In this Division:

amalgamated loan has the meaning given by subsection 109E(3).

arrangement has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

associate has the meaning given by section 318.

benchmark franking percentage has the same meaning as in the *Income Tax Assessment Act 1997*.

benchmark interest rate for a year of income has the meaning given by subsection 109N(2).

deficit has the same meaning as in the *Income Tax Assessment Act 1997*.

distributable surplus of a company for a year of income has the meaning given by subsection 109Y(2).

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

family law obligation means an order, agreement or award mentioned in paragraph 126-5(1)(a), (b), (d), (e) or (f) of the *Income Tax Assessment Act 1997*.

forgive a debt has the meaning given by section 109F.

franking account has the same meaning as in the *Income Tax Assessment Act 1997*.

franking percentage has the same meaning as in the *Income Tax Assessment Act 1997*.

franking period has the same meaning as in the *Income Tax Assessment Act 1997*.

guarantee, in relation to a loan, includes providing security for the loan.

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loan has the meaning given by subsection 109D(3).

lodgment day for a private company's year of income has the meaning given by subsection 109D(6).

payment has the meaning given by subsection 109C(3).

unfrankable has the same meaning as in the *Income Tax Assessment Act 1997*.

109ZE Interpretation rules about entities

The rules in section 960-100 of the *Income Tax Assessment Act 1997* about entities apply to this Division.

Division 9—Co-operative and mutual companies

117 Co-operative companies

- (1) In this Division, *co-operative company* means a company, not being a friendly society dispensary, the rules of which limit the number of shares which may be held by, or by and on behalf of, any one shareholder, and prohibit the quotation of the shares for sale or purchase at any stock exchange or in any other public manner whatever, and includes a company, not being a friendly society dispensary, which has no share capital, and which in either case is established for the purpose of carrying on any business having as its primary object or objects one or more of the following:
- (a) the acquisition of commodities or animals for disposal or distribution among its shareholders;
 - (b) the acquisition of commodities or animals from its shareholders for disposal or distribution;
 - (c) the storage, marketing, packing or processing of commodities of its shareholders;
 - (d) the rendering of services to its shareholders;
 - (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.
- (2) A company is not a co-operative company within the meaning of this Division in relation to a year of income if the company is, for the purposes of section 23G, an approved credit union in relation to that year of income.
- (3) Subsection (2) does not apply to a credit union in relation to a year of income if:
- (a) the credit union is a recognised medium credit union in relation to the year of income; or
 - (b) the credit union is a recognised large credit union in relation to the year of income.

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118 Company not co-operative if less than 90% of business with members

If, in the ordinary course of business of a company in the year of income, the value of commodities and animals disposed of to, or acquired from, its shareholders by the company, or the amount of its receipts from the storage, marketing, packing and processing of commodities of its shareholders, or from the rendering of services to them, or the amount lent by it to them, is less respectively than 90% of the total value of commodities and animals disposed of or acquired by the company, or of its receipts from the storage, marketing, packing and processing of commodities, or from the rendering of services, or of the total amount lent by it, that company shall in respect of that year be deemed not to be a co-operative company.

119 Sums received to be taxed

- (1) The assessable income of a co-operative company shall include all sums received by it, whether from shareholders or from other persons, for the storage, marketing, packing or processing of commodities, or for the rendering of services, or in payment for commodities or animals or land sold, whether on account of the company or on account of its shareholders.
- (2) For the purposes of subsection (1), if a credit union (within the meaning of section 23G) receives a payment of, or in the nature of, interest, the payment is taken to be for the rendering of services.
- (3) Subsection (2) does not limit the generality of subsection (1).

120 Deductions allowable to co-operative company

- (1) So much of the assessable income of a co-operative company as:
 - (a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company;
 - (b) is distributed among its shareholders as interest or dividends on shares; or
 - (c) in the case of a company having as its primary object that specified in paragraph 117(1)(b)—is applied by the company for or towards the repayment of any moneys loaned to the company by a government of the Commonwealth or a State

to enable the company to acquire assets which are required for the purpose of carrying on the business of the company or to pay that government for assets so required which the company has taken over from that government;

shall be an allowable deduction:

Provided that the deduction under paragraph (c) shall not be allowed unless shares representing not less than 90% of the value of the company are held by persons who supply the company with the commodities or animals which the company requires for the purposes of its business.

- (2) No such rebate or bonus based on purchases made by a shareholder from the company shall be included in his assessable income except where the amount of such purchases is allowable as a deduction in ascertaining his taxable income of any year.
- (3) It is hereby declared to be the intention of the Parliament that paragraph (1)(c) applies to loans taken out for the purpose of acquiring assets from:
 - (a) government sources; or
 - (b) non-government sources.
- (4) No deduction is allowable under subsection (1) to the extent that the assessable income of a co-operative company is distributed as the franked part of a franked distribution.
- (5) For the purposes of this section, in determining whether the assessable income of a co-operative company is distributed as the franked part of a franked distribution, if:
 - (a) an amount is distributed by the co-operative company as a franked distribution; and
 - (b) the franking percentage (within the meaning of the *Income Tax Assessment Act 1997*) for the distribution is less than 100%; and
 - (c) a part of the distribution is attributable to sources other than the assessable income of the co-operative company;it is to be assumed that the franked part of the distribution is attributable, to the greatest extent possible, to those other sources.
- (6) If a co-operative company distributes assessable income among its shareholders within the period of 3 months (or such longer period as the Commissioner decides) starting at the end of a year of

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income, the co-operative company may elect that the distribution is to be taken, for the purposes of this section only, to have been made on the last day of the year of income.

(7) In this section:

franked distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

121 Mutual insurance associations

- (1) An association of persons formed for the purpose of insuring those persons against loss, damage or risk of any kind is taken, for the purposes of this Act, to be a company carrying on the business of insurance.
- (2) The assessable income of such a company includes all premiums derived by it, whether from its members or not.

Division 9AA—Demutualisation of insurance companies and affiliates

Subdivision A—What this Division is about

121AA What this Division is about

Basically, if an insurance company demutualises and its policyholders or members dispose of their listed shares in the company, for tax purposes the acquisition cost of the shares is based on the lesser of:

- (a) the embedded value or net tangible asset value of the company; and
- (b) the value of the company based on the total first trading day price of all shares in the company.

Other tax consequences result from disposals of other interests and from other events in connection with the demutualisation.

Subdivision B—Key concepts and related definitions

121AB Insurance company definitions

- (1) A *mutual insurance company* is an insurance company:
 - (a) whose profits are divisible only among its policyholders; or
 - (b) that satisfies all of the following conditions:
 - (i) it is limited by guarantee;
 - (ii) it did not divide its profits among its members during the 10 years ending on 9 May 1995;
 - (iii) on a winding-up, its profits are not divisible among its members; or
 - (c) that satisfies all of the following conditions:

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- (i) at 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995, it was a friendly society (within the meaning of this Act as in force at that time);
 - (ii) it was an insurance company on 1 July 1999;
 - (iii) it does not have capital divided into shares held by its members.
- (2) An *insurance company* is a life insurance company or a general insurance company.
- (3) A *life insurance company* is a company registered under the *Life Insurance Act 1995*.
- (4) A *general insurance company* is a company whose sole or principal business is insurance business within the meaning of subsection 3(1) of the *Insurance Act 1973*, but does not include a life insurance company.

121AC Mutual affiliate company

A *mutual affiliate company* is a company that satisfies the following conditions:

- (a) it is limited by guarantee;
- (b) it is not an insurance company;
- (c) at least 75% of the policyholders of a mutual insurance company are members of it;
- (d) it did not divide its profits among its members during the 10 years ending on 9 May 1995;
- (e) on a winding-up, its profits are not divisible among its members in their capacity as such.

121AD Demutualisation and demutualisation resolution day

- (1) A mutual insurance company *demutualises* if it ceases to be a mutual insurance company:
- (a) in any case—other than by ceasing to be an insurance company; or
 - (b) if it is a life insurance company—because the whole of its life insurance business is transferred to another company under a scheme confirmed by the Federal Court of Australia.

- (2) A mutual affiliate company *demutualises* if it ceases to be a mutual affiliate company other than by ceasing to be a company.
- (3) The *demutualisation resolution day*, in relation to the demutualisation of a company, is:
 - (a) if paragraph (b) does not apply—the day on which the resolution to proceed with the demutualisation is passed; or
 - (b) if paragraph (1)(b) applies to the demutualisation—the day on which the transfer of the whole of the company's life insurance business takes place.

121AE Demutualisation methods, the policyholder/member group and the listing period

Demutualisation methods 1 to 6

- (1) There are 6 methods by which the demutualisation of a mutual insurance company, where a mutual affiliate company is not also demutualised, may be implemented that are relevant for the purposes of this Division. They are described in sections 121AF to 121AK as demutualisation methods 1 to 6.

Demutualisation method 7

- (2) There is one method by which the demutualisation of both a mutual insurance company and a mutual affiliate company may be implemented that is relevant for the purposes of this Division. It is described in section 121AL as demutualisation method 7.

Demutualisation methods

- (3) Each of the methods described in sections 121AF to 121AL is a *demutualisation method*.

Policyholder/member group

- (4) The *policyholder/member group*, in relation to the demutualisation of a mutual insurance company under any of demutualisation methods 1 to 6, consists of the following persons:
 - (a) in the case of a mutual insurance company covered by paragraph 121AB(1)(a)—policyholders (other than trustees covered by paragraph (d) or (e)) in the company immediately before the demutualisation;

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- (b) in the case of any other mutual insurance company—members (other than trustees covered by paragraph (d) or (e)) of the company immediately before the demutualisation;
- (c) in any case—any of the following who, in connection with the demutualisation, are entitled to the same rights to shares or the proceeds of the sale of shares as the policyholders (in a paragraph (a) case) or the members (in a paragraph (b) case):
 - (i) employees of the company or a wholly-owned subsidiary of the company;
 - (ii) persons who ceased to be such policyholders or members before the demutualisation;
 - (iii) charities;
 - (iv) persons who are entitled to the rights because of the death of the policyholders or members;
- (d) in any case—each person who satisfies the following requirements:
 - (i) the person is a member of a regulated superannuation fund (as defined by section 19 of the *Superannuation Industry (Supervision) Act 1993*), other than a standard employer-sponsored member (as defined by subsection 16(5) of that Act);
 - (ii) the trustee of the fund holds a policy or policies in the mutual insurance company;
 - (iii) the trustee of the fund is a company that is a wholly-owned subsidiary of the mutual insurance company;
 - (iv) the person's benefits in the fund consist solely of the proceeds of the policy or policies;
 - (v) in connection with the demutualisation, the person, rather than the trustee, has the right to shares or the proceeds of the sale of shares in respect of the policy or policies held by the trustee;
- (e) in any case—each person who satisfies the following requirements:
 - (i) the person is the member of a single-member superannuation fund;
 - (ii) the trustee of the fund holds a policy or policies in the mutual insurance company;
 - (iii) in connection with the demutualisation, the person, rather than the trustee, has the right to shares or the

proceeds of the sale of shares in respect of the policy or policies held by the trustee.

- (5) The ***policyholder/member group***, in relation to the demutualisation of a mutual insurance company and a mutual affiliate company under demutualisation method 7, consists of the following persons:
- (a) if the mutual insurance company is covered by paragraph 121AB(1)(a)—policyholders (other than trustees covered by paragraph (e) or (f)) in the mutual insurance company immediately before the demutualisation;
 - (b) in the case of any other mutual insurance company—members (other than trustees covered by paragraph (e) or (f)) of the company immediately before the demutualisation;
 - (c) members (other than trustees covered by paragraph (e) or (f)) of the mutual affiliate company immediately before the demutualisation;
 - (d) any of the following who, in connection with the demutualisation, are entitled to the same rights to shares or the proceeds of the sale of shares as the members:
 - (i) employees of the mutual insurance company, the mutual affiliate company or a wholly-owned subsidiary of either company;
 - (ii) persons who ceased to be such members before the demutualisation;
 - (iii) charities;
 - (iv) persons who are entitled to the rights because of the death of members;
 - (e) in any case—each person who satisfies the following requirements:
 - (i) the person is a member of a regulated superannuation fund (as defined by section 19 of the *Superannuation Industry (Supervision) Act 1993*), other than a standard employer-sponsored member (as defined by subsection 16(5) of that Act);
 - (ii) the trustee of the fund holds a policy or policies in the mutual insurance company;
 - (iii) the trustee of the fund is a company that is a wholly-owned subsidiary of the mutual insurance company;

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- (iv) the person's benefits in the fund consist of the proceeds of the policy or policies;
- (v) in connection with the demutualisation, the person, rather than the trustee, has the right to shares or the proceeds of the sale of shares in respect of the policy or policies held by the trustee;
- (f) in any case—each person who satisfies the following requirements:
 - (i) the person is the member of a single-member superannuation fund;
 - (ii) the trustee of the fund holds a policy or policies in the mutual insurance company;
 - (iii) in connection with the demutualisation, the person, rather than the trustee, has the right to shares or the proceeds of the sale of shares in respect of the policy or policies held by the trustee.
- (6) The *listing period* is the period ending 2 years after the demutualisation resolution day, or at such later time as the Commissioner, before the end of the 2 years, allows.

121AEA Replacement of policyholders by persons exercising certain rights

If, as a result of the exercise of any power under the articles of association of an insurance company, persons are entitled to exercise rights in place of policyholders, then, to the extent that the Commissioner considers it appropriate, the persons are treated for the purposes of this Division as replacing the policyholders.

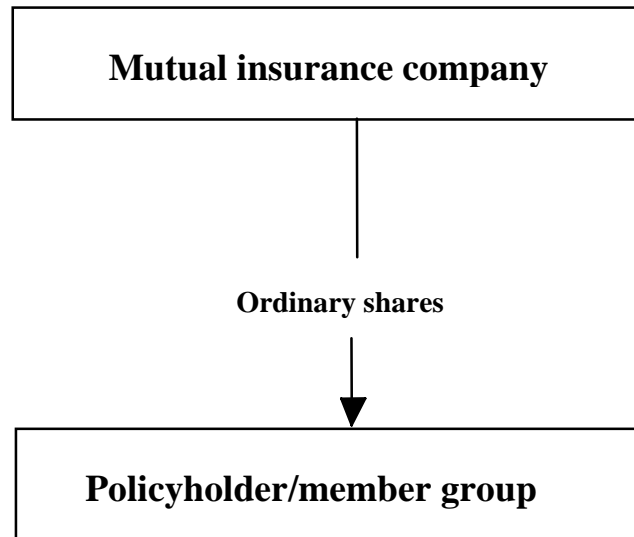
121AF Demutualisation method 1

- (1) Under *demutualisation method 1*, in connection with the implementation of the demutualisation:
 - (a) all membership rights in the mutual insurance company are extinguished; and
 - (b) shares (the *ordinary shares*) of only one class in the mutual insurance company are issued to each person in the policyholder/member group; and
 - (c) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows, where this demutualisation method is used, the issue of the shares to the policyholder/member group.

Demutualisation method 1



121AG Demutualisation method 2

- (1) Under *demutualisation method 2*, in connection with the implementation of the demutualisation:
- (a) all membership rights in the mutual insurance company are extinguished; and
 - (b) not more than 10 shares (the *special shares*) in the mutual insurance company are issued to a trustee to hold for the benefit of the policyholder/member group, where:
 - (i) the issue takes place before the issue of the ordinary shares mentioned in paragraph (c); and
 - (ii) on the issue of all the ordinary shares, the rights attaching to the special shares become the same as those attaching to the ordinary shares; and

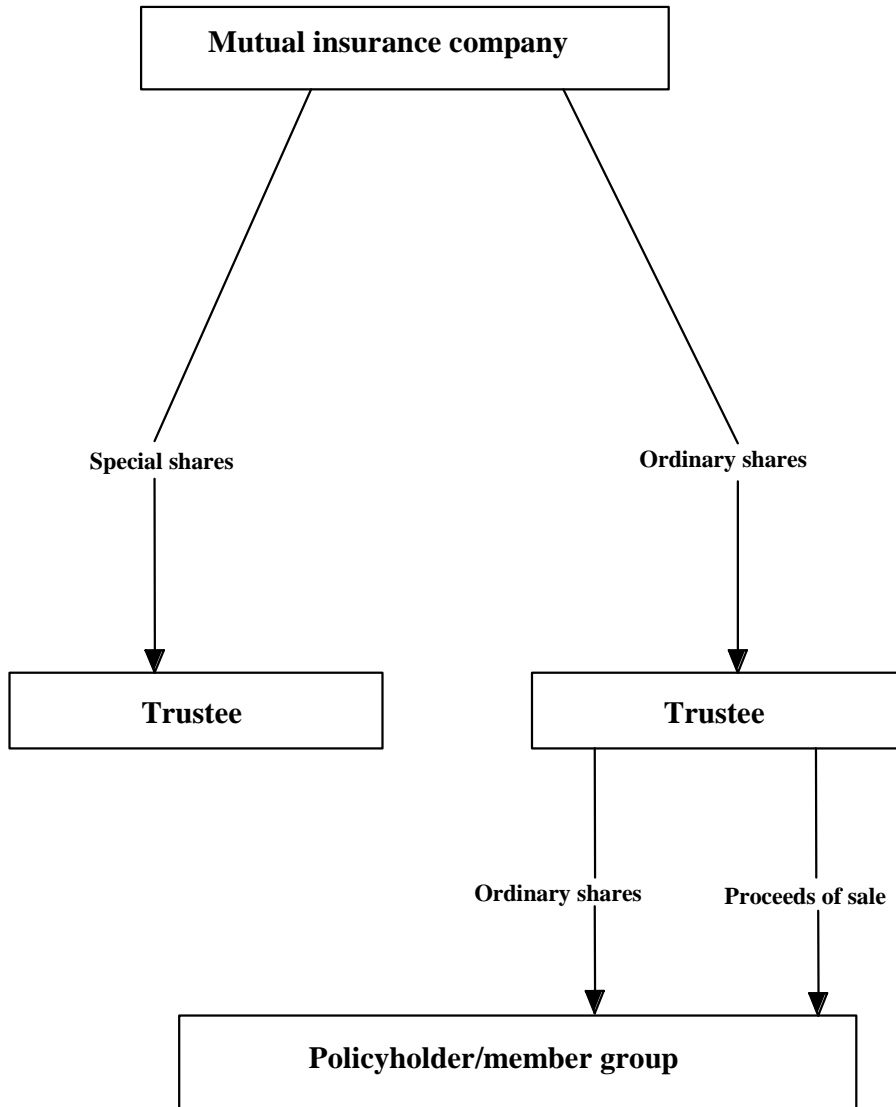
Section 121AG

- (c) a greater number of shares (the *ordinary shares*) of only one class in the mutual insurance company are either:
 - (i) issued, at the election of each person in the policyholder/member group, to the person or to a trustee to sell on behalf of the person; or
 - (ii) issued to a trustee, at the election of each person in the policyholder/member group, to distribute to the person or to sell on behalf of the person; and
- (d) the trustee sells the ordinary shares and distributes the proceeds to the person, or distributes the ordinary shares to the person; and
- (e) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events, where this demutualisation method is used involving an election covered by subparagraph (1)(c)(ii).

Demutualisation method 2

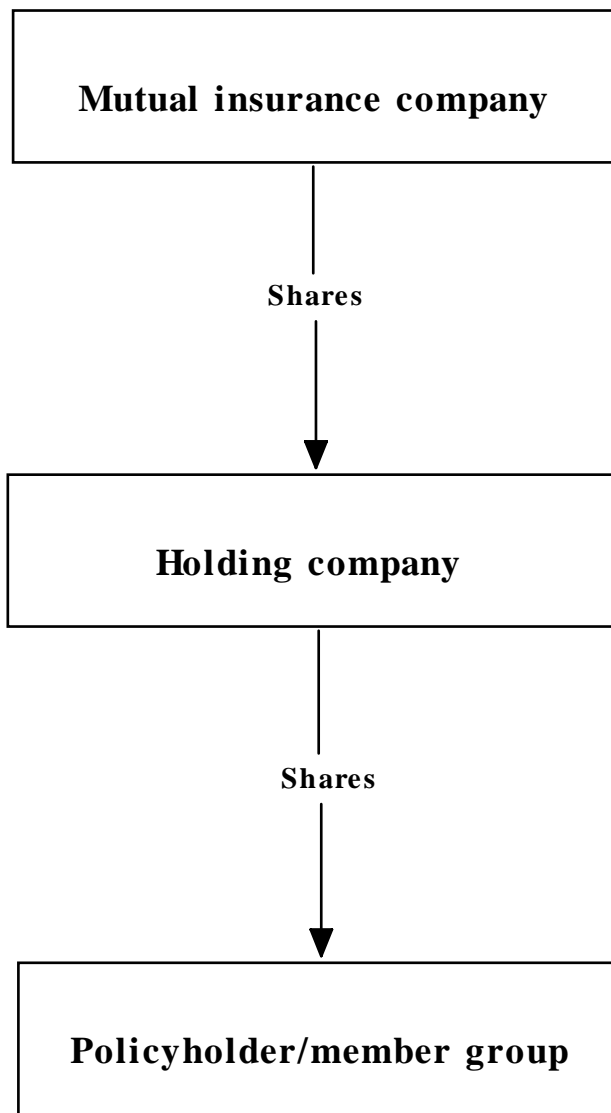


Section 121AH

121AH Demutualisation method 3

- (1) Under *demutualisation method 3*, in connection with the implementation of the demutualisation:
- (a) all membership rights in the mutual insurance company are extinguished; and
 - (b) shares in the mutual insurance company are issued to another company (the *holding company*); and
 - (c) shares (the *ordinary shares*) of only one class in:
 - (i) the holding company; or
 - (ii) another company (the *ultimate holding company*) of which the holding company is a wholly-owned subsidiary, either directly or through one or more other wholly-owned subsidiaries (each of which is an *interposed holding company*);are issued to each person in the policyholder/member group; and
 - (d) the ordinary shares are listed within the listing period.
- Note: Other things may also happen in connection with the implementation of the demutualisation.
- (2) The following diagram shows the main events, where this demutualisation method is used.

Demutualisation method 3



Section 121AI

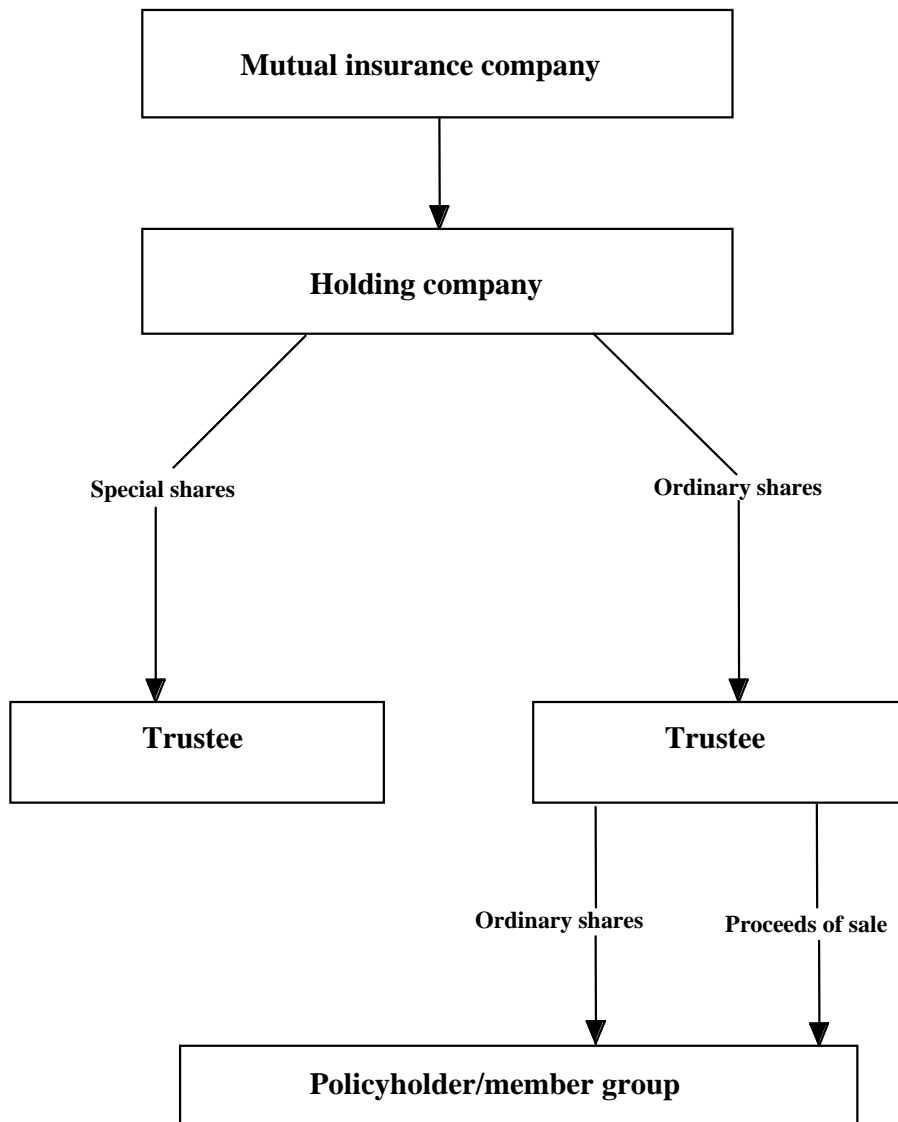
121AI Demutualisation method 4

- (1) Under *demutualisation method 4*, in connection with the implementation of the demutualisation:
- (a) all membership rights in the mutual insurance company are extinguished; and
 - (b) shares in the mutual insurance company are issued to another company (the *holding company*); and
 - (c) not more than 10 shares (the *special shares*) in:
 - (i) the holding company; or
 - (ii) another company (the *ultimate holding company*) of which the holding company is a wholly-owned subsidiary, either directly or through one or more other wholly-owned subsidiaries (each of which is an *interposed holding company*);are issued to a trustee to hold for the benefit of the policyholder/member group; and
 - (d) the issue of the special shares takes place before the issue of the ordinary shares mentioned in paragraph (e), and on the issue of all the ordinary shares, the rights attaching to the special shares become the same as those attaching to the ordinary shares; and
 - (e) a greater number of shares (the *ordinary shares*) of only one class in the holding company or ultimate holding company are either:
 - (i) issued, at the election of each person in the policyholder/member group, to the person or to a trustee to sell on behalf of the person; or
 - (ii) issued to a trustee, at the election of each person in the policyholder/member group, to distribute to the person or to sell on behalf of the person; and
 - (f) the trustee sells the ordinary shares and distributes the proceeds of sale to the person, or distributes the ordinary shares to the person; and
 - (g) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events, where this demutualisation method is used involving 2 trustees and an election covered by subparagraph (1)(e)(ii).

Demutualisation method 4



Section 121AJ

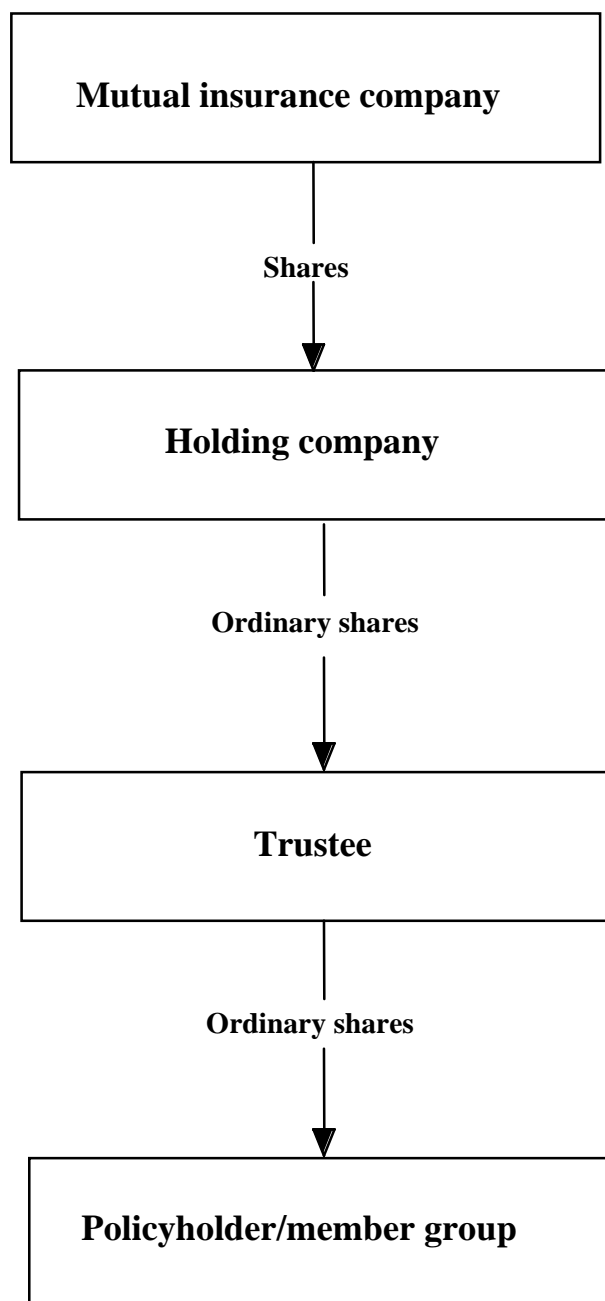
121AJ Demutualisation method 5

- (1) Under *demutualisation method 5*, in connection with the implementation of the demutualisation:
- (a) all membership rights in the mutual insurance company are extinguished; and
 - (b) shares in the mutual insurance company are issued to another company (the *holding company*); and
 - (c) shares (the *ordinary shares*) of only one class in:
 - (i) the holding company; or
 - (ii) another company (the *ultimate holding company*) of which the holding company is a wholly-owned subsidiary, either directly or through one or more other wholly-owned subsidiaries (each of which is an *interposed holding company*);are either:
 - (iii) issued, at the election of each person in the policyholder/ member group, to the person or to a trustee to sell on behalf of the person; or
 - (iv) issued to a trustee, at the election of each person in the policyholder/member group, to distribute to the person or to sell on behalf of the person; and
 - (d) the trustee sells the ordinary shares and distributes the proceeds of sale to the person, or distributes the ordinary shares to the person; and
 - (e) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events, where this demutualisation method is used involving an election covered by subparagraph (1)(c)(iv).

Demutualisation method 5



Section 121AK

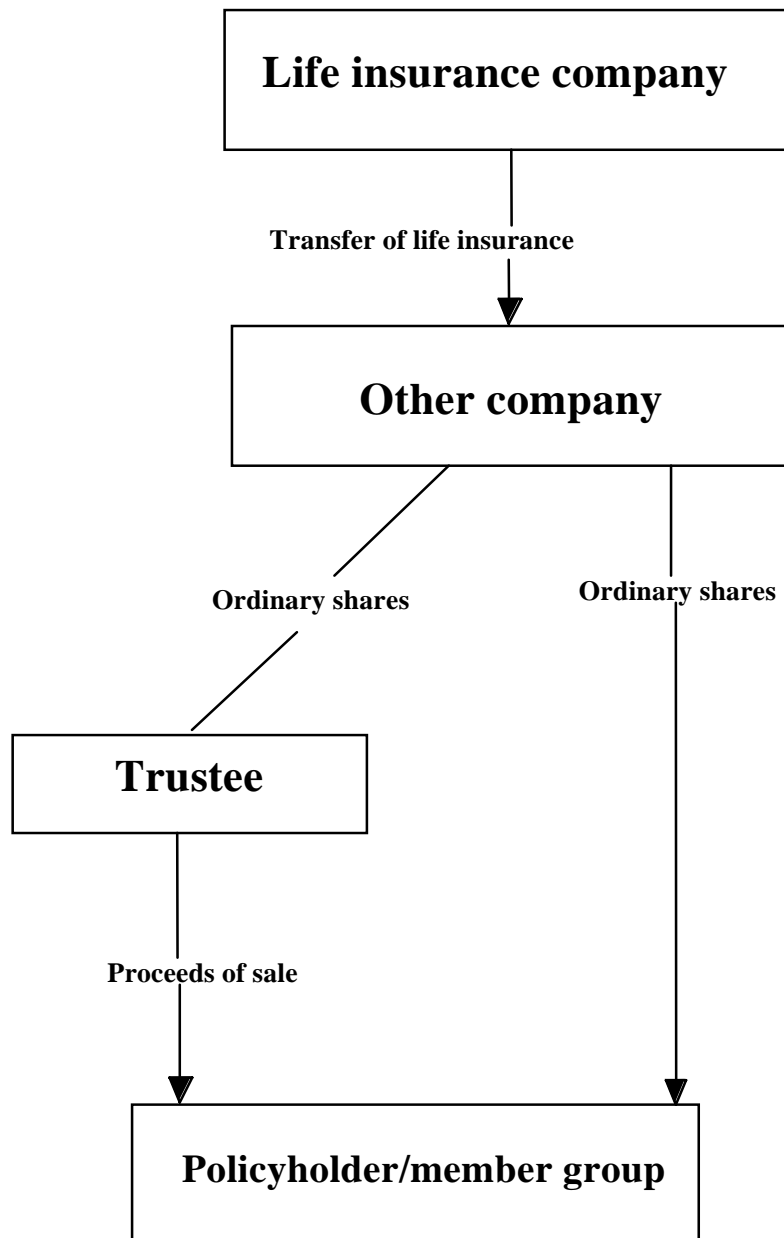
121AK Demutualisation method 6

- (1) Under *demutualisation method 6*, in connection with the implementation of the demutualisation of a life insurance company:
- (a) all membership rights in the company are extinguished; and
 - (b) the whole of the life insurance business of the company is, under a scheme confirmed by the Federal Court of Australia, transferred to another company formed for the purpose; and
 - (c) shares (the *ordinary shares*) of only one class in the other company are:
 - (i) issued, at the election of each person in the policyholder/member group, to the person or to a trustee to sell on behalf of the person; or
 - (ii) issued to a trustee, at the election of each person in the policyholder/member group, to distribute to the person or to sell on behalf of the person; and
 - (d) the trustee sells the ordinary shares and distributes the proceeds of sale to the person or distributes the ordinary shares to the person; and
 - (e) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events, where this demutualisation method is used.

Demutualisation method 6



Section 121AL

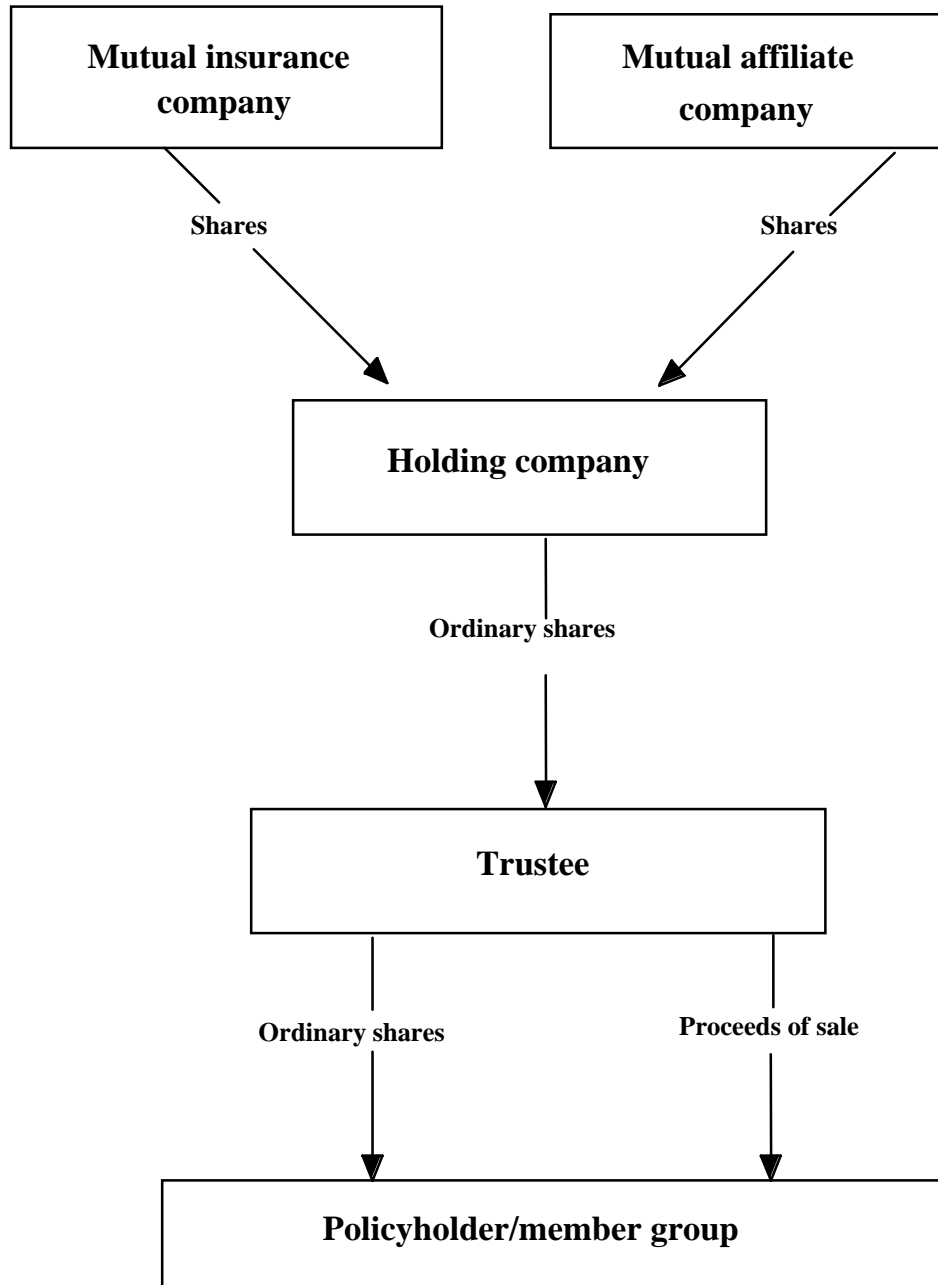
121AL Demutualisation method 7

- (1) Under *demutualisation method 7*, in connection with the implementation of the demutualisation of both a mutual insurance company and a mutual affiliate company:
- (a) all membership rights in both companies are extinguished; and
 - (b) shares in the mutual insurance company and the mutual affiliate company are issued to another company (the *holding company*); and
 - (c) shares (the *ordinary shares*) of only one class in:
 - (i) the holding company; or
 - (ii) another company (the *ultimate holding company*) of which the holding company is a wholly-owned subsidiary, either directly or through one or more other wholly-owned subsidiaries (each of which is an *interposed holding company*);are either:
 - (iii) issued, at the election of each person in the policyholder/member group to the person or to a trustee to sell on behalf of the person; or
 - (iv) issued to a trustee, at the election of each person in the policyholder/member group, to distribute to the person or to sell on behalf of the person; and
 - (d) the trustee sells the ordinary shares and distributes the proceeds of the sale to the person, or distributes the ordinary shares to the person; and
 - (e) the ordinary shares are listed within the listing period.

Note: Other things may also happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events, where this demutualisation method is used involving an election covered by subparagraph (1)(c)(iv).

Demutualisation method 7



Section 121AM

121AM Embedded value of a mutual life insurance company

- (1) The *embedded value* of a mutual life insurance company that demutualises using a demutualisation method is, in accordance with this section, the sum of its existing business value and its adjusted net worth on the applicable accounting day (see subsection (3)).

Eligible actuary and Australian actuarial practice

- (2) The sum is to be worked out by an eligible actuary (see subsection 121AO(3)) according to Australian actuarial practice.

Applicable accounting day

- (3) The *applicable accounting day* is:
- (a) if an accounting period of the company ends on the demutualisation resolution day—that day; or
 - (b) in any other case—the last day of the most recent accounting period of the company ending before the demutualisation resolution day.

Adjustment for changes after applicable accounting day

- (4) In a case covered by paragraph (3)(b), if any significant change in the amount of the existing business value or adjusted net worth occurs between the applicable accounting day and the demutualisation resolution day, the amount is to be adjusted to take account of the change.

Continued business assumption

- (5) In working out the existing business value or the adjusted net worth, it is to be assumed:
- (a) that after the applicable accounting day the company will continue to conduct its life insurance business and any other activity in the same way as it did before that day, and that it will not conduct any different business or other activity; and
 - (b) that the demutualisation will not occur.

Discount rate assumption

- (6) In working out the existing business value or adjusted net worth, the annual discount rate to be used in respect of each future accounting period is worked out using the formula:

$$\text{10 year Treasury bond rate} + 4.5\% + \frac{\text{Capital reserve adequacy shortfall percentage}}{\text{shortfall percentage}}$$

where:

10 year Treasury bond rate means the Treasury bond rate (see subsection 121AO(1)) for the applicable accounting day in respect of bonds with a 10 year term.

Capital reserve adequacy shortfall percentage means:

- (a) if, for any future accounting period, the capital reserves of the company are projected to fall below the capital reserve adequacy level (see subsection 121AO(2)) by 1% or more at both the beginning and end of the accounting period—the percentage worked out by averaging the percentages worked out under each of the following subparagraphs:
- (i) 0.2% for each 1% by which the capital reserves are projected to fall below the level at the beginning of the period;
 - (ii) 0.2% for each 1% by which the capital reserves are projected to fall below the level at the end of the period;
- or
- (b) in any other case—nil.

Annual inflation rate assumption

- (7) In working out the existing business value, the annual inflation rate to be applied is worked out using the formula:

$$\text{10 year Treasury bond rate} - 4\%$$

(see subsection (6))

Expenditure assumption

- (8) In working out the existing business value, it is to be assumed that expenditure that the company will incur, in conducting its life insurance business, on recurring items after the demutualisation resolution day will be of the same kinds and amounts (increased to take account of any inflation, using the annual inflation rate in subsection (7)) as the company incurred in the accounting period,

Section 121AN

or part of an accounting period, ending on the demutualisation resolution day.

Investment return assumption

- (9) In working out the existing business value or the adjusted net worth, it is to be assumed that the annual rate of return on each investment of the company is:
- (a) if the investment is a security with a term less than 2 years or is cash—the Treasury bond rate (see subsection 121AO(1)) for the applicable accounting day in respect of bonds with a 26 week term; or
 - (b) if the investment is any other kind of security—the Treasury bond rate for the applicable accounting day in respect of bonds with a 10 year term; or
 - (c) in any other case—the rate mentioned in paragraph (b), plus 3%.

Future distributable profits assumption

- (10) In working out the existing business value or the adjusted net worth, the future distributable profits are to be determined on the assumption that the company:
- (a) will not distribute its profits so as to cause its capital reserves to fall below the capital reserve adequacy level (see subsection 121AO(2)) applicable to the company; and
 - (b) will distribute all of its profits except to the extent necessary for its capital reserves not to fall below the capital reserve adequacy level.

121AN Net tangible asset value of a general insurance company or mutual affiliate company

- (1) The *net tangible asset value* of a general insurance company, or a mutual affiliate company, that demutualises using a demutualisation method is, in accordance with this section:
- (a) the amount of its assets on the applicable accounting day (see subsection (4));
- reduced by:
- (b) the amount of its liabilities (including future liabilities) arising from its business conducted before that day.

Australian accounting practice

- (2) The amount of the company's assets and liabilities (other than future liabilities) is to be worked out according to Australian accounting practice.

Eligible actuary and Australian actuarial practice

- (3) The amount of the company's future liabilities is to be worked out by an eligible actuary (see subsection 121AO(3)) according to Australian actuarial practice.

Applicable accounting day

- (4) The **applicable accounting day** is:
- (a) if an accounting period of the company ends on the demutualisation resolution day—that day; or
 - (b) in any other case—the last day of the most recent accounting period of the company ending before the demutualisation resolution day.

Adjustment for changes after applicable accounting day

- (5) In a case covered by paragraph (4)(b), if any significant change in the amount of the company's assets or liabilities occurs between the applicable accounting day and the demutualisation resolution day, that amount is to be adjusted to take account of the change.

Continued business assumption

- (6) In working out the net tangible asset value, it is to be assumed:
- (a) that after the applicable accounting day the company will continue to conduct its business and any other activity in the same way as it did before that day, and that it will not conduct any different business or other activity; and
 - (b) that the demutualisation will not occur.

Section 121AO

121AO Treasury bond rate, capital reserve adequacy level, eligible actuary and security

Treasury bond rate

- (1) The **Treasury bond rate** for the applicable accounting day in respect of bonds with a particular term is:
 - (a) if any Treasury bonds with that term were issued on the applicable accounting day—the annual yield on those bonds; or
 - (b) in any other case—the annual yield on Treasury bonds with that term, as published by the Reserve Bank of Australia and applicable to the accounting day.

Capital reserve adequacy level

- (2) The **capital reserve adequacy level** for a life insurance company that demutualises is:
 - (a) if, after 1 July 1995 and before the applicable accounting day mentioned in subsection 121AM(3) or 121AN(4), a prudential standard made under section 230B of the *Life Insurance Act 1995* in relation to capital adequacy applied to the company—the level of capital reserves required by that standard; or
 - (b) in any other case—the level of capital reserves required to provide adequate capital for the conduct of the life insurance business and other activities of the company.

Eligible actuary

- (3) An **eligible actuary** is a Fellow or Accredited Member of the Institute of Actuaries of Australia who is not an employee of:
 - (a) the mutual insurance company or, where demutualisation method 7 applies, the mutual insurance company or the mutual affiliate company; or
 - (b) a subsidiary of that company or, where demutualisation method 7 applies, of either company.

Security

- (4) A **security** is:
- (a) a bond, debenture, certificate of entitlement, bill of exchange or promissory note; or
 - (b) a deposit with a bank or other financial institution; or
 - (c) a secured or unsecured loan.

121AP Subsidiary and wholly-owned subsidiary

Subsidiary

- (1) A company (the **test company**) is a **subsidiary** of another company (the **holding company**) if at least half of the shares in the test company are beneficially owned by:
- (a) the holding company; or
 - (b) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or
 - (c) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company.
- (2) If a company is a subsidiary of another company (including because of this subsection), every company that is a subsidiary of the first-mentioned company is a subsidiary of the other company.

Wholly-owned subsidiary

- (3) A company is a **wholly-owned subsidiary** of another company if it would, under subsection (1) or (2), be a subsidiary of the other company assuming that the reference in subsection (1) to at least half of the shares were instead a reference to all of the shares.

121AQ Other definitions

In this Division:

annuity has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

first trading day price, in relation to a listed share, means the price on the stock market operated by ASX Limited, as published by that

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company, at which the share was last traded on the trading day on which it was listed.

general insurance business means insurance business (within the meaning of the *Insurance Act 1973*) other than life insurance business.

life insurance business has the same meaning as in the *Life Insurance Act 1995*.

listed means listed for quotation in the official list of ASX Limited.

superannuation interest has the same meaning as in the *Income Tax Assessment Act 1997*.

121AR List of definitions

The following table lists the expressions defined in this Division and shows the provisions in which they are defined:

Definition	Provision
annuity	121AQ
applicable accounting day	121AM(3) and 121AN(4)
capital reserve adequacy level	121AO(2)
eligible actuary	121AO(3)
embedded value	121AM(1)
demutualise	121AD(1) and (2)
demutualisation method	121AE(3)
demutualisation method 1 to demutualisation method 7	121AF to 121AL
demutualisation resolution day	121AD(3)
first trading day price	121AQ
general insurance business	121AQ
general insurance company	121AB(4)
insurance company	121AB(2)
life insurance business	121AQ
life insurance company	121AB(3)
listed	121AQ
listing period	121AE(6)
mutual affiliate company	121AC
mutual insurance company	121AB(1)
net tangible asset value	121AN(1)
policyholder/member group	121AE(4) and (5)
security	121AO(4)

Definition	Provision
subsidiary	121AP(1) and (2)
superannuation interest	121AQ
Treasury bond rate	121AO(1)
wholly-owned subsidiary	121AP(3)

Subdivision C—Tax consequences of demutualisation

121AS CGT consequences of demutualisation

The table below sets out modifications of the application of Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* in respect of events that are described in, or relate to events that are described in, particular demutualisation methods.

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
1 Any demutualisation method:		
	Extinguishment of membership rights as mentioned in paragraph (1)(a) of sections 121AF to 121AL.	A capital gain or capital loss arising from a CGT event constituted by the extinguishment is disregarded.
2 Demutualisation method 6:		
	The whole of the life insurance business of the life insurance company is transferred to the other company as mentioned in paragraph 121AK(1)(b).	Subdivision 126-B of the <i>Income Tax Assessment Act 1997</i> as in force immediately before 21 October 1999 (about roll-overs for transfers) applies as if the life insurance company and the other company were members of the same wholly-owned group within the meaning of that Act.

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
3	Any demutualisation method:	
	A person (the <i>disposer</i>) in the policyholder/member group disposes of a right to have ordinary shares issued or distributed to the person, or the proceeds of sale of ordinary shares distributed to the person, as mentioned in paragraph 121AF(1)(b), 121AG(1)(c) or (d), 121AH(1)(c), 121AI(1)(e) or (f), 121AJ(1)(c) or (d), 121AK(1)(c) or (d) or 121AL(1)(c) or (d).	<ol style="list-style-type: none"> 1. A capital loss that the disposer makes from the disposal is disregarded if the disposal takes place before the demutualisation listing day (see note 4 to this table). 2. For the purpose of working out whether the disposer made a capital gain, or made a capital loss (where modification 1 does not apply), from the disposal, he or she is taken: <ol style="list-style-type: none"> (a) to have paid, as consideration for the acquisition of the right disposed of, an amount worked out using the following formula: $\frac{\text{Right disposed of}}{\text{Total of all rights of the same kind}} \times \frac{\text{Applicable company valuation amount}}{\text{(see note 1 to this Table)}} ; \text{ and}$ (b) to have paid the amount in paragraph (a), and to have acquired the right disposed of, on the demutualisation resolution day.

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
4 Demutualisation method 2, 4, 5, 6 or 7:		
	A person (the <i>disposer</i>) in the policyholder/member group disposes of an asset consisting of all or part of the person's interest in the trust property of the trustee mentioned in paragraph 121AG(1)(b) or (c), 121AI(1)(c) or (e), 121AJ(1)(c), 121AK(1)(c) or 121AL(1)(c).	<ol style="list-style-type: none">1. A capital loss that the disposer makes from the disposal is disregarded if the disposal takes place before the demutualisation listing day (see note 4 to this table).2. For the purpose of working out whether the disposer made a capital gain, or made a capital loss (where modification 1 does not apply), from the disposal, he or she is taken:<ol style="list-style-type: none">(a) to have paid, as consideration for the acquisition of the interest disposed of, an amount worked out using the following formula:$\frac{\text{Amount of interest disposed of}}{\text{Total amount of all interests in the trust property}} \times \text{Applicable company valuation amount (see note 1 to this Table)} ; \text{ and}$(b) to have paid the amount in paragraph (a), and to have acquired the interest disposed of, on the demutualisation resolution day.

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
<p>5 Demutualisation method 3, 4 or 5</p> <p>After the issue of the shares (each of which is a <i>demutualisation share</i>) in the mutual insurance company as mentioned in paragraph 121AH(1)(b), 121AI(1)(b) or 121AJ(1)(b), the holding company (the <i>disposer</i>) disposes of an asset consisting of:</p> <p>(a) a demutualisation share, or an interest in such a share; or</p> <p>(b) another share (a <i>non-demutualisation</i> bonus share) in the mutual insurance company, or an interest in such a share, where the share is a bonus share mentioned in Division 8 of former Part IIIA and any of the demutualisation shares are the original shares mentioned in that Division.</p> <p>(For the purposes of the modifications relating to this item, if any of the original shares mentioned in Division 8 of former Part IIIA is a demutualisation share, it is called a <i>demutualisation original share</i>.)</p>		<p>1. A capital loss that the disposer makes from the disposal of the demutualisation share or interest in such a share is disregarded if the disposal takes place before the demutualisation listing day (see note 4 to this table).</p> <p>2. If the disposal is of a demutualisation share (other than a demutualisation original share) or an interest in such a share then, for the purpose of working out whether the disposer made a capital gain, or made a capital loss (where modification 1 does not apply), from the disposal, the disposer is taken:</p> <p>(a) to have paid as consideration for the acquisition of the share or interest both:</p> <p style="padding-left: 20px;">(i) the amount worked out using the formula:</p>

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
		$\frac{\text{Share or amount of interest disposed of}}{\text{Total demutualisation shares or amount of interests in such shares}} \times \text{Applicable company valuation amount (see note 1 to this Table)} ; \text{ and}$
		<ul style="list-style-type: none"> (ii) any consideration actually paid or given for the acquisition; and
		<ul style="list-style-type: none"> (b) to have paid the amount in subparagraph (a)(i) on the demutualisation resolution day and the amount in subparagraph (a)(ii) when it was actually paid; and (c) to have acquired the share or interest on the demutualisation resolution day.
		<p>3. If the disposal is of either:</p> <ul style="list-style-type: none"> (a) a demutualisation original share, or an interest in such a share; or (b) a non-demutualisation bonus share, or an interest in such a share; <p>then, for the purpose of working out whether the disposer made a capital gain, or made a capital loss (where modification 1 does not apply), from the</p>

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
		disposal:
		(c) for the purposes of applying section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> , the consideration for the acquisition of all of the demutualisation original shares to be taken into account under that section is taken to consist of both:
		(i) if the disposal and all previous disposals of the demutualisation original shares and the non-demutualisation bonus shares, or interests in them, take place after the demutualisation listing day—the amount worked out using the formula:
		$\frac{\text{Number of demutualisation original shares}}{\text{Number of demutualisation shares}} \times \frac{\text{Listing day company valuation amount}}{\text{(see note 3 to this table)}} ; \text{ and}$
		(ii) if subparagraph (i) does not apply—the amount worked out using the formula:

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
		$\frac{\text{Number of demutualisation original shares}}{\text{Number of demutualisation shares}} \times \text{Pre - listing day company valuation amount ; and (see note 2 to this table)}$
		(iii) any consideration actually paid or given for the acquisition of the share or interest disposed of; and
		(d) if the disposal is of a demutualisation original share or an interest in such a share, the disposer is taken:
		(i) to have paid the amount in subparagraph (c)(i) or (ii) on the demutualisation resolution day and the amount in subparagraph (c)(iii) when it was actually paid; and
		(ii) to have acquired the share or interest on the demutualisation resolution day.

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
<p>6 Demutualisation method 7:</p> <p>After the issue of the shares (each of which is a <i>demutualisation share</i>) in the mutual insurance company and the mutual affiliate company as mentioned in paragraph 121AL(1)(b), the holding company (the <i>disposer</i>) disposes of an asset consisting of:</p> <p>(a) a demutualisation share, or an interest in such a share; or</p> <p>(b) another share (a <i>non-demutualisation bonus share</i>) in the mutual insurance company or the mutual affiliate company, or an interest in such a share, where the share is a bonus share mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> and any of the demutualisation shares are the original shares mentioned in that section.</p> <p>(For the purposes of the modifications relating to this item, if any of the original shares mentioned in that section is a demutualisation share, it is called a <i>demutualisation</i></p>	<p>1. A capital loss that the disposer makes from the disposal of the demutualisation share or interest in such a share is disregarded if the disposal takes place before the demutualisation listing day (see note 4 to this table).</p> <p>2. If the disposal is of a demutualisation share (other than a demutualisation original share) or an interest in such a share then, for the purpose of working out whether the disposer made a capital gain, or made a capital loss (where modification 1 does not apply), from the disposal, the disposer is taken:</p> <p>(a) to have paid as consideration for the acquisition of the share or interest both:</p> <p>(i) the amount worked out using the formula:</p>	

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
<i>original share.</i>)		$\frac{\text{Share or amount of interest disposed of}}{\text{Total demutualisation shares or amount of interests in such shares in the company concerned}} \times \text{Net tangible asset value of the company concerned}$ <p>; and</p> <p>(ii) any consideration actually paid or given for the acquisition; and</p> <p>(b) to have paid the amount in subparagraph (a)(i) on the demutualisation resolution day and the amount in subparagraph (a)(ii) when it was actually paid; and</p> <p>(c) to have acquired the share or interest on the demutualisation resolution day.</p> <p>3. If the disposal is of either:</p> <p>(a) a demutualisation original share, or an interest in such a share; or</p> <p>(b) a non-demutualisation bonus share, or an interest in such a share;</p> <p>then, for the purpose of working out whether the disposer made a capital</p>

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
		<p>gain, or made a capital loss (where modification 1 does not apply), from the disposal:</p> <p>(c) for the purposes of applying section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i>, the consideration for the acquisition of all of the demutualisation original shares to be taken into account under that section is taken to consist of both:</p> <p>(i) the amount worked out using the formula:</p> $\frac{\text{Number of demutualisation original shares}}{\text{Number of demutualisation shares}} \times \text{Pre-listing day company valuation amount}; \text{ and}$ <p>(ii) any consideration actually paid or given for the acquisition of the share or interest disposed of; and</p> <p>(d) if the disposal is of a share connected with the demutualisation or interest in such a share, the disposer is taken:</p> <p>(i) to have paid the amount in subparagraph (c)(i) on the demutualisation resolution day and the amount in</p>

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
		subparagraph (c)(ii) when it was actually paid; and (ii) to have acquired the share or interest on the demutualisation resolution day.
7	Demutualisation method 3, 4, 5 or 7: After the issue of the shares in the mutual insurance company to the holding company as mentioned in paragraph 121AH(1)(b), 121AI(1)(b), 121AJ(1)(b), or in the mutual insurance company and the mutual affiliate company as mentioned in paragraph 121AL(1)(b): (a) the ultimate holding company (the <i>disposer</i>) disposes of an asset consisting of either of the following shares in the holding company or an interposed holding company: (i) a share (a <i>demutualisation share</i>) acquired before the issue of the shares in the mutual insurance company, or an interest in such a share; or (ii) another share (a <i>non-demutualisation bonus</i>	The same modifications apply as for item 5.

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
	<p><i>share</i>), or an interest in such a share, where the share is a bonus share mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> and any of the demutualisation shares (whether or not disposed of at the time) are the original shares mentioned in that section; or</p> <p>(b) the interposed holding company, or any of the interposed holding companies, (the <i>disposer</i>) disposes of an asset consisting of either of the following shares in the holding company or an interposed holding company:</p> <p>(i) a share (a <i>demutualisation share</i>) acquired before the issue of the shares in the mutual insurance company, or an interest in such a share; or</p> <p>(ii) another share (a <i>non-demutualisation bonus share</i>), or an interest in such a share, where the share is a bonus share mentioned in section 130-20 (about bonus shares) of the</p>	

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
	<p><i>Income Tax Assessment Act 1997</i> and any of the demutualisation shares (whether or not disposed of at the time) are the original shares mentioned in that section.</p> <p>(For the purposes of the modifications relating to this item, if any of the original shares mentioned in that section is a demutualisation share, it is called a demutualisation original share.)</p> <p>(The ultimate holding company and interposed holding company are those mentioned in paragraph 121AH(1)(c), 121AI(1)(c), 121AJ(1)(c) or 121AL(1)(c).</p> <p>8 Demutualisation method 2 or 4:</p> <p>The rights attaching to the special shares held by the trustee become the same as those attaching to the ordinary shares as mentioned in subparagraph 121AG(1)(b)(ii) or paragraph 121AI(1)(d).</p>	<p>A capital gain or capital loss arising from a CGT event constituted by the change in the rights is disregarded.</p>

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
9	Demutualisation method 2, 4, 5, 6 or 7:	
	The trustee (the <i>disposer</i>):	
	(a) sells an ordinary share (a <i>demutualisation share</i>) in the company as mentioned in paragraph 121AG(1)(d), 121AI(1)(f), 121AJ(1)(d), 121AK(1)(d) or 121AL(1)(d); or	1. The person in the policyholder/member group, instead of the trustee, is taken:
	(b) sells another share (a <i>non-demutualisation bonus share</i>), where the share is a bonus share mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> and any of the demutualisation shares (whether or not sold at the time) are the original shares mentioned in that section.	(a) to have sold the demutualisation share or non-demutualisation bonus share; and
		(b) to have paid, given and received any consideration that was paid, given or received by the trustee in respect of either share; and
		(c) to have done any other act in relation to either share that was done by the trustee.
		2. The modifications in item 5 apply to the sale of the demutualisation share or non-demutualisation bonus share in the same way as they do to the disposal of such shares covered by that item.
	(For the purposes of the modifications relating to this item, if any of the original shares mentioned in that section is a demutualisation share, it is called a <i>demutualisation original share</i> .)	

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TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
10 Demutualisation method 2, 4, 5, 6 or 7:		
	The trustee distributes an ordinary share as mentioned in paragraph 121AG(1)(d), 121AI(1)(f), 121AJ(1)(d), 121AK(1)(d) or 121AL(1)(d).	A capital gain or capital loss arising from a CGT event constituted by the distribution is disregarded.
11 Any demutualisation method:		
	A person (the <i>disposer</i>) in the policyholder/member group disposes of an asset consisting of:	The same modifications apply as for item 5.
	(a) a share (a <i>demutualisation share</i>), or an interest in such a share, issued or distributed to the person as mentioned in paragraph 121AF(1)(b), 121AG(1)(c) or (d), 121AH(1)(c), 121AI(1)(e) or (f), 121AJ(1)(c) or (d), 121AK(1)(c) or (d) or 121AL(1)(c) or (d); or	
	(b) another share (a <i>non-demutualisation bonus share</i>) in the same company, or an interest in such a share, where the share is a bonus share mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> and any of the demutualisation shares (whether or not disposed of at the time) are the original shares	

TABLE 1—MODIFICATIONS OF CGT RULES

Item	Event	Modifications
	mentioned in that section.	
	(For the purposes of the modifications relating to this item, if any of the original shares mentioned in that section is a demutualisation share, it is called a <i>demutualisation original share</i> .)	
12 Various demutualisation methods		
A disposal of an asset takes place before the demutualisation listing day, where:		
(a) modification 1 of item 3, 4, 5, 6, 7 or 11 of this table applies to the disposal; and		1. If the person who is taken to acquire the asset under the roll-over provision disposes of it before the demutualisation listing day, a capital loss that the person makes from the disposal is disregarded.
(b) a roll-over provision (see note 5 to this table) applies to the disposal.		2. If the person disposes of the asset on or after the demutualisation listing day, then for the purposes of applying the roll-over provision to that disposal, the modifications in the item in this table apply as if modification 1 were not made.

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Notes:

1. For the purposes of the table, the *applicable company valuation amount*, in relation to the disposal of an asset or the allocation of an amount to a member in the records of a superannuation fund, is:
 - (a) if the asset is disposed of, or the amount is allocated, before the demutualisation listing day—the pre-listing day company valuation amount; or
 - (b) in any other case—the listing day company valuation amount.
 2. The *pre-listing day company valuation amount* is:
 - (a) in relation to demutualisation methods 1 to 6, where the mutual insurance company is a life insurance company—the embedded value of the company; or
 - (b) in relation to demutualisation methods 1 to 6, where the mutual insurance company is a general insurance company—the net tangible asset value of the company; or
 - (c) in relation to demutualisation method 7—the sum of the net tangible asset values of the general insurance company and the mutual affiliate company.
 3. The *listing day company valuation amount* is the lesser of:
 - (a) the pre-listing day company valuation amount; and
 - (b) the amount worked out using the formula:

First trading day price of a listed ordinary share mentioned in the demutualisation method concerned	×	Total number of ordinary shares issued or distributed to, or to be sold on behalf of, persons in the policyholder/member group
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 4. The *demutualisation listing day* is the day on which the ordinary shares mentioned in the demutualisation method concerned are listed.
 5. A *roll-over provision* is:
 - any of these Subdivisions of the *Income Tax Assessment Act 1997*: 122-A, 122-B, 124-B, 124-C, 124-D, 124-E, 124-F, 124-G, 124-H, 124-I, 126-A, 126-B; or
 - section 128-10 or 128-15 of that Act.
-

6. A trustee who gets a roll-over under Subdivision 124-M of the *Income Tax Assessment Act 1997* for an original interest consisting of shares issued as part of a demutualisation may be eligible for a further roll-over under Subdivision 126-E of that Act when a beneficiary becomes absolutely entitled to the replacement shares.

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121AT Other tax consequences of demutualisation

The table below sets out modifications of the application of this Act (except Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*) in respect of events that are described in, or relate to events that are described in, particular demutualisation methods.

TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
1	Event described in item 1 of Table 1.	No amount is included in, or allowable as a deduction from, assessable income in respect of the extinguishment.
2	Event described in item 3 or 4 of Table 1.	<ol style="list-style-type: none"> 1. If the disposal takes place before the demutualisation listing day (see note 4 to Table 1): <ol style="list-style-type: none"> (a) no loss is allowable as a deduction from the disposer's assessable income in respect of the disposal; and (b) any deduction allowable from the disposer's assessable income in respect of the acquisition of the right or interest does not exceed the amount included in the disposer's assessable income in respect of the disposal. 2. Paragraphs 2(a) and (b) of the modifications column for item 3 or 4 in Table 1 apply for the purposes of working out: <ol style="list-style-type: none"> (a) the amount of any profit included in the disposer's assessable income in respect of the disposal; or (b) the amount of any deduction allowable from the disposer's assessable income in respect of the acquisition of the right or interest.

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TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
3	Event that would be described in item 5 of Table 1 if the references in that item to bonus shares and original shares mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> were instead references to bonus shares and original shares mentioned in section 6BA.	<ol style="list-style-type: none">1. If the disposal is of a demutualisation share, or interest in such a share, and the disposal takes place before the demutualisation listing day:<ol style="list-style-type: none">(a) no loss is allowable as a deduction from the disposer's assessable income in respect of the disposal; and(b) any deduction allowable from the disposer's assessable income in respect of the acquisition of the share or interest does not exceed the amount included in the disposer's assessable income in respect of the disposal.2. If the disposal is of a demutualisation share (other than a demutualisation original share), or an interest in such a share, then paragraphs 2(a) to (c) of the modifications column for item 5 in Table 1 apply for the purposes of working out:<ol style="list-style-type: none">(a) the amount of any profit included in, or loss (where modification 1 does not apply) allowable as a deduction from, the disposer's assessable income in respect of the disposal; or

TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
		<ul style="list-style-type: none"> (b) the amount of any deduction allowable (where modification 1 does not apply) from the disposer's assessable income in respect of the acquisition of the share or interest
		<p>3. If the disposal is of either:</p> <ul style="list-style-type: none"> (a) a demutualisation original share, or an interest in such a share; or (b) a non-demutualisation bonus share, or an interest in such a share; <p>then paragraphs 3(c) and (d) of the modifications column for item 5 in Table 1 apply for the purpose of working out:</p> <ul style="list-style-type: none"> (c) the amount of any profit included in, or loss (where modification 1 does not apply) allowable as a deduction from, the disposer's assessable income in respect of the disposal; or (d) the amount of any deduction allowable (where modification 1 does not apply) from the disposer's assessable income in respect of the acquisition of the share or interest.

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TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
4	Event that would be described in item 6 of Table 1 if the references in that item to bonus shares and original shares mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> were instead references to bonus shares and original shares mentioned in section 6BA.	<p>In applying paragraph 3(c) of the modifications column for item 5 in Table 1, the reference to section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> is taken instead to be a reference to section 6BA.</p> <ol style="list-style-type: none">1. If the disposal is of a demutualisation share, or interest in such a share, and the disposal takes place before the demutualisation listing day:<ol style="list-style-type: none">(a) no loss is allowable as a deduction from the disposer's assessable income in respect of the disposal; and(b) any deduction allowable from the disposer's assessable income in respect of the acquisition of the share or interest does not exceed the amount included in the disposer's assessable income in respect of the disposal2. If the disposal is of a demutualisation share (other than a demutualisation original share), or an interest in such a share, then paragraphs 2(a) to (c) of the modifications column for item 6 in Table 1 apply for the purposes of working out:

TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
		<ul style="list-style-type: none"> (a) the amount of any profit included in, or loss (where modification 1 does not apply) allowable as a deduction from, the disposer's assessable income in respect of the disposal; or (b) the amount of any deduction allowable (where modification 1 does not apply) from the disposer's assessable income in respect of the acquisition of the share or interest.
		<p>3. If the disposal is of either:</p> <ul style="list-style-type: none"> (a) a demutualisation original share, or interest in such a share; or (b) a non-demutualisation bonus share, or an interest in such a share; <p>then paragraphs 3(c) and (d) of the modifications column for item 6 in Table 1 apply for the purpose of working out:</p> <ul style="list-style-type: none"> (c) the amount of any profit included in, or loss (where modification 1 does not apply) allowable as a deduction from, the disposer's assessable income in respect of the disposal; or (d) the amount of any deduction allowable (where modification 1 does not apply) from the disposer's assessable income in respect of the acquisition of the share or interest.

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TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
		In applying paragraph 3(c) of the modifications column for item 6 in Table 1, the reference to section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> is taken instead to be a reference to section 6BA.
5	Event that would be described in item 7 of Table 1 if the references in that item to bonus shares and original shares mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> were instead references to bonus shares and original shares mentioned in section 6BA.	The same modifications as for item 3 of this table apply.
6	Event described in item 8 of Table 1.	No amount is included in, or allowable as a deduction from, assessable income in respect of the change in the rights.
7	Event that would be described in item 9 of Table 1 if the references in that item to bonus shares and original shares mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> were instead references to bonus shares and original shares mentioned in section 6BA.	<ol style="list-style-type: none">1. The person in the policyholder/member group, instead of the trustee is taken:<ol style="list-style-type: none">(a) to have sold the demutualisation share or non-demutualisation bonus share; and(b) to have paid, given and received any consideration that was paid, given or received by the trustee in respect of either share; and(c) to have done any other act in relation to either share that was done by the trustee.

TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
		2. The modifications in item 3 of this table apply to the sale of the demutualisation share or non-demutualisation bonus share in the same way as they do to the disposal of such shares covered by that item.
8	Event that would be described in item 11 of Table 1 if the references in that item to bonus shares and original shares mentioned in section 130-20 (about bonus shares) of the <i>Income Tax Assessment Act 1997</i> were instead references to bonus shares and original shares mentioned in section 6BA.	The same modifications as for item 3 of this table apply.
9	Under demutualisation method 6, the whole of the life insurance business of a life insurance company is transferred to another company as mentioned in paragraph 121AK(1)(b).	The other company is taken to continue to carry on the transferred life insurance business of the mutual life insurance company.
10	An ordinary share is issued or distributed to a person in the policyholder/member group as mentioned in paragraph 121AF(1)(b), 121AG(1)(c) or (d), 121AH(1)(c), 121AI(1)(e) or (f), 121AJ(1)(c) or (d), 121AK(1)(c) or (d) or 121AL(1)(c) or (d).	No amount is included in, or allowable as a deduction from, assessable income of the person in respect of the issue or distribution of the share, except where the share is issued in consideration for services provided, or to be provided, by the person.

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TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
11	<p>Ordinary shares in the company are issued or distributed as mentioned in paragraph 121AF(1)(b), 121AG(1)(c) or (d), 121AH(1)(c), 121AI(1)(e) or (f), 121AJ(1)(c) or (d), 121AK(1)(c) or (d) or 121AL(1)(c) or (d) to a person in the policyholder/member group who is the trustee of a superannuation fund to hold on behalf of a member of the fund. The trustee within 30 days allocates to the member, in the records of the fund, an amount representing the member's contributions in respect of the shares (the <i>allocation shares</i>).</p>	<p>If the trustee pays a superannuation benefit to the member, the tax free component (within the meaning of the <i>Income Tax Assessment Act 1997</i>) of the superannuation interest (within the meaning of that Act) from which the benefit is paid is increased by the amount worked out using the formula:</p> $\frac{\text{Number of allocation shares}}{\text{Total number of ordinary shares issued or distributed to, or to be sold on behalf of, the policyholder/member group}} \times \text{Applicable company valuation amount (see note 1 to Table 1)}$
12	<p>A resolution is passed to proceed, in accordance with one of the demutualisation methods, with the demutualisation of:</p> <p>(a) a mutual insurance company that is a general insurance company; or</p> <p>(b) both such a mutual insurance company and a mutual affiliate company.</p> <p>Immediately before the demutualisation resolution day:</p> <p>(a) in the case of any demutualisation method—the general</p>	<p>The franking surplus is reduced to nil at the beginning of the demutualisation resolution day.</p>

TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
	<p>insurance company or any wholly-owned subsidiary of the general insurance company; or</p> <p>(b) in the case of demutualisation method 7—the mutual affiliate company, a wholly-owned subsidiary of the mutual affiliate company, or a company all of whose shares are beneficially owned by the general insurance company and the mutual affiliate company;</p> <p>has a franking surplus.</p>	
13	<p>A resolution is passed to proceed with the demutualisation of a mutual insurance company or both a mutual insurance company and a mutual affiliate company. A dividend that was declared before the demutualisation resolution day is paid on or after the demutualisation resolution day to:</p> <p>(a) in the case of any demutualisation method—the mutual insurance company or any wholly-owned subsidiary of the mutual insurance company; or</p> <p>(b) in the case of demutualisation method 7—the mutual affiliate company, a wholly-owned subsidiary of the mutual affiliate company, or a company all of whose</p>	<p>No franking credit arises for the company or the subsidiary in relation to the payment of the dividend on or after the demutualisation resolution day.</p>

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TABLE 2—MODIFICATIONS OF THIS ACT (EXCEPT CGT RULES)

Item	Event	Modifications
	shares are beneficially owned by the general insurance company and the mutual affiliate company.	

Division 9A—Offshore banking units

Subdivision A—Object and simplified outline

121A Object

The object of this Division is to provide for concessional taxing, at the rate of 10%, of the offshore banking (**OB**) income of an offshore banking unit (**OBU**).

121B Simplified outline

Scope of section

- (1) The following is a simplified outline of the Division.

Main concepts

- (2) Subdivision B sets out the concepts used in the Division, the most important being:
- (a) **OB activity** (section 121D) together with the related definition of **offshore person** (section 121E) and the **OBU requirement** in section 121EA; and
 - (b) special assessable income and allowable deduction definitions relating to OB activities (sections 121EE and 121EF).

Operative provisions

- (3) Subdivision C contains the operative provisions. Basically, they provide as follows:
- (a) an OBU's income from OB activities is taxed at only 10%;
 - (b) there is a loss of the concession where there is excessive use of non-OB money;
 - (d) income from OB activities is taken to be Australian sourced;
 - (e) a deemed interest penalty applies to equity provided by an OBU's resident owner;
 - (f) income of OBU offshore investment trusts is exempt from tax;

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- (g) income derived by overseas charitable institutions from OBUs is exempt from tax;
- (h) certain adjustments are made to the capital gains and losses that flow from disposals of certain interests in trusts of which an OBU is the trustee.

Subdivision B—Interpretation

121C Interpretation

In this Division:

adjusted assessable OB income has the meaning given by subsection 121EE(4).

adjusted total assessable income has the meaning given by subsection 121EE(5).

allowable OB deduction has the meaning given by subsection 121EF(2).

apportionable OB deduction has the meaning given by subsection 121EF(5).

assessable OB income has the meaning given by subsections 121EE(2) and (3A).

associate has the meaning given by section 318.

Australian thing has the meaning given by subsection 121DA(5).

average Australian asset percentage has the meaning given by subsection 121DA(2).

borrow includes raise finance by the issue of a security.

eligible contract means a futures contract, a forward contract, an options contract, a swap contract, a cap, collar, floor or similar contract or a loan contract.

exclusive non-OB deduction has the meaning given by subsection 121EF(6).

exclusive OB deduction has the meaning given by subsection 121EF(3).

general OB deduction has the meaning given by subsection 121EF(4).

lend includes provide finance by the purchase of a security.

loss deduction has the meaning given by subsection 121EF(7).

monthly Australian asset percentage has the meaning given by subsection 121DA(3).

non-OB money, in relation to an OBU, means money of the OBU other than:

- (a) money received by the OBU in carrying on an OB activity;
or
- (b) OBU resident-owner money of the OBU; or
- (c) money paid to the OBU by a non-resident (other than in carrying on business in Australia at or through a permanent establishment of the non-resident) by way of subscription for, or a call on, shares in the OBU;

(an example of non-OB money being money borrowed from a resident whose lending of the money does not occur in carrying on business in a country outside Australia at or through a permanent establishment of the resident).

non-resident trust means a unit trust that is not a resident unit trust within the meaning of section 102Q.

OB activity has the meaning given by section 121D.

OBU (offshore banking unit) means an offshore banking unit within the meaning of Division 11A of Part III.

Note: In this Division, the head company of a consolidated group or MEC group may be treated for certain purposes as an OBU at a time when a subsidiary member of the group is an OBU (see Subdivision 717-O of the *Income Tax Assessment Act 1997*).

OBU resident-owner money has the meaning given by section 121EC.

offshore person has the meaning given by section 121E.

overseas charitable institution means a non-resident institution the income of which:

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- (a) would be exempt from tax under item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997* (and not under any other item of that section) if the institution had a physical presence in Australia and incurred its expenditure and pursued its objectives principally in Australia; and
- (b) is exempt in the country in which it is resident.

owner, in relation to a company, means a person who, alone or together with an associate or associates, is the beneficial owner of all of the shares in the company.

portfolio investment has the meaning given by subsection 121DA(1).

related person, in relation to an OBU, means:

- (a) an associate of the OBU; or
- (b) a permanent establishment referred to in paragraph 121EB(1)(b) in relation to the OBU.

security means a bond, debenture, debt interest, bill of exchange, promissory note or other security or similar instrument.

trade with a person has the meaning given by section 121ED.

90-day bank bill rate, at a particular time, means:

- (a) if the Reserve Bank of Australia has published a rate described as the 90-day bank accepted bill rate in respect of a period in which the particular time occurs—that rate; or
- (b) in any other case—the rate declared by regulations for the purposes of this definition to be the 90-day bank accepted bill rate in respect of a period in which the particular time occurs.

121D Meaning of *OB activity*

Kinds of OB activity

- (1) Each of the following things done by an OBU is an **OB activity** (offshore banking activity) of the OBU, provided that the requirement relating to the OBU in section 121EA is met:
 - (a) a borrowing or lending activity described in subsection (2);
or
 - (b) a guarantee-type activity described in subsection (3); or
 - (c) a trading activity described in subsection (4); or

- (d) an eligible contract activity described in subsection (5); or
- (e) an investment activity described in subsection (6), (6A) or (6B); or
- (f) an advisory activity described in subsection (7); or
- (g) a hedging activity described in subsection (8); or
- (h) any other activity involving an offshore person, being an activity declared by regulations for the purposes of this paragraph to be an OB activity.

Borrowing or lending activity

- (2) For the purposes of paragraph (1)(a), a ***borrowing or lending activity*** is:
- (a) borrowing money from an offshore person where, if that person is a related person or a person to whom paragraph 121E(b) applies and is not an OBU, the money is not Australian currency; or
 - (b) lending money to an offshore person where, if that person is a person to whom paragraph 121E(b) applies and is not an OBU, the money is not Australian currency; or
 - (c) borrowing gold from an offshore person; or
 - (d) lending gold to an offshore person.

Guarantee-type activity

- (3) For the purposes of paragraph (1)(b), a ***guarantee-type activity*** is:
- (a) providing a guarantee or letter of credit to an offshore person in relation to activities that are, or will be, conducted wholly outside Australia; or
 - (b) underwriting a risk for an offshore person in relation to activities that are, or will be, conducted wholly outside Australia in respect of property outside Australia or an event that can only happen outside Australia; or
 - (c) syndicating a loan for an offshore person; or
 - (d) issuing a performance bond to an offshore person;
- where, if the offshore person is a related person, any money payable under the guarantee, letter, underwriting, loan or bond is not Australian currency.

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Trading activity

- (4) For the purposes of paragraph (1)(c), a **trading activity** is:
- (a) trading with an offshore person in:
 - (i) securities issued by non-residents; or
 - (ii) eligible contracts, under which any amounts payable are payable by non-residents; or
 - (b) trading with an offshore person in:
 - (i) shares in non-resident companies; or
 - (ii) units in non-resident trusts; or
 - (c) trading with an offshore person in options or rights in respect of securities, eligible contracts, shares or units referred to in paragraph (a) or (b); or
 - (d) trading (including on behalf of an offshore person) on the Sydney Futures Exchange in futures contracts, or options contracts, under which any money payable is not Australian currency; or
 - (e) trading in currency, or options or rights in respect of currency, with any person, where the currency is not Australian currency; or
 - (ea) trading in currency, or options or rights in respect of currency, with an offshore person; or
 - (f) trading in gold bullion, or in options or rights in respect of such bullion:
 - (i) with an offshore person where the money or moneys payable or receivable is or are in any currency; or
 - (ii) a person other than an offshore person where the money or moneys payable or receivable is or are in a currency other than Australian currency; or
 - (g) trading with an offshore person in silver, platinum or palladium bullion, or in options or rights in respect of such bullion; or
 - (h) trading with an offshore person in base metals.
- (5) For the purposes of paragraph (1)(d), an **eligible contract activity** is entering into an eligible contract (other than a loan contract) with an offshore person.

Investment activity

- (6) For the purposes of paragraph (1)(e), an **investment activity** is making (but not managing), as broker or agent for, or trustee for the benefit of, an offshore person to whom paragraph 121E(a) applies, an investment with an offshore person to whom that paragraph applies, where:
- (a) the currency in which the investment is made is not Australian currency; and
 - (b) if the investment involves the purchase of any thing:
 - (i) if the thing is a share in a company—the company is a non-resident company; or
 - (ii) if the thing is a unit in a unit trust—the unit trust is a non-resident trust; or
 - (iii) if the thing is land or a building—the land or building is not in Australia; or
 - (iv) in any other case—the thing is located outside Australia.

Investment activity—portfolio investment

- (6A) For the purposes of paragraph (1)(e), an **investment activity** is also the managing by an OBU of a portfolio investment (see subsection 121DA(1)) for the whole or part (the **investment management period**) of a year of income, where:
- (a) the portfolio investment is managed as broker, agent or custodian for, or trustee for the benefit of, a non-resident; and
 - (b) the portfolio investment was made by the OBU or the non-resident; and
 - (c) the portfolio investment was made with a non-resident (except to the extent that making the investment consisted of making a loan or purchasing an Australian thing); and
 - (d) the currency in which the portfolio investment was made was not Australian currency; and
 - (e) if the portfolio investment consists of only a single thing—the thing is not an Australian thing (see subsection 121DA(5)); and
 - (f) if paragraph (e) does not apply—the average Australian asset percentage (see subsection 121DA(2)) of the portfolio investment is not more than 10%.

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Investment activity—portfolio investment for overseas charitable institutions

- (6B) For the purposes of paragraph (1)(e), an **investment activity** is also the managing by an OBU of a portfolio investment (see subsection 121DA(1)) for the whole or part (the **investment management period**) of a year of income, where:
- (a) the portfolio investment is managed as broker, agent or custodian for, or trustee for the benefit of, an overseas charitable institution; and
 - (b) the portfolio investment was made by the OBU or the overseas charitable institution.

Advisory activity

- (7) For the purposes of paragraph (1)(f), an **advisory activity** is giving investment or other financial advice to an offshore person where, if the advice is about the making of a particular investment, the investment is of a kind referred to in subsection (6). This does not exclude giving advice about a particular investment of a different kind if doing so is incidental to advising on an investment of a kind referred to in subsection (6), for example for the purpose of comparison or because the investments are commercially related.

Hedging activities

- (8) For the purposes of paragraph (1)(g), a **hedging activity** is entering into a contract with an offshore person for the sole purpose of eliminating or reducing the risk of adverse financial consequences that might result to the OBU from:
- (a) interest rate exposure of the OBU in respect of borrowing or lending activities (described in subsection (2)) of the OBU; or
 - (b) currency exposure of the OBU in respect of borrowing or lending activities (described in subsection (2)) of the OBU.

Effect of subsection (8)

- (9) Subsection (8) does not limit the scope of any other OB activity of the OBU (for example the trading activity mentioned in paragraph (4)(e)).

121DA Meaning of expressions relevant to *investment activity*

Portfolio investment

- (1) If, under a contract or trust instrument, an OBU manages one or more investments as broker an agent or custodian for, or trustee for the benefit of, a non-resident, the investment, or all of the investments, constitute a ***portfolio investment***.

Average Australian asset percentage

- (2) The ***average Australian asset percentage*** of a portfolio investment is the average, for all months that wholly or partly fall within the investment management period (see subsection 121D(6A) or (6B)), of the monthly Australian asset percentages (see subsection (3)) of all of the things comprising the portfolio investment.

Monthly Australian asset percentage

- (3) For the purposes of subsection (2), the ***monthly Australian asset percentage*** of the things for a month is the percentage of the total value of all of the things comprising the portfolio investment, for the month, that is represented by the value of Australian things.

Basis for working out percentage

- (4) The percentage in subsection (3) must be worked out according to reasonable accounting practice that applies on the same basis for all months falling wholly or partly within the investment management period.

Australian thing

- (5) A thing is an ***Australian thing*** at a particular time if:
- (a) where the thing is a share in a company—the company is a resident company at the time; or
 - (b) where the thing is a unit in a unit trust—the unit trust is a resident trust (within the meaning of section 102Q) in relation to the year of income in which the time occurs; or
 - (c) where the thing is land or a building—the land or building is in Australia; or
 - (d) where the thing is a loan—the loan was made to an Australian resident; or

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- (e) in any other case—the thing is located in Australia at the time.

121E Meaning of offshore person

For the purposes of section 121D, a reference in that section to an offshore person, in relation to the doing of any thing by an OBU (*the first OBU*), is a reference to:

- (a) a non-resident whose involvement in the doing of the thing does not occur in carrying on business in Australia at or through a permanent establishment of that person; or
- (b) a resident whose involvement in the doing of the thing occurs in carrying on business in a country outside Australia at or through a permanent establishment of the person; or
- (c) another OBU (*the second OBU*), where, if the doing of the thing involves the payment of any money (for example a loan of money) by the second OBU to the first OBU, the second OBU gives, at or before the time of the payment, a statement in writing to the first OBU to the effect that none of the money is non-OB money of the second OBU.

121EA OBU requirement

For a thing done by an OBU to be an OB activity, it is necessary that, when the thing is done:

- (a) the OBU is a resident and the thing is not done in carrying on business in a country outside Australia at or through a permanent establishment of the OBU; or
- (b) the OBU is a non-resident and the thing is done in carrying on business in Australia at or through a permanent establishment of the OBU.

121EB Internal financial dealings of an OBU

Permanent establishments treated as separate persons

- (1) If an OBU consists of:
 - (a) one or more permanent establishments in Australia at or through which the OBU carries on what are OB activities apart from this section; and

- (b) one or more other permanent establishments either in Australia or outside Australia;
- then sections 121D to 121EA (inclusive) apply as if:
- (c) the OBU consisted only of the permanent establishments referred to in paragraph (a); and
 - (d) the permanent establishments referred to in paragraph (b) were separate persons.

Head office can be permanent establishment

- (2) For the purpose of determining under subsection (1) whether something is a permanent establishment, it does not matter whether it is a head office or not.

121EC Meaning of *OBU resident-owner money*

Money is *OBU resident-owner money* of an OBU if it is paid to the OBU by a resident owner of the OBU by way of a subscription for, or a call on, shares in the OBU, except if the shares are redeemable preference shares.

121ED Meaning of *trade with a person*

A person (*the trader*) is said to *trade with another person* in a thing if:

- (a) the trader, for the purpose of trading in the thing, acquires it on issue from the other person; or
- (b) the trader, for the purpose of trading in the thing, buys it from the other person; or
- (c) the trader, in trading in the thing, sells it to the other person.

121EE Definitions relating to assessable income of an OBU

Purpose of section

- (1) This section sets out certain definitions used in this Division that relate to the assessable income of an OBU of a year of income.

Assessable OB income

- (2) Subject to subsection (3A), the *assessable OB income* of an OBU is so much of the OBU's assessable income (other than amounts

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included under Part 3-1 of the *Income Tax Assessment Act 1997*) of the year of income as is:

- (a) derived from OB activities of the OBU or the part of the OBU to which paragraph 121EB(1)(c) applies; or
- (b) included in the assessable income because of such activities; except to the extent that the money lent, invested or otherwise used in carrying on the activities is non-OB money of the OBU.

Typical example of amount excluded from assessable OB income

- (3) A typical example of an amount covered by the exception in subsection (2) is interest derived from the OB activity of lending money to an offshore person, where the money lent is non-OB money.

Reduction of assessable OB income because of certain investment activities

- (3A) If OB activities of the OBU or the part of the OBU to which paragraph 121EB(1)(c) applies include an investment activity within the meaning of subsection 121D(6A) or (6B), any assessable income derived from the investment activity that would otherwise be taken into account under subsection (2) is reduced by the average Australian asset percentage (within the meaning of subsection 121DA(2)) of the portfolio investment concerned.

Adjusted assessable OB income

- (4) The **adjusted assessable OB income** of an OBU is the OBU's assessable OB income of the year of income reduced by the sum of the OBU's exclusive OB deductions for interest (including a discount in the nature of interest).

Adjusted total assessable income

- (5) The **adjusted total assessable income** of an OBU is the OBU's assessable income of the year of income reduced by the sum of the OBU's exclusive OB deductions, and exclusive non-OB deductions, for interest (including a discount in the nature of interest).

121EF Definitions relating to allowable deductions of an OBU

Purpose of section

- (1) This section sets out certain definitions used in this Division relating to allowable deductions of an OBU in relation to a year of income.

Allowable OB deduction

- (2) An **allowable OB deduction** is any of the following 3 kinds of allowable deduction:
- (a) an exclusive OB deduction;
 - (b) a general OB deduction;
 - (c) an apportionable OB deduction.

Exclusive OB deduction

- (3) An **exclusive OB deduction** is any deduction (other than a loss deduction) allowable from the OBU's assessable income of the year of income that relates exclusively to assessable OB income.

General OB deduction

- (4) A **general OB deduction** is so much of any deduction (other than a loss deduction, an apportionable deduction, an exclusive OB deduction or an exclusive non-OB deduction) allowable from the OBU's assessable income of the year of income as is calculated using the formula:

$$\text{Deduction} \times \frac{\text{Adjusted assessable OB income}}{\text{Adjusted total assessable income.}}$$

Apportionable OB deduction

- (5) An **apportionable OB deduction** is so much of any apportionable deduction allowable from the OBU's assessable income of the year of income as is calculated by multiplying the deduction by the following fraction:

$$\frac{\text{OBU's assessable OB income} - \left[\begin{array}{l} \text{OBU's exclusive OB deductions +} \\ \text{OBU's general OB deductions} \end{array} \right]}{\text{OBU's taxable income} + \text{OBU's apportionable deductions.}}$$

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Exclusive non-OB deduction

- (6) An **exclusive non-OB deduction** is any deduction (other than a loss deduction) allowable from the OBU's assessable income of the year of income that relates exclusively to assessable income that is not assessable OB income.

Loss deduction

- (7) A **loss deduction** is any allowable deduction under Division 36 of the *Income Tax Assessment Act 1997*.

Subdivision C—Operative provisions

121EG Reduction of assessable OB income, allowable OB deductions and foreign income tax paid

Only eligible fraction of assessable OB income is assessable

- (1) Subject to section 121EH, the assessable income of an OBU includes only the eligible fraction of each amount of assessable OB income derived by the OBU.

Only eligible fraction of allowable OB deductions is allowable

- (2) Subject to section 121EH, only the eligible fraction of each allowable OB deduction of an OBU is an allowable deduction of the OBU.

Remaining amounts not exempt income etc.

- (3) For the purposes of this Act:
- (a) any amount of assessable OB income of an OBU that, because of subsection (1), is not included in its assessable income is taken not to be exempt income of the OBU; and
 - (b) any part of an allowable OB deduction of an OBU that, because of subsection (2), is not an allowable deduction of the OBU is taken not to be an expense or outgoing incurred in deriving exempt income of the OBU.

Only eligible fraction of foreign income tax is taken to be paid

- (3A) Subject to section 121EH, this Act applies to an OBU as if only the eligible fraction of each amount of foreign income tax (within the meaning of the *Income Tax Assessment Act 1997*) the OBU paid in respect of an amount of assessable OB income had been paid in respect of that income.

Meaning of eligible fraction

- (4) In this section:

eligible fraction means 10 divided by the number of percent in the corporate tax rate.

121EH Loss of special treatment where excessive use of non-OB money

If:

- (a) the subsection 121EE(2) exception in respect of the lending, investing or other use of non-OB money of an OBU in carrying on activities did not apply to exclude amounts from its assessable OB income; and
- (b) as a result, more than 10% of what would then be the OBU's assessable OB income of any year of income would be attributable to that lending, investing or other use of non-OB money;

then:

- (c) subsection 121EG(1) (which limits the OBU's assessable income) does not apply to the OBU's assessable OB income of the year of income; and
- (d) subsection 121EG(2) (which limits the OBU's allowable deductions) does not apply to so much of each allowable OB deduction of the OBU for the year of income as is calculated using the formula:

$$\text{Allowable OB deduction} \times \frac{\text{Assessable OB income}}{\text{Sum of allowable OB deductions}}$$

(where each amount is worked out ignoring the assumption in paragraph (a)); and

- (e) subsection 121EG(3A) (which limits the OBU's foreign income tax) does not apply to the OBU in relation to an

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amount of foreign income tax (within the meaning of the *Income Tax Assessment Act 1997*) the OBU paid in respect of an amount of the OBU's assessable OB income of the year of income.

121EJ Source of income derived from OB activities

For the purposes of this Act, income of an OBU that is derived from OB activities of the OBU is taken to be derived from a source in Australia.

121EK Deemed interest on 90% of certain OBU resident-owner money

Deemed interest

- (1) If:
- (a) an owner of an OBU pays an amount of money to the OBU and, because of section 121EC, the amount becomes OBU resident-owner money of the OBU; and
 - (b) the OBU uses, or holds ready for use, the whole or part of the amount (which whole or part is called *the OB use amount*) in carrying on any of its OB activities during the whole or part of any year of income (which whole or part is called *the OB use period*);

then the assessable income of the owner of the year of income includes deemed interest as described in subsection (2).

Amount of deemed interest

- (2) The deemed interest is:
- (a) applied to 90% of the OB use amount; and
 - (b) applied on a daily-rests basis for the OB use period at a rate that is 2% above the 90-day bank bill rate from time to time during that period.

Deduction for deemed interest

- (3) A deduction is allowable from the OBU's assessable income, equal to the amount included in the owner's assessable income, for the year of income. The deduction is taken to be an exclusive OB deduction for interest.

121EL Exemption of income etc. of OBU offshore investment trusts

(1) If:

- (a) an OBU is a trustee, or is the central manager and controller, of a trust estate; and
- (b) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust are non-residents; and
- (c) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6) or (6A);

then:

- (d) any income of the trust estate derived from an investment activity covered by subsection 121D(6) is exempt from income tax; and
- (e) any capital gain or capital loss made by the trust estate from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6) is disregarded; and
- (f) any income of the trust estate derived from an investment activity covered by subsection 121D(6A) is exempt from income tax, in so far as the income exceeds the average Australian asset percentage (within the meaning of subsection 121DA(2)) for the portfolio investment concerned; and
- (g) if, apart from this section, the trust estate would make a capital gain or capital loss from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6A)—the trust estate makes only the average Australian asset percentage (for the portfolio investment concerned) of the gain or loss.

(2) If:

- (a) an OBU is a trustee, or is the central manager and controller, of a trust estate; and
- (b) the only person who benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust is an overseas charitable institution; and

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(c) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6B);

then:

(d) any income of the trust estate derived from an investment activity covered by subsection 121D(6B) is exempt from income tax; and

(e) any capital gain or capital loss made by the trust estate from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6B) is disregarded.

121ELA Exemption of income etc. of overseas charitable institutions

Investment with OBU

(1) Income, derived by an overseas charitable institution, is exempt to the extent that it is:

(a) a payment or outgoing from an OBU as part of the OB activities of the OBU; or

(b) a distribution of income that is exempt under subsection 121EL(2).

Capital gains and losses

(2) If:

(a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and

(b) the only person who benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust is an overseas charitable institution; and

(c) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6B); and

(d) the overseas charitable institution disposes of its interest in the trust;

then the overseas charitable institution makes no capital gain or capital loss from a CGT event happening in relation to the disposal.

121ELB Adjustment of capital gains and losses from disposal of units in OBU offshore investment trusts

Trust with subsection 121D(6) investment activities

- (1) If:
- (a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and
 - (b) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust are non-residents; and
 - (c) all units in the trust are held by non-residents; and
 - (d) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6); and
 - (e) a non-resident disposes of a unit in the trust;
- then the non-resident makes no capital gain or capital loss from a CGT event happening in relation to the disposal.

Trust with subsection 121D(6A) investment activities

- (2) If:
- (a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and
 - (b) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust are non-residents; and
 - (c) all units in the trust are held by non-residents; and
 - (d) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6A); and
 - (e) a non-resident disposes of a unit in the trust; and
 - (f) the average Australian asset percentage for the portfolio investment concerned was 10% or less;
- then if, apart from this section, the non-resident would make a capital gain or capital loss from a CGT event happening in relation to the disposal, the non-resident makes only the average Australian asset percentage of the gain or loss.

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- (3) In working out the average Australian asset percentage for the purposes of subsection (2), the investment management period is taken to be the period during the 12 months before the disposal during which the non-resident held the unit.

Division 9C—Assessable income diverted under certain tax avoidance schemes

121F Interpretation

- (1) In this Division, unless the contrary intention appears:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

consideration includes a benefit of any kind.

diverted income, in relation to a taxpayer, means all the amounts that are included under this Division in the diverted income of the taxpayer.

diverted trust income, in relation to a trustee of a trust estate, means all the amounts that are included under this Division in the diverted trust income of the trust estate.

income includes all amounts that, apart from the operation of the relevant exempting provisions, would be assessable income.

property includes:

- (a) a chose in action;
- (b) any estate, interest, right or power, whether at law or in equity, in or over property; and
- (c) any right to receive income.

public company rate means the rate of tax payable in respect of the taxable income of a company that is not a private company.

relevant exempting provision means any of the following provisions:

- (aa) section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 of the *Income Tax Assessment Act 1997*;
- (b) paragraph 23(ja) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;

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- (baa) paragraph 23(x) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 2) 1988*;
- (ba) section 23F, 23FA or 23FB, as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
- (bb) paragraph 23(jaa) or section 23FC or 23FD, as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 2) 1989*;
- (bc) section 24AM;
- (c) paragraph 320-37(1)(a) of the *Income Tax Assessment Act 1997*;
- (cb) regulations under the *International Organisations (Privileges and Immunities) Act 1963*, insofar as those regulations provide that an organisation is not liable to income tax; and
- (d) any provision of an Act other than this Act to the effect that income of a particular person or body is not subject to taxation under any law of the Commonwealth or to the effect that a particular person or body is not subject to taxation under any law of the Commonwealth.

right to receive income, in relation to a person, means a right of the person to have income that will or may be derived (whether from property or otherwise) paid to, or applied or accumulated for the benefit of, the person.

tax avoidance agreement means an agreement that was entered into after 24 June 1980 and was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the agreement had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the agreement had not been entered into or carried out.

taxpayer does not include a partnership.

- (2) In determining for the purposes of this Division whether an agreement is a tax avoidance agreement, no regard shall be had to a purpose that is a merely incidental purpose.

- (3) For the purposes of this Division, an agreement shall be taken to have been entered into or carried out for a particular purpose, or for purposes that included a particular purpose, if any of the parties to the agreement entered into or carried out the agreement for that purpose, or for purposes that included that purpose, as the case may be.
- (4) A reference in this Division to a person shall be read as including a reference to a person in the capacity of a trustee.
- (5) For the purposes of the application of this Division in relation to property acquired under a tax avoidance agreement, a reference to income that is derived from that property shall be read as including a reference to income that is derived from the disposal of that property, of any part of that property or of any interest in that property.

121G Diverted income and diverted trust income

- (1) Where:
 - (a) a taxpayer, not being a taxpayer in the capacity of a trustee, has acquired property (in this subsection referred to as the **relevant property**) under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
 - (b) by reason that the taxpayer derives any income from the relevant property, an amount (in this subsection referred to as the **relevant amount**) would, apart from the operation of the relevant exempting provisions, be included in the assessable income of the taxpayer of a year of income otherwise than under Division 5, section 97, section 99B or section 100;
 - (c) apart from this Division, the relevant amount would not be included in the assessable income of the taxpayer of the year of income; and
 - (d) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the

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relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted income of the taxpayer of the year of income shall include the relevant amount.

(2) Where:

- (a) a taxpayer, not being a taxpayer in the capacity of a trustee, has acquired property (in this subsection referred to as the **relevant property**), being an interest in a partnership, under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
- (b) by reason of the ownership by the taxpayer of the relevant property, an amount (in this subsection referred to as the **relevant amount**) would, apart from the operation of the relevant exempting provisions, be included, under Division 5, in the assessable income of the taxpayer of a year of income (in this subsection referred to as the **relevant year of income**);
- (c) apart from this Division, the relevant amount would not be included in the assessable income of the taxpayer of the relevant year of income; and
- (d) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted income of the taxpayer of the relevant year of income shall include the relevant amount.

(3) Where:

- (a) a taxpayer, not being a taxpayer in the capacity of a trustee, has acquired property (in this subsection referred to as the **relevant property**), being a beneficial interest in a trust estate, under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
- (b) by reason of the ownership by the taxpayer of the relevant property, an amount (in this subsection referred to as the **relevant amount**) would, apart from the operation of the relevant exempting provisions, be included, under Division 6, in the assessable income of the taxpayer of a year of income (in this subsection referred to as the **relevant year of income**);
- (c) apart from this Division, the relevant amount would not be included in the assessable income of the taxpayer of the relevant year of income; and
- (d) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted income of the taxpayer of the relevant year of income shall include the relevant amount.

(4) Where:

- (a) a taxpayer, being a taxpayer in the capacity of a trustee of a trust estate, has acquired property (in this subsection referred to as the **relevant property**) under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
- (b) by reason that the taxpayer derives any income from the relevant property, an amount (in this subsection referred to as

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the *relevant amount*) would, apart from the operation of the relevant exempting provisions, be included in the assessable income of the trust estate of a year of income otherwise than under Division 5, section 97, section 99B or section 100;

- (c) apart from this Division, the relevant amount would not be included in the assessable income of the trust estate of the year of income; and
- (e) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted trust income of the trust estate of the year of income shall include the relevant amount.

(5) Where:

- (a) a taxpayer, being a taxpayer in the capacity of a trustee of a trust estate, has acquired property (in this subsection referred to as the *relevant property*), being an interest in a partnership, under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
- (b) by reason of the ownership by the taxpayer of the relevant property, an amount (in this subsection referred to as the *relevant amount*) would, apart from the operation of the relevant exempting provisions, be included, under Division 5, in the assessable income of the trust estate of a year of income (in this subsection referred to as the *relevant year of income*);
- (c) apart from this Division, the relevant amount would not be included in the assessable income of the trust estate of the relevant year of income; and
- (e) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance

agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted trust income of the trust estate of the relevant year of income shall include the relevant amount.

(6) Where:

- (a) a taxpayer, being a taxpayer in the capacity of a trustee of a trust estate (in this subsection referred to as the **relevant trust estate**), has acquired property (in this subsection referred to as the **relevant property**), being a beneficial interest in another trust estate, under a tax avoidance agreement or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of a tax avoidance agreement;
- (b) by reason of the ownership by the taxpayer of the relevant property, an amount (in this subsection referred to as the **relevant amount**) would, apart from the operation of the relevant exempting provisions, be included, under section 97, 99B or 100, in the assessable income of the relevant trust estate of a year of income (in this subsection referred to as the **relevant year of income**);
- (c) apart from this Division, the relevant amount would not be included in the assessable income of the relevant trust estate of the relevant year of income; and
- (e) so much of the amount or value of the consideration provided by the taxpayer under or in connection with the tax avoidance agreement as the Commissioner is satisfied was provided in respect of the acquisition by the taxpayer of the relevant property substantially exceeds the amount or value of the consideration that might reasonably be expected to have been provided by the taxpayer in respect of the acquisition of the relevant property if the taxpayer were liable to pay tax, in respect of any income derived by the taxpayer from the

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relevant property, at the public company rate applicable for the financial year in which the taxpayer acquired the relevant property;

the diverted trust income of the relevant trust estate of the relevant year of income shall include the relevant amount.

(8) Where:

- (a) a deduction is allowable or deductions are allowable, in calculating the net income of a partnership or trust estate of a year of income, in respect of losses or outgoings (in this subsection referred to as the *relevant losses or outgoings*) incurred under or in connection with a tax avoidance agreement;
- (b) if no deduction were allowable, in calculating that net income, in respect of the relevant losses or outgoings and no relevant exempting provisions were applicable in relation to a taxpayer, an amount would be included in the assessable income of the taxpayer of a year of income by reason that the taxpayer owned an interest in the partnership or a beneficial interest in the trust estate or owned an interest in any other partnership or a beneficial interest in any other trust estate; and
- (c) if the deduction or deductions were allowed, in calculating that net income, in respect of the relevant losses or outgoings and no relevant exempting provision were applicable in relation to the taxpayer:
 - (i) no amount would be included in the assessable income of the taxpayer of the year of income by reason that the taxpayer owned an interest in a partnership or a beneficial interest in a trust estate as mentioned in paragraph (b); or
 - (ii) an amount would be included in the assessable income of the taxpayer of the year of income by reason that the taxpayer owned an interest in a partnership or a beneficial interest in a trust estate as mentioned in paragraph (b) but the amount that would be so included in that assessable income would be less than the amount referred to in paragraph (b);

then, for the purposes of the application of subsections (2), (3), (5) and (6) in relation to the taxpayer in relation to the tax avoidance agreement, no deduction shall be allowed in respect of the relevant

losses or outgoings in calculating the net income of the partnership or trust estate referred to in paragraph (a).

- (10) For the purposes of the application of subsection (8), a reference to a deduction that is allowable in calculating the net income of a partnership does not include a reference to a deduction allowable to the partnership in respect of expenditure taken under sections 70-90 and 70-95 and subsection 70-100(3) of the *Income Tax Assessment Act 1997* to have been incurred in the acquisition of trading stock by the partnership.
- (11) In determining for the purposes of this section the amount or value of the consideration that might reasonably be expected to have been provided by a taxpayer in respect of the acquisition of property by the taxpayer if the taxpayer were liable to pay tax in respect of any income derived by the taxpayer from the property at the public company rate applicable for the financial year in which the taxpayer acquired the property, the possibility that the taxpayer would be entitled to a rebate of tax in respect of any of that income shall be disregarded.
- (12) In determining for the purposes of this section whether an amount would, apart from the operation of the relevant exempting provisions, be included in the assessable income of a taxpayer or a trust estate of a year of income, section 128D of this Act and section 802-15 of the *Income Tax Assessment Act 1997* shall be disregarded.
- (13) For the purposes of this section, where:
- (a) a taxpayer acquired property, being an interest in a trust estate or partnership, before the time when a tax avoidance agreement was entered into; and
 - (b) under the tax avoidance agreement, or by reason of an act, transaction or circumstance occurring as part of, in connection with or as a result of the tax avoidance agreement, the amount of the share (in this subsection referred to as the ***relevant share***) of the taxpayer of the income of the trust estate or partnership of any year of income was or is increased;
- the following provisions apply:

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- (c) the property referred to in paragraph (a) shall be taken to have been acquired by the taxpayer under the tax avoidance agreement; and
 - (d) any consideration provided by the taxpayer in respect of the increase in the amount of the relevant share shall be taken to be consideration provided by the taxpayer in respect of the acquisition of the property referred to in paragraph (a).
- (14) For the purposes of the application of this section in relation to the acquisition of property by a person under a tax avoidance agreement, the Commissioner may be satisfied that consideration provided by the person under or in connection with the tax avoidance agreement was provided by the person in respect of the acquisition of the property notwithstanding, in a case where the person acquired property from another person, that the consideration was not provided to that other person.

121H Assessment of diverted income and diverted trust income

- (1) A taxpayer, not being a taxpayer in the capacity of a trustee of a trust estate, shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this Division, upon the diverted income of the taxpayer of the year of income.
- (2) A taxpayer in the capacity of a trustee of a trust estate shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this Division, upon the diverted trust income of the trust estate of the year of income.

121J Ascertainment of diverted income or diverted trust income deemed to be an assessment

The ascertainment of the amount of the diverted income or diverted trust income and of the tax payable thereon shall, for all purposes of this Act be deemed to be an assessment.

121K Application of International Tax Agreements Act

For the purposes of sections 15 and 16 of the *International Tax Agreements Act 1953*, any amount that is included in the diverted income or diverted trust income of a taxpayer of a year of income shall be deemed to be included in the assessable income of the taxpayer of the year of income.

121L Division applies notwithstanding exemption under other laws

This Division has effect notwithstanding anything contained in any law of the Commonwealth other than this Act.

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

Volume 3 includes: Table of Contents
Sections 124K – 202G

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

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

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Division 10B—Industrial property

124K Interpretation

- (1) In this Division, unless the contrary intention appears:

Australian film means a film that is certified in writing by the Minister to be a film that:

- (a) has been, or is to be, made wholly or substantially in Australia or in an external Territory and has, or will have, a significant Australian content; or
- (b) has been, or is to be, made in pursuance of an agreement or arrangement entered into between the Government of Australia or an authority of the Government of Australia and the Government of another country or an authority of the Government of another country.

film has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Minister means the Minister administering the *Film Licensed Investment Company Act 2005*.

Senior Executive Service office has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

the owner, in relation to a unit of industrial property, means the person who possesses the rights in respect of that unit of industrial property.

unit of industrial property means:

- (a) rights possessed by a person under a law of Australia as:
 - (ii) the owner of a copyright; or
 - (iv) a licensee under such a copyright;and includes equitable rights in respect of such a patent, copyright or design or in respect of a licence under such a patent, copyright or design; or
- (b) rights possessed by a person under a law of a foreign country that are equivalent to the rights referred to in paragraph (a).

Section 124K

- (1A) In considering for the purposes of the definition of *Australian film* in subsection (1) whether a film has or will have a significant Australian content, the Minister shall have regard to:
- (a) the subject-matter of the film;
 - (b) the place or places where the film was, or is to be, made;
 - (c) the nationalities and places of residence of:
 - (i) the persons who took part, or are to take part, in the making of the film (including authors, composers, actors, scriptwriters, editors, producers, directors and technicians);
 - (ii) the persons who are, or will be, the beneficial owners of the shares or stock in the capital of any company concerned in the making of the film; and
 - (iii) the persons who are, or will be, the beneficial owners of the copyright in the film;
 - (d) the source from which moneys used, or to be used, in the making of the film were, or will be, derived; and
 - (e) any other matters that he considers to be relevant.
- (1B) The Minister may, by writing, delegate to the Secretary to the Minister's Department, or to a person holding or performing the duties of a Senior Executive Service office in the Minister's Department, all or any of the Minister's powers under this section.
- (1C) Applications may be made to the Tribunal for review of a decision:
- (a) to refuse to give a certificate of the kind referred to in the definition of *Australian film* in subsection (1); or
 - (b) to revoke such a certificate.
- (1D) Where the Minister makes a decision of the kind referred to in subsection (1C) and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice shall:
- (a) in all cases—include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision; and
 - (b) except where subsection 28(4) of that Act applies—include a statement to the effect that a request may be made under section 28 of that Act by or on behalf of such a person for a statement setting out the findings on material questions of

fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

- (1E) A failure to comply with the requirements of subsection (1D) in relation to a decision does not affect the validity of the decision.
- (2) Subject to subsection (2A), a reference in this Division to expenditure of a capital nature does not include a reference to:
- (a) expenditure in respect of which a deduction has been allowed or is allowable under a provision of this Act, other than a provision of this Division, or which has been or is taken into account in ascertaining the amount of an allowable deduction under such a provision; or
 - (b) the expenditure of moneys by a taxpayer, under a contract entered into on or after 1 October 1980, in producing, or by way of contribution to the cost of producing, a film where:
 - (i) the expenditure of the moneys was expenditure of a capital nature;
 - (ii) at the time when the moneys were expended, the taxpayer was a resident;
 - (iii) at the time when the moneys were expended, a certificate under section 124ZAB or 124ZAC was in force in relation to the film;
 - (iv) the Commissioner is satisfied, in relation to the expenditure of those moneys by the taxpayer, as mentioned in former paragraph 124ZAF(1)(c) or paragraph 124ZAF(1)(c); and
 - (v) the taxpayer has not made an election under section 124ZAE in relation to that film; or
 - (c) expenditure on software (within the meaning of the *Income Tax Assessment Act 1997*).
- (2A) Where a taxpayer has expended moneys as mentioned in paragraph (2)(b) and, by reason of the operation of section 124ZAM, the taxpayer is deemed, for the purposes of Division 10BA, not to have expended those moneys or not to have expended part of those moneys, paragraph (2)(b) does not apply in respect of the expenditure of those moneys or of that part of those moneys, as the case may be.

Section 124KAA

- (3) Where a unit of industrial property is transmitted to a person by operation of law, this Division has effect as if that unit had been disposed of to that person by the last preceding owner of the unit at the time of the transmission.
- (4) In this Division, a reference to the transmission of a unit of industrial property by operation of law includes, without limiting the generality of that expression, a reference to the transmission of a unit of industrial property to a person:
 - (a) as trustee of the estate of the deceased owner of the unit;
 - (b) as a beneficiary under the will or a codicil of the deceased owner of the unit or under an order of a court that varied or modified the provisions or such a will or codicil; or
 - (c) as a beneficiary on the intestacy of the deceased owner of the unit or as a beneficiary under an order of a court that varied or modified the application, in relation to the estate of the deceased owner of the unit, of the provisions of the law relating to the distribution of the estates of persons who die intestate.
- (5) For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

124KAA Division subject to Division 245 of Schedule 2C

This Division has effect subject to Division 245 of Schedule 2C.

124KA Application of Division where deduction allowable under former section 124ZAF or section 124ZAFA

- (1) Where:
 - (a) a partnership has expended capital moneys in producing, or by way of contribution to the cost of producing, a film;
 - (b) by virtue of the expenditure of those moneys by the partnership, a deduction has been allowed, or is allowable, under former section 124ZAF or section 124ZAFA to a taxpayer being a partner in the partnership;the following provisions have effect:

- (c) for the purposes of this Division other than this section, the partnership shall not be taken to have incurred any expenditure of a capital nature directly in relation to producing the film; and
- (d) where an amount (in this paragraph referred to as the **relevant amount**) of moneys expended by the partnership under a contract (in this subsection referred to as the **relevant contract**):
 - (i) is taken, for the purposes of subsection 124ZAP(2), to have been expended by the partnership in producing, or by way of contribution to the cost of producing, the film; or
 - (ii) would be taken, for the purposes of that subsection, to have been expended by the partnership in producing, or by way of contribution to the cost of producing, the film if that subsection and Subdivision B of Division 10BA extended to the expenditure of moneys under contracts entered into before 1 October 1980;

a taxpayer, being a partner in the partnership, shall, subject to subsection 124K(2), be taken for the purposes of this Division to have expended capital moneys in producing the film of an amount equal to:

- (iii) so much of the relevant amount as the partners have agreed is to be borne by the taxpayer; or
- (iv) if the partners have not agreed as to the part of the relevant amount that is to be borne by the taxpayer—so much of the relevant amount as bears to the relevant amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the relevant amount was expended by the partnership bears to that net income or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss;

and the amount deemed to be expended by the taxpayer shall be deemed to have been expended under a contract entered into at the time when the relevant contract was entered into by the partnership.

Section 124L

- (2) In this section, a reference to the expenditure of capital moneys is a reference to the expenditure of moneys that is expenditure of a capital nature.

124L Application

- (1A) For the purposes of assessments for the 1998-99 year of income and later years of income, this Division applies to the owner of a unit of industrial property only if:
- (a) the unit relates to a copyright in an Australian film; and
 - (b) a claim is not made for a tax offset in respect of the film under Division 376 of the *Income Tax Assessment Act 1997* (whether in that year of income or another year of income); and
 - (c) an application for a certificate of the kind referred to in the definition of **Australian film** in subsection 124K(1) in respect of the film is made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent; and
 - (d) the owner claims a deduction in respect of the film under this Division in relation to the 2008-09 year of income or an earlier year of income.

Note 1: For other kinds of intellectual property, see Division 40 of the *Income Tax Assessment Act 1997*.

Note 2: Paragraph (d) means that, if a taxpayer claims a deduction in respect of a film under this Division in relation to the 2008-09 year of income, the taxpayer can claim a deduction in respect of the film in relation to the 2009-10 year of income as well.

- (1) This Division applies to the owner of a unit of industrial property who:
- (a) became the owner of the unit by reason of being the first owner of the copyright to which the unit relates and, before the unit came into existence, incurred expenditure of a capital nature directly in relation to producing the work or other subject-matter in which the copyright subsists; or
 - (b) incurred expenditure of a capital nature on the purchase of the unit of industrial property; or
 - (c) acquired the unit of industrial property by virtue of the disposal (other than a disposal by way of transmission by operation of law), in whole or in part and otherwise than for valuable consideration, of a unit of industrial property by the

owner of that last-mentioned unit in a case where a deduction under this Division in respect of that unit has been allowed or is allowable in an assessment in respect of income of that last-mentioned owner or would have been so allowable if that unit, or the invention, work or other subject-matter or design to which that unit relates, had been used by that owner for the purpose of producing assessable income; or

- (d) acquired the unit of industrial property by virtue of the transmission, in whole or in part, of a unit of industrial property by operation of law, in a case where a deduction under this Division in respect of that unit has been allowed or is allowable in an assessment in respect of income of the last preceding owner of that unit or would have been so allowable if that unit, or the invention, work or other subject-matter or design to which that unit relates, had been used by that last preceding owner for the purpose of producing assessable income;

and, in the year of income or a previous year of income, has used the unit of industrial property of which he is the owner, or the invention, work or other subject-matter or design to which that unit relates, for the purpose of producing assessable income.

124M Annual deductions

- (1) Where, at any time during the year of income, a taxpayer is the owner of a unit of industrial property to whom this Division applies, an amount equal to the residual value of the unit in relation to the taxpayer as at the end of the year of income divided by a number equal to the number of whole years in the effective life of the unit in relation to the taxpayer as at the commencement of the year of income shall, subject to this Act, be an allowable deduction in respect of the unit.
- (2) Where the deduction allowable under subsection (1) would, but for this subsection, be less than \$100, the deduction allowable shall be \$100, or the amount of the residual value referred to in subsection (1), whichever is the less.
- (3) Where:
- (a) at any time during the year of income a taxpayer was the owner of a unit of industrial property to whom this Division applies;

Section 124N

- (b) the effective life of the unit in relation to the taxpayer expired before the commencement of the year of income; and
 - (c) there was a residual value of the unit in relation to the taxpayer as at the end of the year of income;
- an amount equal to that residual value shall, subject to this Act, be an allowable deduction in respect of the unit in the assessment of the taxpayer in respect of income of that year of income.
- (4) Subject to subsection (5), where, during a year of income, the owner of a unit of industrial property ceases to be the owner of the unit, a deduction under this section in respect of the unit is not allowable in his assessment in respect of income of that year of income.
 - (5) Subsection (4) extends to the case where the owner of the unit of industrial property ceases to be the owner by reason that the property ceases to exist but does not apply:
 - (a) where the owner ceases to be the owner of the unit of industrial property by virtue of the transmission of the unit by operation of law; or
 - (b) where the unit of industrial property was purchased or otherwise acquired by the owner for a specified period and he ceases to be the owner by reason that the specified period terminates.
 - (6) A reference in subsection (1) or (3) to the residual value of a unit of industrial property as at the end of a year of income in relation to a taxpayer who was the owner of the unit at any time during that year of income shall, in a case where the taxpayer ceased to be the owner of the unit by virtue of the transmission of the unit by operation of law, be read as a reference to the residual value of the unit in relation to the taxpayer immediately before the time of the transmission of the unit.

124N Deductions on the disposal or lapse of a unit of industrial property

- (1) Where, at any time during the year of income, a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole and the amount of the consideration receivable in respect of the disposal is less than the residual value of the unit in relation to him at that time, the amount

of the residual value, less the amount of the consideration, shall be an allowable deduction.

(2) Where:

- (a) a unit of industrial property owned by a taxpayer who is an owner to whom this Division applies ceases to exist at any time during the year of income by reason of the copyright to which the unit relates ceasing to be in force; or
- (b) a unit of industrial property owned by a taxpayer who is an owner to whom this Division applies and became the owner by reason of the grant, by licence, to him of an interest in a copyright ceases to exist at any time during the year of income by reason of a surrender of the licence in a case where there was no consideration receivable by the taxpayer in respect of the surrender;

and there is a residual value of the unit in relation to the taxpayer as at that time, that residual value shall be an allowable deduction.

124P Amount to be included in assessable income on disposal of a unit of industrial property

(1) Where, at any time during the year of income, a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of that unit in whole or in part (whether or not the effective life of that unit in relation to the taxpayer had expired at that time):

- (a) if there is a residual value of that unit in relation to the taxpayer at that time and the amount of the consideration receivable in respect of the disposal exceeds that residual value—the amount of the excess; or
- (b) if there is no residual value of that unit in relation to the taxpayer at that time—the amount of the consideration receivable in respect of the disposal;

shall be included in the assessable income of the taxpayer of the year of income.

(3) The amount which, under subsection (1), is required to be included in the assessable income of a taxpayer of a year of income in respect of a unit of industrial property shall not exceed the sum of the deductions which have been allowed or are allowable in respect of the unit under this Division in assessments of income of the taxpayer, less the sum of the amounts, if any, which have, under

Section 124PA

this section, been included in the assessable income of the taxpayer of a previous year, or previous years, of income in respect of that unit.

124PA Roll-over relief

- (1A) This section does not apply in respect of a disposal in respect of which Subdivision 170-D of the *Income Tax Assessment Act 1997* applies.

Roll-over relief where CGT roll-over relief allowed

- (1) This section applies to the disposal of a unit of industrial property by a taxpayer (in this section called the **transferor**) to another taxpayer (in this section called the **transferee**) if:
- (b) subject to subsection (6), deductions have been allowed or are allowable under this Division to the transferor in respect of the unit; and
 - (c) no part of the cost of the unit to the transferor is attributable to expenditure covered by subsection 124K(2A) or 124KA(1); and
 - (d) the disposal involves a CGT event; and
 - (e) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A of the <i>Income Tax Assessment Act 1997</i> for the CGT event.
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the unit is partnership property, and there is a roll-over under Subdivision 122-B of the <i>Income Tax Assessment Act 1997</i> for the disposal by the partners of the CGT assets consisting of their interests in the unit.
3	Marriage or relationship breakdown	There is a roll-over under Subdivision 126-A of the <i>Income Tax Assessment Act 1997</i> for the CGT event.
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B of the <i>Income Tax Assessment Act 1997</i> for the CGT event.

Roll-over relief where joint election made under section 124W

- (2) This section also applies if a joint election for roll-over relief is made under subsection 124W(3) by both the transferor and the transferee referred to in that subsection in relation to the disposal of a unit of industrial property.

No balancing charges or deductions

- (3) Sections 124N and 124P (which deal with balancing charges and deductions) do not apply to the disposal of the unit by the transferor.

Transferee to inherit certain characteristics from transferor

- (4) This Division applies as if:
- (a) the cost of the unit of industrial property in relation to the transferee were equal to the residual value of the unit in relation to the transferor immediately before the disposal; and
 - (b) the effective life of the unit of industrial property determined in relation to the transferor immediately before the disposal under section 124UA were the effective life of the unit of industrial property in relation to the transferee; and
 - (c) if the transferor had not made an election under section 124UA in relation to the unit of industrial property—the transferee were not entitled to make an election under that section in relation to the unit.

Disposal by transferee where no roll-over relief—inheritance of deductions

- (5) If:
- (a) the transferee disposes of the unit of industrial property; and
 - (b) this section does not apply to the disposal;
- then, for the purposes of the application of subsection 124P(3) in relation to the disposal:
- (c) the total of:
 - (i) the deductions allowed or allowable to the transferor under this Division in relation to the unit; and
 - (ii) if there have been 2 or more prior successive applications of this section—the deductions allowed or

Section 124Q

- allowable to the prior successive transferors under this Division in relation to the unit;
are taken to have been deductions allowed or allowable to the transferee under this Division in relation to the unit; and
- (d) the total of:
- (i) the amounts included in the transferor's assessable income under section 124P in relation to the unit; and
 - (ii) if there have been 2 or more prior successive applications of this section—the amounts included in the prior successive transferors' assessable incomes under that section in relation to the unit;
- are taken to have been included in the transferee's assessable income under that section in relation to the unit.

Second or subsequent application of section—paragraph (1)(b) does not apply

- (6) If, apart from this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by:
- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.

124Q Disposal of part of a unit of industrial property

Subject to this Division, where the owner of a unit of industrial property disposes of that unit in part, that part of the unit of which he remains the owner shall, for the purposes of this Division, be deemed to be the same unit of industrial property as the unit of industrial property which he disposed of in part.

124R Cost of a unit of industrial property

- (1) For the purposes of this Division, the cost of a unit of industrial property to the owner of the unit shall, subject to subsection 124S(2), be taken to be:
- (a) in the case of an owner referred to in paragraph 124L(1)(a):
 - (i) if subsection (2) of this section is applicable—the cost ascertained in accordance with that subsection; or

- (ii) if subsection (2) of this section is not applicable—the expenditure referred to in paragraph 124L(1)(a);
 - (b) in the case of an owner referred to in paragraph 124L(1)(b):
 - (i) if subsection (3) or (5) of this section is applicable—the cost ascertained in accordance with that subsection; or
 - (ii) if neither of those subsections is applicable—the expenditure referred to in paragraph 124L(1)(b);
 - (c) in the case of an owner referred to in paragraph 124L(1)(c):
 - (i) if the owner acquired a unit of industrial property of another person in whole—the residual value of the unit in relation to the last preceding owner of the unit immediately before the time of the disposal of the unit; or
 - (ii) in any other case—such part of that residual value as the Commissioner determines; or
 - (d) in the case of an owner referred to in paragraph 124L(1)(d):
 - (i) if the owner acquired a unit of industrial property of another person in whole—an amount ascertained by deducting from the residual value of the unit in relation to the last preceding owner of the unit immediately before the time of the transmission of the unit any deductions allowed or allowable under this Division in respect of the unit in an assessment in respect of income of that last preceding owner of the year of income during which the transmission took place; or
 - (ii) in any other case—such part of that amount as the Commissioner determines.
- (2) Where, in the case of an owner referred to in paragraph 124L(1)(a), the Commissioner is satisfied, having regard to any connection between the owner and any person who supplied goods to, or provided services for, the owner in relation to the unit of industrial property concerned or to any other relevant circumstances, that:
- (a) the owner and that person were not dealing with each other at arm's length in relation to the supply of those goods or the provision of those services; and
 - (b) the expenditure of a capital nature incurred by the owner in relation to producing the work or other subject-matter in which the copyright subsists exceeds the expenditure of a capital nature that would have been incurred by the owner if

Section 124R

the owner and that person had dealt with each other at arm's length;

the cost of the unit to the owner for the purposes of this Division shall be taken to be the amount of the expenditure of a capital nature that, in the opinion of the Commissioner, would have been incurred by the owner if the owner and that person had dealt with each other at arm's length.

- (3) Where, in the case of an owner referred to in paragraph 124L(1)(b):
- (a) the Commissioner is satisfied, having regard to any connection between the owner and the person from whom the unit of industrial property concerned was purchased or to any other relevant circumstances, that the owner and that person were not dealing with each other at arm's length in relation to the purchase; and
 - (b) the expenditure of a capital nature incurred by the owner on the purchase of the unit of industrial property:
 - (i) exceeds the amount that was the cost of the unit to the last preceding owner of the unit; or
 - (ii) does not exceed the amount that was the cost of the unit to the last preceding owner of the unit but exceeds the value of the unit at the time of the purchase;

the cost of the unit to the owner for the purposes of this Division shall be taken to be the cost of the unit to the last preceding owner of the unit or the value of the unit at the time of the purchase, whichever is the less.

- (4) References in subsection (3) to the cost of a unit of industrial property to the last preceding owner of the unit or to the value of a unit of industrial property at the time of the purchase of the unit shall, if the purchase was a purchase of a part of a unit of industrial property of another person, be construed as references to such part of that cost or of that value, as the case may be, as the Commissioner determines.
- (5) Where, in the case of an owner referred to in paragraph 124L(1)(b), the unit of industrial property was purchased by the owner of the unit with other property and no separate price was allocated to the unit, the amount of the expenditure of a capital nature incurred by the owner on the purchase of the unit for the purposes of this Division shall be taken to be so much of the

purchase price of the unit and the other property as the Commissioner determines.

124S Residual value

- (1) Subject to this section, the residual value of a unit of industrial property at any time in relation to the owner of the unit shall, for the purposes of this Division, be ascertained by deducting from the cost of the unit to the owner the sum of:
 - (a) any deductions allowed or allowable under this Division in respect of the unit in assessments in respect of income of the owner of a year or years of income which ended prior to that time; and
 - (b) the consideration receivable by the owner in respect of any disposal by him of the unit in part prior to that time.
- (1A) The reference in paragraph (1)(a) to any deductions allowed or allowable under this Division in respect of a unit of industrial property shall, in the case of a deduction that has been or is to be reduced by reason of section 124Z, be read as a reference to the deduction that, but for that section, would have been allowed or would be allowable.
- (2) Where the owner of a unit of industrial property has incurred expenditure of a capital nature in obtaining the surrender to him of a licence previously granted by him in respect of the copyright to which the unit relates, then, in ascertaining the residual value of the unit in relation to the owner of the unit at any time after the surrender, the cost of the unit to the owner of the unit shall be deemed to be increased by:
 - (a) in a case to which paragraph (b) does not apply—an amount equal to the expenditure so incurred in obtaining the surrender; or
 - (b) if:
 - (i) the Commissioner is satisfied, having regard to any connection between the owner and the person who surrendered the licence or to any other relevant circumstances, that the owner and that person were not dealing with each other at arm's length in relation to the surrender; and

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- (ii) the consideration for the surrender:
 - (A) was greater than the value of the licence at the time of the surrender; or
 - (B) was not greater than that value but was greater than the expenditure of a capital nature that was incurred by the person who surrendered the licence in obtaining the grant of the licence;an amount equal to that value or that expenditure, whichever is the less.

124T Consideration receivable on disposal

- (1) Subject to this section, for the purposes of this Division, the consideration receivable by the owner of a unit of industrial property in respect of the disposal of the unit in whole or in part shall be taken to be:
 - (a) where the unit is sold in whole or in part (whether with or without other property) for a specified price—the sale price of the unit or part of the unit, less the expenses of the sale of the unit or part of the unit or such part of the expenses of the sale of the unit or part of the unit together with the other property as the Commissioner determines;
 - (b) where the unit is sold in whole or in part together with other property and a specified price is not allocated to the unit or the part of the unit—such part of the sale price of the unit or part of the unit together with the other property as the Commissioner determines, less such part of the expenses of the sale of the unit or part of the unit together with the other property as the Commissioner determines; or
 - (c) where the unit is transmitted by operation of law:
 - (i) if the unit is transmitted in whole—an amount equal to the residual value of the unit in relation to that owner of the unit immediately before the time of the transmission of the unit; or
 - (ii) if the unit is transmitted in part—such part of that residual value as is determined by the Commissioner.
- (2) Where the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part to another person and:

- (a) the Commissioner is satisfied, having regard to any connection between the owner and that other person or to any other relevant circumstances, that the owner and that other person were not dealing with each other at arm's length in relation to the disposal; and
- (b) there was no amount receivable by the owner in respect of the disposal or the amount receivable by the owner in respect of the disposal was less than the value of the unit or the part of the unit at the time of the disposal;

the consideration receivable by the owner in respect of the disposal for the purposes of this Division shall be taken to be the amount that was the value of the unit or the part of the unit at the time of the disposal.

(3) Where:

- (a) the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part; and
- (b) the whole or a part of the amount receivable by the owner in respect of the disposal has been included or is to be included in the assessable income of the owner of any year of income under any provision of this Act other than a provision of this Division;

then, for the purposes of this Division, the consideration receivable by the owner in respect of the disposal shall be reduced by so much of that amount as has been so included or is to be so included.

124UA Effective life of certain units of industrial property

- (1) Subject to this section, for the purposes of this Division, the effective life of a unit of industrial property that relates to a copyright subsisting in an Australian film shall, in relation to the owner of the unit, be deemed to have commenced at the commencement of the year of income during which the owner of the unit first used that unit, or the subject-matter to which that unit relates, for the purpose of producing assessable income and shall end:
 - (a) where the unit was purchased or otherwise acquired by him for a specified period—at the end of the year of income next succeeding the year of income during which the unit was first so used or at the end of the year of income during which the specified period will terminate, whichever will first occur; or

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- (b) in any other case—at the end of the year of income next succeeding the year of income during which the unit was first so used.
- (2) The owner of a unit of industrial property that relates to a copyright subsisting in an Australian film may elect that this Division does not apply in relation to that unit.
- (3) An election under subsection (2) must be made on or before the last day for the furnishing of the owner's return of income of the year of income during which the owner first used that unit, or the subject-matter to which the unit relates, for the purpose of producing assessable income, or within such further time as the Commissioner allows.
- (4) This section does not apply in relation to a unit of industrial property that relates to a copyright subsisting in an Australian film if the unit, or the subject-matter to which the unit relates, was used for the purpose of producing income before 22 November 1977.

124V Interest by licence in patent etc.

- (1) For the purposes of this Division, the owner of a unit of industrial property who, by licence, grants to another person an interest in the copyright to which the unit relates shall, subject to subsection (2), be deemed to have disposed of the unit in part.
- (2) For the purposes of this Division, where a person who became the owner of a unit of industrial property by reason of the grant to him, by licence, of an interest in a copyright surrenders that licence:
 - (a) that person shall not be deemed to have disposed of the unit unless the surrender was made in consideration of the payment to him of an amount; and
 - (b) the person to whom the licence was surrendered shall not, by reason only of the surrender, be deemed to have acquired a unit of industrial property.
- (3) Where a unit of industrial property arises out of the grant, by licence, of an interest in a copyright, an extension of the term of that licence shall, for the purposes of this Division, be deemed to be the grant of a new licence.

124W Disposal of unit of industrial property on change of partnership etc.

- (1) Where, for any reason, including:
 - (a) the formation or dissolution of a partnership; or
 - (b) a variation in the constitution of a partnership or in the interests of the partners;a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property and the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change, then, subject to subsection 124S(2) but notwithstanding any other provision of this Division, the succeeding provisions of this section have effect.
- (2) The provisions of this Division apply as if the person or persons who owned the unit before the change (in this section called the *transferor*) had, on the day on which the change occurred, disposed of the unit in whole to the person, or all the persons, by whom the unit is owned after the change (in this section called the *transferee*).
- (3) Unless a joint election for roll-over relief has been made by both the transferor and the transferee, this Division applies as if the consideration for the disposal were equal to the market value of the unit immediately before the change.
- (4) If a joint election for roll-over relief has been made by both the transferor and the transferee, section 124PA applies to the disposal.
- (5) A joint election for roll-over relief has no effect unless it:
 - (a) is in writing; and
 - (b) is made:
 - (i) within 6 months after the later of the following:
 - (A) the end of the year of income of the transferee in which the disposal occurred;
 - (B) the commencement of this subsection; or
 - (ii) within such further period as the Commissioner allows; and
 - (c) contains such information about the transferor's holding of the unit as will enable the transferee to work out how section 124PA will apply to the transferee's holding of the unit.

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- (6) If a person dies before the end of the period allowed for making a joint election for roll-over relief, the trustee of the deceased person's estate may be a party to the election on the deceased person's behalf.

124WA Disposal of unit of industrial property where deduction allowable under former section 124ZAF or section 124ZAFA

- (1) Where:
- (a) for any reason, including:
 - (i) the formation or dissolution of a partnership; or
 - (ii) a variation in the constitution of a partnership or in the interests of the partners;a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property being a copyright, or an interest in a copyright, subsisting in a film;
 - (b) the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change;
 - (c) a deduction has been allowed or is allowable under former section 124ZAF or section 124ZAFA to the person or to any of the persons who owned the unit before the change in respect of moneys expended in producing, or by way of contribution to the cost of producing, the film, being expenditure that relates to the unit; and
 - (d) a person to whom a deduction has been allowed or is allowable as mentioned in paragraph (c) has an interest in the unit after the change;
- section 124W does not apply to that change but subsections (2), (3) and (7) of this section have effect.
- (2) Where a person (in this subsection referred to as the *relevant person*) who had an interest in the unit before the change:
- (a) did not have an interest in the unit after the change; or
 - (b) had a lesser interest in the unit after the change;
- the following provisions have effect:
- (c) if the relevant person did not have an interest in the unit after the change, the relevant person shall be deemed, for the purposes of this Division, to have disposed of the whole of

his interest in the unit at the time when the change occurred for an amount of consideration equal to:

- (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the purposes of the agreement, an amount greater than the value of the unit at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the interest disposed of bears to the value of the unit at the time when the change occurred; and
 - (ii) in any other case—the value, at the time when the change occurred, of the interest disposed of;
- (d) if the relevant person had a lesser interest in the unit after the change, the relevant person shall be deemed, for the purposes of this Division, to have disposed of part of his interest in the unit at the time when the change occurred for an amount of consideration equal to:
- (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the purposes of the agreement, an amount greater than the value of the unit at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the part of the interest disposed of bears to the value of the unit at the time when the change occurred; and
 - (ii) in any other case—the value, at the time when the change occurred, of the part of the interest disposed of.
- (3) Where a person (in this subsection referred to as the *relevant person*):
- (a) did not have an interest in the unit before the change but had an interest in the unit after the change; or
 - (b) had an interest in the unit before the change and had an additional interest in the unit after the change;
- the following provisions have effect:
- (c) if the relevant person did not have an interest in the unit before the change, the relevant person shall be deemed, for the purposes of this Division, to have incurred expenditure of

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a capital nature, on the purchase of the interest that the relevant person had after the change, of an amount equal to:

- (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the purposes of the agreement, an amount less than the value of the unit at the time when the change occurred:
 - (A) so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the interest that the relevant person had after the change bears to the value of the unit at the time when the change occurred; or
 - (B) so much of the cost of the unit as bears to that cost the same proportion as the value, at the time when the change occurred, of the interest that the relevant person had after the change bears to the value of the unit at the time when the change occurred;

whichever is the less; and

- (ii) in any other case:
 - (A) the value, at the time when the change occurred, of the interest that the relevant person had after the change; or
 - (B) so much of the cost of the unit as bears to that cost the same proportion as the value, at the time when the change occurred, of the interest that the relevant person had after the change bears to the value of the unit at the time when the change occurred;

whichever is the less;

- (d) if the relevant person had an interest in the unit before the change and had an additional interest in the unit after the change, the relevant person shall be deemed, for the purposes of this Division, to have incurred expenditure of a capital nature on the purchase of that additional interest of an amount equal to:
 - (i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the

purposes of the agreement, an amount less than the value of the unit at the time when the change occurred:

- (A) so much of the amount specified in the agreement as bears to that amount the same proportion as the value of the additional interest, at the time when the change occurred, bears to the value of the unit at the time when the change occurred; or
- (B) so much of the cost of the unit as bears to that cost the same proportion as the value of the additional interest, at the time when the change occurred, bears to the value of the unit at the time when the change occurred;

whichever is the less; and

(ii) in any other case:

- (A) the value of the additional interest at the time when the change occurred; or
- (B) so much of the cost of the unit as bears to that cost the same proportion as the value of the additional interest, at the time when the change occurred, bears to the value of the unit at the time when the change occurred;

whichever is the less.

(4) Where:

(a) for any reason, including:

- (i) the formation or dissolution of a partnership; or
- (ii) a variation in the constitution of a partnership or in the interests of the partners;

a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property being a copyright, or an interest in a copyright, subsisting in a film;

- (b) the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change;
- (c) a deduction has been allowed or is allowable under section 124ZAF or 124ZAF A to the person or to any of the persons who owned the unit before the change in respect of moneys expended in producing, or by way of contribution to

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the cost of producing, the film, being expenditure that relates to the unit; and

- (d) no person to whom a deduction has been allowed or is allowable as mentioned in paragraph (c) has an interest in the unit after the change;

section 124W does not apply to that change but the succeeding provisions of this section have effect.

- (5) Any person who had an interest in the unit before the change shall, for the purposes of this Division, be deemed to have disposed of his interest in the unit in whole for an amount of consideration equal to:

- (a) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the purposes of the agreement, an amount greater than the value of the unit at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the interest deemed to have been disposed of bears to the value of the unit at the time when the change occurred; and
- (b) in any other case—the value, at the time when the change occurred, of the interest disposed of.

- (6) For the purposes of the application of this Division to the person or persons who owned the unit after the change, that person or those persons shall be deemed to have incurred expenditure of a capital nature on the purchase of the unit of an amount equal to:

- (a) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the unit for the purposes of the agreement, an amount less than the value of the unit at the time when the change occurred—the amount specified in the agreement or the cost of the unit, whichever is the less; and
- (b) in any other case—the value of the unit at the time when the change occurred or the cost of the unit, whichever is the less.

- (7) For the purposes of the application of subsection (3) or (6) in respect of a change in the ownership of, or in the interests of persons in, a unit of industrial property being a copyright, or an interest in a copyright, subsisting in a film, a reference to the cost of the unit is a reference to the cost (if any) of the unit, ascertained

in accordance with section 124R, to the person or persons who owned the unit before the change increased by so much of the expenditure incurred in relation to the film in respect of which a deduction or deductions has or have been allowed or is or are allowable under former section 124ZAF or section 124ZAF to the person or any of the persons who owned the unit before the change as is attributable to so much of the unit as, immediately before the change occurred, was owned by the person or persons to whom that deduction or those deductions has or have been allowed or is or are allowable.

124Y Damages for infringement

Where, in pursuance of a judgment of a court or otherwise, an amount is paid to a person who is or has been the owner of a unit of industrial property in respect of an infringement, or an alleged infringement, of the copyright to which the unit relates, that person shall, for the purposes of this Division, be deemed to have disposed of the unit in part, at the time of payment, in consideration of the payment of that amount.

124Z Benefit from overseas rights

Where the owner of a unit of industrial property has obtained or is obtaining a benefit from a right exercisable in a place outside Australia, being a right which relates to the invention, work or other subject-matter or design to which the unit of industrial property relates, the Commissioner may determine that any deduction allowable under this Division in respect of the unit of industrial property shall be reduced by such amount as the Commissioner, having regard to that benefit, thinks fit, and the deduction shall be reduced accordingly.

Division 10BA—Australian films

Subdivision A—Preliminary

124ZAA Interpretation

- (1) In this Division, unless the contrary intention appears:

Australian film means a film that:

- (a) has been made wholly or substantially in Australia or in an external Territory and has a significant Australian content; or
- (b) has been made in pursuance of an agreement or arrangement entered into between the Government of Australia or an authority of the Government of Australia and the Government of another country or an authority of the Government of another country.

copyright, in relation to a film, means copyright subsisting in the film by virtue of Part IV of the *Copyright Act 1968* and includes copyright subsisting in, or in relation to, the film or in any work comprised in the film, under the law of a country other than Australia.

feature film has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

film has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

film account, in relation to a film, means an account that has been opened in relation to the film in the Film Trust Fund.

Film Trust Fund means the Australian Film Industry Trust Fund in the Trust Fund referred to in section 60 of the *Audit Act 1901*.

final certificate means a certificate issued under section 124ZAC.

future copyright means copyright to come into existence at a future time or upon the happening of a future event.

Minister means the Minister for the Arts, Sport, the Environment, Tourism and Territories.

provisional certificate means a certificate issued under section 124ZAB.

public event includes:

- (a) a sporting activity;
- (b) a theatrical performance;
- (c) an artistic performance; or
- (d) any other activity, performance or event;

to which the public is normally admitted (whether free of charge or on payment of a charge).

qualifying Australian film means a film that is:

- (a) an eligible film; and
- (b) an Australian film.

relevant 24 month period, in relation to a film, means the period of 24 months after the end of the financial year in which capital moneys were first expended in producing, or by way of contribution to the cost of producing, the film.

television broadcasting includes transmission by means of cables.

- (2) A reference in this Division to a film shall, unless the contrary intention appears, be read as including a reference to a proposed film.
- (3) In this Division, a reference to the expenditure of capital moneys is a reference to the expenditure of moneys that is expenditure of a capital nature.
- (4) Subject to subsection (5), a reference in this Division to an eligible film is a reference to a film produced wholly or principally for exhibition to the public in cinemas or by way of television broadcasting, being a feature film or a film of a like nature produced for exhibition by way of television broadcasting, a documentary or a mini-series of television drama.
- (5) Without extending by implication the generality of subsection (4), a reference in this Division to an eligible film does not include a reference to a film that is, or is to a substantial extent:
 - (a) a film for exhibition as an advertising program or a commercial;

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- (b) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature;
 - (c) a film of a public event;
 - (d) a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
 - (e) a training film.
- (6) A reference in this Division to moneys expended in producing a film is a reference to moneys expended to the extent to which those moneys are expended directly in producing a film.
- (7) For the purposes of this Division, moneys withdrawn from a film account opened in relation to a film shall be taken to be dealt with in the prescribed manner if, and only if, the moneys are expended:
- (a) in producing the film;
 - (b) in payment to the Commissioner in respect of amounts paid into the film account under former paragraph 221ZN(1)(e); or
 - (c) in payment by way of refund to a person of an amount deducted under former paragraph 221ZN(1)(a), being an amount to which former subsection 221ZN(4) applied.
- (8) In the application of paragraph (7)(a) for the purposes of this Division, other than sections 124ZAG and 124ZAH, in determining whether moneys are expended in producing a film, sections 124ZAJ and 124ZAK shall be disregarded.
- (9) In determining for the purposes of the definition of **relevant 24 month period** in subsection (1) and for the purposes of section 124ZADA and subparagraph 124ZAF(1)(d)(iv) the meaning of references to the expenditure of capital moneys in producing, or by way of contribution to the cost of producing, a film, sections 124ZAJ, 124ZAK, 124ZAL and 124ZAM shall be disregarded.
- (10) For the purposes of this Division:
- (a) where a person pays moneys to another person and that other person pays the moneys into a film account:
 - (i) the first-mentioned person shall be deemed to have paid the moneys into that film account at the time when the moneys were paid to the other person; and

- (ii) the other person shall be deemed not to have paid the moneys into the film account; and
 - (b) where a person withdraws moneys from a film account and pays the moneys to another person:
 - (i) the other person shall be deemed to have withdrawn the moneys from the film account at the time when the moneys were paid to that other person; and
 - (ii) the first-mentioned person shall be deemed not to have withdrawn the moneys from the film account.
- (11) Where the Minister is satisfied that:
- (a) a proposed film, when completed, will have a significant non-Australian content; or
 - (b) a film has a significant non-Australian content;
- the Minister may treat the proposed film or film as not being a qualifying Australian film for the purposes of this Division.

124ZAB Provisional certificates

- (1) A person (in this section referred to as the *applicant*) may apply to the Minister for a certificate stating that a proposed film will, when completed, be a qualifying Australian film for the purposes of this Division.
- (2) An application under subsection (1):
 - (a) shall be in writing;
 - (b) shall be signed by or on behalf of the applicant; and
 - (c) shall be accompanied by such information as the Minister requires.
- (2A) An application under subsection (1) must be made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent.
- (3) Where an application is made to the Minister under subsection (1) and the Minister is satisfied that:
 - (a) the proposed film, when completed, will be a qualifying Australian film; and
 - (b) having regard to the role of the applicant in the proposed production of the film, the applicant is an appropriate person

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- to whom to issue a certificate under this section in respect of the proposed film;
- the Minister shall issue to the applicant a certificate under this section in respect of the proposed film.
- (3A) Where the Minister makes a decision refusing an application under subsection (1), the Minister shall, as soon as practicable, give notice in writing of the refusal to the applicant.
- (4) A person to whom a certificate in respect of a proposed film has been issued under subsection (3) shall furnish to the Minister, within a period specified by the Minister, such information in relation to the proposed film as the Minister requests.
- (5) Where a person to whom a certificate in respect of a proposed film has been issued under subsection (3) fails to comply with subsection (4) in respect of the proposed film, the Minister may, by writing under his hand, revoke the certificate and thereupon the certificate shall, for the purposes of this Act, be deemed never to have been in force.
- (6) Where:
- (a) the Minister has issued a certificate under this section stating that a proposed film will, when completed, be a qualifying Australian film for the purposes of this Division; and
 - (b) at any time after the issue of the certificate, the Minister becomes satisfied that:
 - (i) the proposed film, when completed, will not be a qualifying Australian film for the purposes of this Division; or
 - (ii) if the proposed film has been completed—the completed film is not a qualifying Australian film for the purposes of this Division;
- the Minister shall, by writing under his hand, revoke the certificate and thereupon the certificate shall, for the purposes of this Act, be deemed never to have been in force.
- (6A) The Minister may, by signed writing, revoke a certificate in respect of a proposed film that has been issued under subsection (3) if:
- (a) the person who applied for the certificate applies to the Minister for the revocation in the approved form; and

- (b) the person provides a statutory declaration stating that:
- (i) no taxpayer has claimed a deduction under this Division in respect of the film; and
 - (ii) a final certificate in respect of the film has not been issued under this Division; and
 - (iii) a taxpayer intends to claim a tax offset under Division 376 of the *Income Tax Assessment Act 1997* in respect of the film; and
 - (iv) financial assistance has not been provided by the Film Finance Corporation Australia Limited (incorporated under the *Companies Act 1981* on 12 July 1988) in respect of the film.

A certificate that is revoked under this subsection is, for the purposes of this Act, taken never to have been in force.

Note: Revocation of a certificate under this subsection allows a person to claim a tax offset under Division 376 of the *Income Tax Assessment Act 1997* in respect of the film.

- (7) Where the Minister, under subsection (5), (6) or (6A), revokes a certificate, the Minister shall, as soon as practicable, give notice in writing of the revocation to the person to whom the certificate was issued.
- (8) The revocation of a certificate issued under this section in respect of a proposed film does not prevent the issue of a further certificate under this section in respect of that proposed film.
- (9) Subject to subsections (5), (6), (6A) and (10), a certificate issued under this section shall be deemed to have been in force at all times before the time when it was issued.
- (10) If an application for a final certificate in respect of a film is not made in accordance with section 124ZAC before the expiration of 6 months after the time when the film is completed, any certificate issued under this section in respect of the film shall be deemed never to have been in force.

124ZAC Final certificates

- (1) A person (in this section referred to as the *applicant*) may apply to the Minister for a certificate stating that a film that has been completed is a qualifying Australian film for the purposes of this Division.

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- (1A) The applicant cannot apply for a certificate in respect of a film under subsection (1) unless a certificate has been issued to the applicant in respect of the film under section 124ZAB.
- (2) An application under subsection (1):
- (a) shall be in writing;
 - (b) shall be signed by or on behalf of the applicant; and
 - (c) shall be accompanied by such information as the Minister requires.
- (3) Where an application is made to the Minister under subsection (1) and the Minister is satisfied that:
- (a) the film is a qualifying Australian film; and
 - (b) having regard to the role of the applicant in the production of the film, the applicant is an appropriate person to whom to grant a certificate under this section in respect of the film; and
 - (c) a claim has not been made for a tax offset in respect of the film under Division 376 of the *Income Tax Assessment Act 1997*;
- the Minister shall issue to the applicant a certificate under this section in respect of the film.
- (4) A certificate issued under this section shall be deemed to have been in force at all times before the time when it was issued.
- (5) Where the Minister makes a decision refusing an application under subsection (1), the Minister shall, as soon as practicable, give notice in writing of the decision to the applicant.

124ZAD Determination of content of film

In determining for the purposes of this Division whether a film has, or a proposed film, when completed, will have, a significant Australian content or a significant non-Australian content, the Minister shall have regard to:

- (a) the subject matter of the film or proposed film;
- (b) the place or places where the film was, or the proposed film will be, made;
- (c) the nationalities and places of residence of:

- (i) the persons who took part, or who will take part, in the making of the film or proposed film (including authors, composers, actors, scriptwriters, editors, producers, directors and technicians);
- (ii) the persons who are, or who will be, the beneficial owners of shares in any company concerned in the making of the film or proposed film; and
- (iii) the persons who are, or who will be, the beneficial owners of the copyright in the film or proposed film;
- (d) the source from which moneys that were used in the making of the film were, or that are to be used in the making of the proposed film will be, derived;
- (e) the details of the production expenditure incurred in respect of the film or of the budgeted production expenditure to be incurred in respect of the proposed film; and
- (f) any other matters that the Minister considers to be relevant.

124ZADAA Delegation by Minister

- (1) The Minister may, by writing, delegate to the Secretary to the Minister's Department, or to an SES employee or acting SES employee in the Minister's Department, all or any of the Minister's powers under this Division.

124ZADAB Review of decisions of Minister

- (1) Applications may be made to the Tribunal for review of a decision of the Minister under this Division (other than a decision to delegate a power under section 124ZADAA).
- (2) Where the Minister makes a decision of the kind referred to in subsection (1) and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice shall:
 - (a) in all cases—include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision; and
 - (b) except where subsection 28(4) of that Act applies—include a statement to the effect that a request may be made under section 28 of that Act by or on behalf of such a person for a

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statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

- (3) A failure to comply with the requirements of subsection (2) in relation to a decision does not affect the validity of the decision.

124ZADA Declarations

- (1) Where:

- (a) during a financial year (in this subsection referred to as the *relevant financial year*) capital moneys are expended, under a contract entered into on or after 13 January 1983, by way of contribution to the cost of producing a film; and
- (b) capital moneys have not been expended during any preceding financial year by way of contribution to the cost of producing the film;

a person may, after 30 June 1983 and before the expiration of 1 month after the end of the relevant financial year, or within such further time as the Commissioner allows, lodge with the Commissioner a declaration:

- (c) that a contract for the production of the film has been entered into under which a person has, or persons have, agreed to expend an amount that is specified in the contract as the estimated cost of producing the film;
- (d) specifying the items of expenditure that comprise the amount referred to in paragraph (c);
- (e) stating either of the following:
- (i) that a film account (in this section called the *relevant film account*) has been opened in relation to the film;
- (ii) that no film account has been opened in relation to the film;
- (f) specifying the following details:
- (i) the total amount of moneys received, being capital moneys expended by persons by way of contribution to the cost of producing the film, during the period (in this subsection referred to as the *relevant period*) commencing at the beginning of the relevant financial year and ending at the time the declaration is made;

- (ii) if subparagraph (e)(i) applies:
 - (A) the total amount of the moneys referred to in subparagraph (i) of this paragraph that were, upon receipt, paid into the relevant film account; and
 - (B) the total amount of the moneys referred to in subparagraph (i) of this paragraph that were not, upon receipt, paid into the relevant film account; and
 - (C) the total amount withdrawn from the relevant film account during the relevant period; and
 - (D) the total amount of the moneys referred to in sub-subparagraph (C) that were, upon being withdrawn from the relevant film account, expended in producing the film; and
 - (E) the total amount of the moneys referred to in sub-subparagraph (B) that were expended in producing the film; and
 - (iii) if subparagraph (e)(ii) applies—the total amount of the moneys referred to in subparagraph (i) of this paragraph that were expended in producing the film; and
 - (h) if subparagraph (e)(i) applies—that all moneys withdrawn from the relevant film account after the time the declaration is made will, upon withdrawal, be dealt with in the prescribed manner or paid to persons as refunds of capital moneys expended by way of contribution to the cost of producing the film.
- (2) Where a person lodges a declaration in respect of a film under subsection (1) or (5) and furnishes to the Commissioner such information in relation to the film as the Commissioner requires, the Commissioner shall decide whether the person making the declaration is, having regard to the role of the person in the production of the film, a person whom the Commissioner considers to be an appropriate person to make the declaration in respect of the film, and shall notify the person in writing of his decision.
- (3) Where:
- (a) at any time after a person has lodged a declaration under subsection (1) or (5) in respect of a film, any change occurs in the role of the person in the production of the film; and

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(b) before the time when the change occurs:

- (i) the person has not been notified of a decision of the Commissioner under subsection (2) in relation to the declaration; or
- (ii) the person has been notified under subsection (2) of a decision of the Commissioner that the person is an appropriate person to make the declaration and has not been notified under subsection (4) of a decision of the Commissioner in relation to the declaration;

the person shall, within 21 days after the change occurs, notify the Commissioner in writing of the change.

Penalty: 2 penalty units.

(3A) An offence under subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(4) Where, at any time (in this subsection referred to as the *relevant time*) after the Commissioner has notified a person under subsection (2) of his decision that the person is an appropriate person to make a declaration under subsection (1) or (5) in respect of a film, the Commissioner, having regard to the role of the person in the production of the film, decides that, if the person were to make a declaration at the relevant time as to the matter specified in paragraph (1)(h), the person would not be an appropriate person to make such a declaration, the Commissioner shall notify the person in writing of his decision.

(5) Where:

- (aa) a film account has been opened in relation to a film;
- (a) a declaration in relation to the film is lodged under subsection (1) or under this subsection by a person who has been notified by the Commissioner under subsection (2) that the Commissioner considers the person to be an appropriate person to make the declaration; and
- (b) the person dies or the Commissioner notifies the person under subsection (4) of a decision of the Commissioner under that subsection;

a person may lodge with the Commissioner, before the expiration of 1 month after the death or the notification under subsection (4), as the case may be, or within such further time as the Commissioner allows, a declaration that all moneys withdrawn

from the film account after the time the declaration is made will, upon withdrawal, be dealt with in the prescribed manner or paid to persons as refunds of capital moneys expended by way of contribution to the cost of producing the film.

(8) For the purposes of this Division, but subject to subsection (9), a declaration made by a person under subsection (1) shall be taken to be in force at all times after it is lodged with the Commissioner.

(9) Where:

(aa) a film account has been opened in relation to a film;

(a) a declaration in relation to the film is lodged under subsection (1) or (5) by a person who has been notified by the Commissioner under subsection (2) that the Commissioner considers the person to be an appropriate person to make the declaration;

(b) the person dies or the Commissioner notifies the person under subsection (4) of a decision of the Commissioner under that subsection; and

(c) a further declaration is not lodged under subsection (5) in relation to the film by a person who is notified by the Commissioner under subsection (2) that the person is considered by the Commissioner to be an appropriate person to lodge the declaration;

the following provisions have effect:

(d) where the declaration referred to in paragraph (a) was lodged under subsection (1)—the declaration shall be taken, for the purposes of this Division, not to be, and never to have been, in force;

(e) where the declaration referred to in paragraph (a) was lodged under subsection (5)—any declaration lodged under subsection (1) in respect of the film that would, but for this subsection, be in force shall be taken, for the purposes of this Division, not to be, and never to have been, in force.

(10) A person who is notified of a decision of the Commissioner under subsection (2) or (4) and who is dissatisfied with the decision may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

124ZADB Notification regarding non-completion of film

- (1) Where:
- (a) a person has lodged a declaration under subsection 124ZADA(1) or (5) in respect of a film;
 - (b) the Commissioner has notified the person under subsection 124ZADA(2) that the Commissioner considers the person to be an appropriate person to make the declaration and the Commissioner has not notified the person of a decision under subsection 124ZADA(4) in relation to the declaration; and
 - (c) either of the following conditions is satisfied:
 - (i) at the time when the person was notified as mentioned in paragraph (b), the person was satisfied that the film would not be, or was unlikely to be, completed before the expiration of the relevant 24 month period; or
 - (ii) after the person was notified as mentioned in paragraph (b), the person becomes satisfied that the film will not be, or is unlikely to be, completed before the expiration of the relevant 24 month period;

the person shall, within 14 days after:

- (d) in a case to which subparagraph (c)(i) applies—the day on which the person was notified as mentioned in paragraph (b); or
- (e) in a case to which subparagraph (c)(ii) applies—the day on which the person becomes satisfied as mentioned in that subparagraph;

notify the Commissioner in writing that the person was so satisfied or became so satisfied, as the case may be.

Penalty: 2 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

124ZAE Election that Division not apply

- (1) A taxpayer may elect that this Division shall not apply in relation to the taxpayer in relation to a film and, where such an election is made, this Division does not apply in relation to the taxpayer in relation to that film.

- (2) An election under subsection (1) in relation to a film must be made on or before the date of lodgment of the return of income of the taxpayer of the first year of income in respect of which a deduction would, but for this section, and the provisions of Subdivision B other than section 124ZAF A, be allowable to the taxpayer in relation to the film.

124ZAEA Transfer by way of security

For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

Subdivision B—Deductions for capital expenditure

124ZAF A Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

124ZAF A Deductions for capital expenditure under post 12 January 1983 contracts

- (1) Subject to this Subdivision, where:
- (a) a taxpayer has, under a contract entered into on or after 13 January 1983, expended capital moneys in producing, or by way of contribution to the cost of producing, a film;
 - (b) at the time when the moneys were expended:
 - (i) the taxpayer was a resident; and
 - (ii) a provisional certificate or a final certificate was in force in relation to the film;
 - (c) the Commissioner is satisfied that, at the time when the moneys were expended:
 - (i) the taxpayer expected to become the first owner, or one of the first owners, of the copyright in the film when that copyright came into existence; and
 - (ii) the taxpayer intended to use that copyright, or the taxpayer's interest in that copyright, as the case may be, for the purpose of producing assessable income from the

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exhibition of the film to the public in cinemas or by way of television broadcasting or from granting rights to exhibit the film to the public in cinemas or by way of television broadcasting; and

- (d) in a case where the moneys were expended by the taxpayer by way of contribution to the cost of producing the film:
 - (iii) there is in force a declaration lodged in respect of the film in accordance with subsection 124ZADA(1) by a person who has been notified by the Commissioner under subsection 124ZADA(2) that the person is considered by the Commissioner to be an appropriate person to lodge the declaration in respect of the film; and
 - (iv) before the end of the financial year in which capital moneys were first expended (whether by the taxpayer or by another person) in producing, or by way of contribution to the cost of producing, the film:
 - (A) a production contract was entered into (whether or not by the taxpayer) under which an amount of capital moneys specified in the production contract as the estimated cost of producing the film was to be expended in producing, or by way of contribution to the cost of producing, the film; or
 - (B) a production contract, and an underwriting contract or underwriting contracts, were entered into (whether or not by the taxpayer) under which an amount of capital moneys specified in the production contract as the estimated cost of producing the film was to be expended in producing, or by way of contribution to the cost of producing, the film;

an amount equal to:

- (e) where:
 - (i) the moneys were expended under a contract entered into on or before 23 August 1983; and
 - (ii) the moneys were expended by the taxpayer by way of contribution to the cost of producing the film; and
 - (iii) the moneys were contributed before 1 July 1983; and
 - (iv) the moneys were:

- (A) expended before 1 July 1983 in producing the film; or
 - (B) on or before 1 July 1983, paid into a film account opened in relation to the film;
- 150%; or
- (f) where:
- (i) the moneys were expended under a contract entered into on or before 23 August 1983; and
 - (ii) the moneys were expended by the taxpayer by way of contribution to the cost of producing the film; and
 - (iii) the moneys were contributed after 30 June 1983; and
 - (iv) the moneys were, upon contribution, deposited in a film account opened in relation to the film;
- 150%; or
- (g) where:
- (i) the moneys were expended under a contract entered into on or before 23 August 1983; and
 - (ii) the moneys were expended by the taxpayer in producing the film;
- 150%; or
- (h) where:
- (i) the moneys were expended under a contract entered into after 23 August 1983 and on or before 19 September 1985; and
 - (ii) the moneys were expended by the taxpayer by way of contribution to the cost of producing the film; and
 - (iii) the moneys were, upon contribution, deposited in a film account opened in relation to the film;
- 133%; or
- (j) where:
- (i) the moneys were expended under a contract entered into after 23 August 1983 and on or before 19 September 1985; and
 - (ii) the moneys were expended by the taxpayer in producing the film;
- 133%; or

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(k) where:

- (i) the moneys were expended under a contract entered into after 19 September 1985 and before 25 May 1988; and
- (ii) the moneys were expended by the taxpayer by way of contribution to the cost of producing the film; and
- (iii) the moneys were, upon contribution, deposited in a film account opened in relation to the film;

120%; or

(m) where:

- (i) the moneys were expended under a contract entered into after 19 September 1985 and before 25 May 1988; and
- (ii) the moneys were expended by the taxpayer in producing the film;

120%; or

(n) where the moneys were expended under a contract entered into on or after 25 May 1988—100%;

of the amount of the moneys expended shall be allowed as a deduction in the assessment of the taxpayer in respect of income of the year of income in which the moneys were expended by the taxpayer.

(1A) A deduction under subsection (1) is not allowable in relation to the 2009-10 year of income or a later year of income.

(2) Subject to subsection (3), where a deduction has been allowed, or would, but for this subsection, be allowable, from the assessable income of a taxpayer of a year of income under subsection (1) in relation to capital moneys expended by the taxpayer in producing, or by way of contribution to the cost of producing, a film and the following conditions are not satisfied:

(a) before the expiration of the relevant 24 month period:

- (i) the taxpayer has used the copyright in the film or the taxpayer's interest in the copyright, as the case may be, for the purpose of producing assessable income from the exhibition of the film to the public in cinemas or by way of television broadcasting or from granting rights to exhibit the film to the public in cinemas or by way of television broadcasting; or
- (ii) the taxpayer has derived assessable income under an agreement entered into before the copyright in the film

came into existence under which the taxpayer agreed, upon the copyright coming into existence, to grant rights to another person to exhibit the film to the public in cinemas or by way of television broadcasting; and

- (b) the taxpayer has, by reason of the moneys being expended, become the first owner, or one of the first owners, of the copyright in the film before the expiration of the relevant 24 month period;

the deduction shall, for the purposes of this Act, be deemed not to have been, or not to be, allowable, as the case may be.

- (3) Subsection (2) does not apply in relation to a deduction that has been allowed, or is allowable, from the assessable income of a taxpayer of a year of income in relation to capital moneys expended by the taxpayer in producing, or by way of contribution to the cost of producing, a film where:

- (a) the taxpayer dies before the expiration of the relevant 24 month period; and
- (b) the Commissioner is satisfied that subsection (2) would not have applied in relation to the deduction if the taxpayer had not died.

- (4) Where:

- (a) by reason that the Commissioner is satisfied in accordance with paragraph (3)(b) that subsection (2) would not have applied in relation to a deduction if a taxpayer had not died, subsection (2) would not, but for this subsection, apply in relation to the deduction; and
- (b) the Commissioner later becomes satisfied that subsection (2) would have applied in relation to the deduction if the taxpayer had not died;

subsection (2) shall, notwithstanding subsection (3), apply in relation to the deduction.

- (5) In this section:

production contract, in relation to a film, means a contract under which a person has, or persons have, agreed to expend capital moneys in producing, or by way of contribution to the cost of producing, the film, but does not include an underwriting contract.

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underwriting contract, in relation to a film, means a contract:

- (a) under which a person has, or persons have, conditionally agreed to expend capital moneys by way of contribution to the cost of producing the film; and
 - (b) under which no person has agreed to expend capital moneys by way of contribution to the cost of producing the film otherwise than conditionally.
- (6) For the purposes of this section, a person shall be taken to have conditionally agreed under a contract to expend capital moneys by way of contribution to the cost of producing a film if, under the contract, the person has agreed to expend capital moneys by way of contribution to the cost of producing the film only in the event that the aggregate of the capital moneys expended, or agreed to be expended, in producing, or by way of contribution to the cost of producing, the film is less than an amount specified in, or ascertained in accordance with, the contract.

124ZAG Expenditure of contributions

(1) Where:

- (a) but for this section and sections 124ZAL and 124ZAM, an amount (in this subsection referred to as the ***relevant amount***) would be taken for the purposes of this Division to have been expended by a taxpayer by way of contribution to the cost of producing a film; and
- (b) the whole of the relevant amount is not expended in producing the film;

the following provisions have effect:

- (c) where no part of the relevant amount was expended in producing the film—no part of the relevant amount shall be taken for the purposes of this Division to have been expended by the taxpayer;
- (d) where part only of the relevant amount was not expended in producing the film—the relevant amount shall be reduced by that part of the relevant amount that was not expended in producing the film.

(2) Where:

- (a) but for this section and sections 124ZAL and 124ZAM, an amount (in this subsection referred to as the ***relevant***

amount) would be taken for the purposes of this Division to have been expended by a taxpayer by way of contribution to the cost of producing a film; and

- (b) the whole or a part of the relevant amount is included in an amount that was withdrawn from a film account opened in relation to the film and was not, upon withdrawal, dealt with in the prescribed manner;

the following provisions have effect:

- (c) where the whole of the relevant amount was included in the amount withdrawn from the film account—no part of the relevant amount shall be taken for the purposes of this Division to have been expended by the taxpayer;
- (d) where part only of the relevant amount was included in the amount withdrawn from the film account—the relevant amount shall be reduced by that part of the relevant amount that was so included.

124ZAGA Satisfaction of Commissioner as to the future application of certain provisions

(1) Where:

(a) the Commissioner is at any time satisfied that:

- (i) subsection 124ZAF(2) will, at a later time, apply to deem a deduction not to have been, or not to be, allowable to a taxpayer in relation to capital moneys expended in producing, or by way of contribution to the cost of producing, a film; or
- (ii) section 124ZAG will, at a later time, apply in respect of an amount, or part of an amount, that, but for that section and sections 124ZAL and 124ZAM, would be taken for the purposes of this Division to have been expended by a taxpayer by way of contribution to the cost of producing a film; or

(b) at a time after the Commissioner is satisfied in accordance with subparagraph (a)(i) or (ii), the Commissioner is satisfied that subsection 124ZAF(2) will not apply in relation to the deduction, or that section 124ZAG will not apply in relation to the amount or the part of the amount;

the following provisions have effect:

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- (c) in a case to which paragraph (a) applies—subsection 124ZAF(2) or section 124ZAG, as the case may be, shall, for the purposes of this Subdivision, be taken to apply, and always to have applied, in relation to the deduction or in relation to the amount or the part of the amount, as the case may be; and
 - (d) in a case to which paragraph (b) applies—subsection 124ZAF(2) or section 124ZAG, as the case may be, shall, for the purposes of this Subdivision, be taken not to apply, and never to have applied, in relation to the deduction, or in relation to the amount or the part of the amount, as the case may be.
- (2) Where, at any time after the making of an assessment in relation to a taxpayer, being an assessment in the making of which subsection 124ZAF(2) or section 124ZAG has been applied by reason that the Commissioner was satisfied in accordance with subparagraph (1)(a)(i) or (ii) of this section, the taxpayer considers that the Commissioner ought to be satisfied in accordance with paragraph (1)(b) of this section that subsection 124ZAF(2) or section 124ZAG, as the case may be, will not apply, the taxpayer may post to, or lodge with, the Commissioner a request in writing for an amendment of the assessment to give effect to subsection (1).
 - (3) The Commissioner shall consider the request and shall serve on the taxpayer, by post or otherwise, a written notice of his decision on the request.
 - (4) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

124ZAH Allocation of contributions expended

- (1) Where:
 - (a) a taxpayer has expended capital moneys by way of contribution to the cost of producing a film; and
 - (b) an amount of moneys has been expended in producing the film out of moneys that include the moneys expended by the taxpayer;

then, for the purposes of this Division, so much of the moneys expended by the taxpayer as the Commissioner determines shall be taken to be included in the amount referred to in paragraph (b) that has been expended in producing the film.

(1A) Where:

- (a) a taxpayer has expended capital moneys by way of contribution to the cost of producing a film;
- (b) an amount of moneys is withdrawn from a film account opened in relation to the film, being a film account into which the moneys expended by the taxpayer have been paid; and
- (c) the amount withdrawn from the film account was not, upon withdrawal, dealt with in the prescribed manner;

then, for the purposes of this Division, so much (if any) of the moneys expended by the taxpayer as the Commissioner determines shall be taken to be included in the amount withdrawn from the film account.

- (2) Sections 124ZAJ and 124ZAK apply, for the purposes of this section, in determining whether, and the extent to which, moneys have been expended in producing a film.

124ZAJ Non-arm's length transactions

(1) Where:

- (a) but for this section and sections 124ZAK, 124ZAL and 124ZAM, an amount expended by a person (in this subsection referred to as the *producer*) for the supply of goods or the provision of services would be taken, for the purposes of this Division, to be an amount expended in producing a film;
- (b) the Commissioner is satisfied, having regard to any connection between the producer and the person who supplied those goods or provided those services, or to any other relevant circumstances, that the producer and that person were not dealing with each other at arm's length in relation to the transaction; and
- (c) the Commissioner is satisfied that the amount of moneys expended on the supply of those goods or the provision of those services exceeds the amount of moneys that would have been expended by the producer if the producer and the

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person supplying those goods or providing those services had dealt with each other at arm's length;

then such part only of the amount of the moneys expended on the supply of those goods or the provision of those services as, in the opinion of the Commissioner, is reasonable shall be taken for the purposes of this Division to have been expended in producing the film.

- (2) A reference in subsection (1) to an amount expended by a person, in producing a film, for the provision of services includes a reference to an amount paid by the person to another person as consideration for the other person producing, or agreeing to produce, a film or a part of a film.

124ZAK Amounts expended in acquiring assets

Where:

- (a) but for this section and sections 124ZAL and 124ZAM, an amount would be taken for the purposes of this Division to have been expended in producing a film;
- (b) that amount or part of that amount was expended in the acquisition of assets for use in producing the film; and
- (c) those assets are subsequently disposed of or are used otherwise than in producing the film;

the amount referred to in paragraph (a) shall be reduced by such amount as the Commissioner considers reasonable.

124ZAL Deduction reduced if future copyright assigned

(1) Where:

- (a) but for this section and section 124ZAM, an amount would be taken for the purposes of this Division to have been expended by a taxpayer in producing, or by way of contribution to the cost of producing, a film; and
- (b) at the time when that amount was expended, or before or after that time, the taxpayer partially assigned his future copyright in the film;

the amount referred to in paragraph (a) shall be reduced by such amount as the Commissioner considers reasonable.

- (2) A reference in subsection (1) to an assignment by a taxpayer of future copyright in a film includes a reference to the taxpayer entering into an agreement to transfer copyright in the film to another person upon the copyright coming into existence or at any time after the coming into existence of the copyright.

124ZAM No deduction unless expenditure at risk

- (1) Where:

- (a) but for this section and sections 124ZAG, 124ZAJ, 124ZAK and 124ZAL, a taxpayer or a partnership would be taken, for the purposes of this Division, to have expended capital moneys in producing, or by way of contribution to the cost of producing, a film; and
- (b) but for this section, a taxpayer (in this section referred to as the *relevant taxpayer*), being the taxpayer referred to in paragraph (a) or a partner in the partnership, would be taken for the purposes of this Division to have expended the whole or a part of the capital moneys referred to in paragraph (a) (which whole or part is in this subsection referred to as the *relevant amount*) in producing, or by way of contribution to the cost of producing, the film;

then, for the purposes of this Division, the amount of the capital moneys that, by virtue of the expenditure of the moneys referred to in paragraph (a), the relevant taxpayer is to be taken to have expended in producing, or by way of contribution to the cost of producing, the film is:

- (c) if the Commissioner is satisfied that, at the time when the moneys referred to in paragraph (a) were expended, the relevant taxpayer was not at risk in respect of any amount by virtue of the expenditure of the moneys referred to in paragraph (a)—nil;
- (d) if the Commissioner is satisfied that, at the time when the moneys referred to in paragraph (a) were expended, the relevant taxpayer was, by virtue of the expenditure of the moneys referred to in paragraph (a), at risk in respect of an amount less than the relevant amount—the amount in respect of which the taxpayer was at risk; or
- (e) if the Commissioner is satisfied that, at the time when the moneys referred to in paragraph (a) were expended, the taxpayer was, by virtue of the expenditure of those moneys,

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at risk with respect to an amount equal to or greater than the relevant amount—the relevant amount.

- (2) For the purposes of the application of subsection (1) in respect of the relevant taxpayer in relation to the moneys expended in relation to the film as mentioned in paragraph (1)(a), the taxpayer shall be taken to be at risk, by virtue of the expenditure of those moneys, in respect of an amount equal to the amount of the loss that, in the opinion of the Commissioner, would be suffered by the taxpayer by reason of the expenditure of the moneys referred to in paragraph (1)(a) if the relevant taxpayer were not to derive any income, other than excepted income, from the film or from the taxpayer's interest in the copyright of the film.
- (3) For the purposes of subsection (2), income derived by the relevant taxpayer from the film is excepted income if:
 - (a) the income is derived under an agreement under which moneys were to be paid to the taxpayer or another person; and
 - (b) the Commissioner is satisfied that the agreement was entered into for the purpose, or for purposes that included the purpose, of enabling the moneys referred to in paragraph (1)(a) to be expended as mentioned in that paragraph.
- (4) In forming an opinion for the purpose of subsection (2) as to the amount of a loss that would be suffered by the relevant taxpayer, by virtue of the expenditure of the moneys referred to in paragraph (1)(a), if the relevant taxpayer were not to derive any income, other than excepted income, from the film or from the taxpayer's interest in copyright in the film, the Commissioner may have regard to:
 - (a) any act that occurred, any transaction that was entered into or any circumstance that existed before, or at the time when, the moneys referred to in paragraph (1)(a) were expended; and
 - (b) any act that was likely to occur, any transaction that was likely to be entered into or any circumstance that was likely to exist after the time when the moneys referred to in paragraph (1)(a) were expended by reason of any act, transaction or circumstance mentioned in paragraph (a);
being an act, transaction or circumstance that had, or was likely to have, the effect of reducing or eliminating the loss that would be

suffered by the relevant taxpayer, by virtue of the expenditure of the moneys referred to in paragraph (1)(a), if the relevant taxpayer were not to derive any income, other than excepted income, from the film or from the taxpayer's interest in copyright in the film.

- (5) In this section:
- (a) a reference to an agreement is a reference to any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings; and
 - (b) a reference to income derived from a film is a reference to:
 - (i) any amount received or receivable as consideration for the use of, or the right to use, the film or any copyright or interest in copyright in the film;
 - (ii) any amount received or receivable as consideration for the granting of a licence in respect of future copyright in the film; and
 - (iii) any amount received or receivable as consideration in respect of the disposal of the whole or a part of any copyright or interest in copyright in the film or in respect of the assignment of any right to use the copyright or an interest in the copyright in the film or to derive income from the use of such a copyright or interest.

Subdivision C—Miscellaneous

124ZAO Limitation on deductibility of revenue expenses

- (1) This section applies, in relation to a taxpayer in relation to a film in relation to a year of income, to:
- (a) any deduction that, but for this section, would be allowable to the taxpayer in the year of income in respect of expenditure (not being expenditure in respect of which a deduction is allowable under section 124ZAFB) to the extent that the expenditure is incurred by the taxpayer in relation to the film and in gaining or producing amounts to which section 26AG applies in relation to the taxpayer in relation to the film in relation to any year of income; and

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- (b) any deduction deemed by subsection (3) to be a deduction to which this section applies in relation to the taxpayer in relation to the film in relation to the year of income.
- (2) Where:
- (a) but for this subsection, a deduction or deductions to which this section applies in relation to a taxpayer in relation to a film in relation to a year of income would be allowable to the taxpayer in respect of the year of income; and
 - (b) the amount of that deduction or of the sum of those deductions exceeds the amount, or the sum of the amounts, that would be included in the assessable income of the taxpayer of the year of income under section 26AG in relation to the film;
- then, notwithstanding any other provision of this Act, the amount of that deduction shall be reduced by the amount of the excess or, as the case requires, the amount of each of those deductions shall be reduced by an amount that bears to the amount of the excess the same proportion as the amount of the deduction bears to the sum of the deductions.
- (3) Where, by virtue of subsection (2), a deduction is not allowable to a taxpayer in a year of income in relation to a film or the amount of a deduction allowable to a taxpayer in a year of income in relation to a film is reduced, the following provisions have effect:
- (a) a deduction equal to the amount of the deduction or the amount of the reduction, as the case may be, is, subject to this section, allowable to the taxpayer in respect of the next succeeding year of income; and
 - (b) the deduction that, by virtue of paragraph (a), is allowable to the taxpayer in respect of the next succeeding year of income shall be deemed to be a deduction to which this section applies in relation to the taxpayer in relation to the film in relation to the next succeeding year of income.

124ZAP Special provisions relating to partnerships

- (1) This Division does not apply in calculating the net income of a partnership, or a partnership loss, in accordance with section 90.
- (2) For the purposes of the application of Subdivision B in relation to a taxpayer being a partner in a partnership, where, under a contract

entered into on or after 1 October 1980, the partnership has expended capital moneys in producing, or by way of contribution to the cost of producing, a film, the taxpayer shall be deemed to have expended capital moneys in producing, or by way of contribution to the cost of producing, that film, of an amount equal to:

- (a) so much of the amount of the moneys expended as the partners have agreed is to be borne by the taxpayer; or
 - (b) if the partners have not agreed as to the part of the moneys expended that is to be borne by the taxpayer—so much of the amount of the moneys expended as bears to that amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the moneys were expended bears to that net income or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss.
- (3) Sections 124ZAG, 124ZAH, 124ZAJ and 124ZAK apply, for the purposes of subsection (2), in determining whether a partnership has expended capital moneys in producing, or by way of contribution to the cost of producing, a film and in determining the amount of any such moneys.
- (4) Where a partnership has incurred expenditure in a year of income in respect of which a deduction is not allowable to the partnership in calculating the net income of the partnership for the purposes of section 90 but would be allowable but for subsections 26AG(9) and (10), a taxpayer being a partner in the partnership shall be deemed, for the purposes of this Act, to have incurred, at the time when that expenditure was incurred by the partnership:
- (a) so much of the amount of that expenditure as the partners have agreed is to be borne by the taxpayer; or
 - (b) if the partners have not agreed as to the part of the expenditure that is to be borne by the taxpayer—so much of that amount of the expenditure as bears to that amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the expenditure was incurred bears to that net income or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss.

Division 10E—PDFs (pooled development funds)

Subdivision A—Shares in PDFs

124ZM Treatment distributions to shareholders in PDF

Unfranked part of distribution exempt from income tax

- (1) If a company makes a distribution to a shareholder at a time when the company is a PDF, the unfranked part of the distribution is exempt from income tax.

Rest of section deals with franked part

- (2) The rest of this section applies to the franked part of the distribution.

Usual case

- (3) Subsection (4) applies if the assessable income of a year of income of a taxpayer who or that is:

- (a) a company or a natural person (other than a company or natural person in the capacity of a trustee); or
- (b) a corporate unit trust in relation to that year of income; or
- (c) a public trading trust in relation to that year of income; or
- (d) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to that year of income; or

- (da) an FHSA trust;

would (apart from subsection (4)) include:

- (e) the franked part of the distribution; or
- (f) any of the franked part of the distribution that flows indirectly to the taxpayer.

This subsection does not apply to cases dealt with in subsections (5) and (6).

- (4) Subject to subsection (7), the following is exempt income of the taxpayer:

- (a) if paragraph (3)(e) applies—the franked part;

- (b) if paragraph (3)(f) applies—so much of the franked part of the distribution as flows indirectly to the taxpayer.

Taxpayers who qualify for venture capital franking tax offset

- (5) If a taxpayer (other than a life assurance company) is entitled to a tax offset in relation to the distribution under section 210-170 of the *Income Tax Assessment Act 1997*, then:
- (a) so much of the franked part of the distribution as equals the part of the distribution that is franked with a venture capital credit is exempt income of the taxpayer; and
 - (b) if the franked part exceeds the amount so exempt—the excess is, subject to subsection (7), exempt income of the taxpayer.
- (6) If a life assurance company is entitled to a tax offset in relation to the distribution under section 210-170 of the *Income Tax Assessment Act 1997*, then:
- (a) so much of the franked part of the distribution as equals the amount worked out using the following formula is exempt income of the life assurance company:

$$\text{Venture capital franked part} \times \frac{\text{Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

complying superannuation/FHSA class of taxable income is the life assurance company's complying superannuation/FHSA class of taxable income, within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*, for the year of income in which the distribution is made.

venture capital franked part is the part of the distribution that is franked with a venture capital credit.

total income is the life assurance company's assessable income for the year of income in which the distribution is made; and

- (b) if the franked part exceeds the amount so exempt—the excess is, subject to subsection (7), exempt income of the life assurance company.

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No exemption if return prepared on basis that amount assessable

- (7) Subsection (4) and paragraphs (5)(b) and (6)(b) do not exempt, and are taken never to have exempted, an amount if the taxpayer's return of income of the year of income is prepared on the basis that the amount is included in the taxpayer's assessable income of that year.

Where partner entitled to deduction for amount flowing indirectly

- (8) If:
- (a) any of the franked part of the distribution flows indirectly to a taxpayer who is a partner in a partnership; and
 - (b) apart from this subsection, the amount that flows indirectly would be allowable as a deduction from the taxpayer's assessable income of a year of income; and
 - (c) the taxpayer is of a kind mentioned in any of paragraphs (3)(a) to (d);
- the amount that flows indirectly is not allowable as a deduction from that assessable income.
- (9) Subsection (8) does not prevent, and is taken never to have prevented, an amount from being allowable as a deduction if the taxpayer's return of income of the year of income is prepared on the basis that the amount is so allowable.

Where trustee assessed on amount flowing indirectly

- (10) If:
- (a) any of the franked part of the distribution flows indirectly to the trustee of a trust estate; and
 - (b) apart from this subsection, the trustee would be liable under section 98, 99 or 99A to be assessed and pay tax on the amount that flows indirectly;
- the trustee is not liable under that section to be assessed and to pay tax on the amount that flows indirectly.
- (11) Subsection (10) does not prevent, and is taken never to have prevented, the trustee from being liable under that section to be assessed and to pay tax on an amount if the trustee elects to be so liable.

- (12) An election must be made in the trustee's return of income of the trust estate for the year of income concerned.

Interpretation

- (13) In this section:

flows indirectly has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

part of a distribution that is franked with a venture capital credit has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

124ZN Exemption of income from sale of shares in a PDF

Income derived by a taxpayer from selling shares in a company is exempt from income tax if the company is a PDF at the time of the sale.

Note: Any capital gain or capital loss from a disposal of shares in a PDF is disregarded: see section 118-13 of the *Income Tax Assessment Act 1997*.

124ZO Shares in a PDF are not trading stock

Shares in a PDF are not trading stock for the purposes of this Act.

124ZQ Effect of company becoming a PDF

- (1) This section applies to shares in a company that a taxpayer holds when the company becomes a PDF.
- (2) In determining for the purposes of this Act whether an amount is or was allowable as a deduction to the taxpayer in respect of acquiring the shares, the shares are taken to have been shares in a PDF throughout the period beginning immediately before the taxpayer acquired them and ending when the company became a PDF.
- (3) For the purposes of this Act, the shares are taken to have been trading stock of the taxpayer at no time during that period.
- (4) Section 170 does not prevent an assessment from being amended to give effect to this section.

124ZR Effect of company ceasing to be a PDF

- (1) This section applies to shares in a company that a taxpayer holds when the company ceases to be a PDF.
- (2) For the purposes of this Act (except Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*), the taxpayer is taken:
 - (a) to have sold the shares immediately before the company ceased to be a PDF; and
 - (b) to have rebought the shares immediately after the company so ceased;for a consideration equal to the market value of the shares immediately after the company so ceased.
- (3) Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* apply as if the taxpayer:
 - (a) had disposed of the CGT assets constituted by the shares, and had done so immediately before the company ceased to be a PDF; and
 - (b) had re-acquired those assets immediately afterwards;for an amount equal to the shares' market value immediately after the company so ceased.

Subdivision B—The taxable income of PDFs

124ZS Definitions

In this Subdivision:

non-CGT assessable income means an amount included in assessable income otherwise than under Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997* or Subdivision C of this Division.

SME investment means an investment other than an unregulated investment.

Note: *SME* stands for small and medium enterprises.

unregulated investment has the same meaning as in the *Pooled Development Funds Act 1992*.

124ZTA Taxable income in first year as PDF if PDF component is nil

- (1) This section applies if:
 - (a) a company becomes a PDF during a year of income and is still a PDF at the end of the year of income; and
 - (b) the PDF component for the year of income is a nil amount; and
 - (c) the year of income is the 1997-98 year of income or a later one.
- (2) The company's taxable income of the year of income is the amount that, if the period (the *notional year*) beginning at the start of the year of income and ending immediately before the company becomes a PDF were a year of income of the company, would be the company's taxable income of the notional year.

124ZT SME assessable income

SME assessable income

- (1) A company's *SME assessable income* of a year of income is the sum of:
 - (a) so much of the company's non-CGT assessable income of the year of income as was derived:
 - (i) from, or from the disposal of, an SME investment of the company; and
 - (ii) at a time when the company was a PDF; and
 - (b) any assessable income allocated to the company's SME assessable income under section 124ZZB.

Note: Section 124ZZB deals with capital gains etc.

When assessable income derived

- (2) For the purposes of paragraph (1)(a), if an amount is derived by a company during, but not at a particular time during, a year of income, the amount is taken to have been derived by the company on the last day of the year of income.

124ZU SME income component

Full-year PDFs

- (1) The SME income component of a year of income of a company that is a PDF throughout the year of income is so much of the company's taxable income of the year of income as does not exceed the amount (if any) remaining after deducting from the company's SME assessable income of the year of income any deductions allowable to the company in relation to the year of income.

Part-year PDFs

- (2) The **SME income component** of a year of income of a company that becomes a PDF during the year of income and is still a PDF at the end of the year of income is so much of the company's adjusted taxable income of the year of income as does not exceed the amount (if any) remaining after deducting from the company's SME assessable income of the year of income any deductions where both of the following conditions are satisfied:
 - (a) the deductions were allowable to the company in relation to the year of income;
 - (b) the deductions were taken into account in working out the company's PDF component of the year of income.

For this purpose, **adjusted taxable income** means so much of the company's taxable income of the year of income as does not exceed its PDF component of the year of income.

124ZV Unregulated investment component

Full-year PDFs

- (1) The **unregulated investment component** of a year of income of a company that is a PDF throughout the year of income is the amount (if any) remaining after deducting from the company's taxable income of the year of income the company's SME income component of the year of income.

Part-year PDFs

- (2) The **unregulated investment component** of a year of income of a company that becomes a PDF during the year of income and is still
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a PDF at the end of the year of income is the amount (if any) remaining after deducting from the company's adjusted taxable income of the year of income the company's SME income component of the year of income. For this purpose, **adjusted taxable income** means so much of the company's taxable income of the year of income as does not exceed its PDF component of the year of income.

Subdivision C—Adjustments of the tax treatment of capital gains and capital losses of PDFs

124ZW Definitions

In this Subdivision:

accumulated net capital loss for a year of income (the *loss year*) means the amount (if any) by which the total of:

- (a) the total of the overall capital losses for all classes of assessable income for the loss year; and
- (b) any accumulated net capital loss for the last year of income *before* the loss year;

exceeds:

- (c) the total of the overall capital gains for all classes of assessable income for the loss year (before section 116GB is applied).

class, in relation to assessable income, means a class specified in section 124ZY.

company does not include a company in a capacity of trustee.

non-CGT assessable income means an amount included in assessable income otherwise than under Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997* or this Subdivision.

ordinary capital gain for a CGT event means any capital gain that would (apart from this Subdivision) arise from the event.

ordinary capital loss for a CGT event means any capital loss that would (apart from this Subdivision) arise from the event.

overall capital gain for a class of assessable income means:

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- (a) the amount by which the total ordinary capital gain for that class exceeds the total ordinary capital loss for that class; or
- (b) if an amount has been applied under subsection 124ZZB(2) to reduce an overall capital gain previously worked out under this definition—that gain as so reduced.

overall capital loss for a class of assessable income means the amount by which the total ordinary capital gain for that class is less than the total ordinary capital loss for that class.

residual overall capital gain means so much of an overall capital gain as remains after applying subsection 124ZZB(2).

SME assessable income has the meaning given by Subdivision B.

SME investment means an investment other than an unregulated investment.

total ordinary capital gain for a class means the total of so much of any ordinary capital gains as has been allocated to that class under section 124ZZA.

total ordinary capital loss for a class means the total of so much of any ordinary capital losses as has been allocated to that class under section 124ZZA.

unregulated investment has the same meaning as in the *Pooled Development Funds Act 1992*.

124ZX Companies to which this Subdivision applies

This Subdivision applies to a company in relation to a year of income if:

- (a) the company is a PDF throughout the year of income; or
- (b) the company becomes a PDF during the year of income and is still a PDF at the end of the year of income.

124ZY Classes of assessable income

Classes

- (1) The classes of assessable income of the company are as follows:
 - (a) SME assessable income (see section 124ZT);

- (b) other assessable income (see subsection(2)).

Other assessable income

- (2) The company's **other assessable income** of the year of income is the sum of:
- (a) so much of the company's non-CGT assessable income of the year of income as is not included in the company's SME assessable income of the year of income; and
 - (b) any assessable income allocated to the company's other assessable income under section 124ZZB.

124ZZ Treatment of capital gains

Nothing is to be included in the company's assessable income of the year of income under section 102-5 of the *Income Tax Assessment Act 1997* (about net capital gains).

124ZZA Allocation of gain amounts and loss amounts to classes of assessable income

Disposals of SME investments

- (1) If:
- (a) there is an ordinary capital gain amount, or an ordinary capital loss amount, in respect of a disposal of an SME investment of the company; and
 - (b) the company was a PDF at the time of the disposal;
- the ordinary capital gain amount or ordinary capital loss amount, as the case may be, is taken into account in determining the overall capital gain or overall capital loss for the class known as SME assessable income.

Disposals of assets other than SME investments

- (2) If:
- (a) there is an ordinary capital gain amount, or an ordinary capital loss amount, in respect of a disposal of an asset of the company; and
 - (b) subsection (1) does not apply to the disposal;
- the ordinary capital gain amount or the ordinary capital loss amount, as the case may be, is taken into account in determining

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the overall capital gain or overall capital loss for the class known as other assessable income.

124ZZB Assessable income etc. in relation to capital gains

- (1) The assessable income of each class includes the amount (if any) that is left over after the overall capital gain for that class has been reduced in accordance with this section.
- (2) If there is an overall capital loss for a particular class of assessable income, the loss is to be applied in reduction of overall capital gains for the remaining class.
- (3) Any accumulated net capital loss for the immediately preceding year of income is to be applied in reduction of residual overall capital gains for the classes of assessable income in the following order:
 - (a) SME assessable income;
 - (b) other assessable income.

124ZZD No net capital loss

The company does not make a net capital loss for the year of income, despite section 102-10 of the *Income Tax Assessment Act 1997*.

Division 11—Interest paid by companies on bearer debentures

126 Interest paid by a company on bearer debentures

- (1) If:
- (a) a company pays or credits an amount of interest in respect of a debenture payable to bearer; and
 - (b) the interest is not, to any extent, subject to withholding tax under Division 11A; and
 - (c) neither of sections 128F (to the extent it applies to non-residents who are not engaged in carrying on a business in Australia at or through a permanent establishment in Australia) and 128GB applies to the interest; and
 - (d) the interest is not interest that, because of section 159GZZZZE (which deals with infrastructure borrowings), is not included in assessable income; and
 - (e) the company does not give the Commissioner the name and address of the holder of the debenture;

the company is liable to pay income tax, as imposed by the *Income Tax (Bearer Debentures) Act 1971*, on the amount paid or credited, or, if the company makes a deduction under subsection (2), the amount that otherwise would have been paid or credited.

- (1A) Subsection (1) does not affect any other liability of the company to pay income tax.
- (2) The company may deduct and retain for its own use from an amount payable to a person in respect of which the company is liable to pay tax in accordance with subsection (1) an amount equal to that tax.
- (3) Where the Commissioner is satisfied that that person is not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures.

127 Credit for tax paid by company

- (1) Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to

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whom it was paid or credited, the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person.

128 Assessments of tax

An assessment of tax payable in accordance with this Division by a company may be an assessment of the amount of tax so payable upon interest in respect of a number of debentures, whether held by the one holder or not.

Division 11A—Dividends, interest and royalties paid to non-residents and to certain other persons

Subdivision A—General

128AAA Application of Division to non-share dividends

- (1) This Division:
 - (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.
- (2) Subsection (1) does not apply to:
 - (a) section 128AE; and
 - (b) section 128F; and
 - (ba) section 128FA.

128A Interpretation

- (1) In this Division, unless the contrary intention appears:

ADI means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

dividend:

 - (a) includes part of a dividend; and
 - (b) (except when used in paragraph (d) of the definition of *interest* in subsection (1AB)) does not include a dividend paid in respect of a non-equity share.

enterprise means a business or other industrial or commercial undertaking.

entity means:

 - (a) the Commonwealth, a State or an authority of the Commonwealth or of a State;

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- (b) a natural person;
- (c) a company;
- (d) the partners in a partnership, in their capacity as partners;
- (e) the persons carrying on a joint venture, in their capacity as such persons; or
- (f) the trustees of a trust, in their capacity as such trustees.

foreign bank means a non-resident company that carries on a banking business.

joint venture means an enterprise carried on by 2 or more persons in common otherwise than as partners.

non-ADI financial institution means a corporation that:

- (a) is a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) is included in Category D (Money Market Corporation) in a list kept under section 11 of that Act; and
- (c) carries on a general business of providing finance (within the meaning of that Act) on a commercial basis.

nostro account means an account that:

- (a) an ADI or non-ADI financial institution holds with a foreign bank and maintains for the sole purpose of settling international transactions; and
- (b) operates on the basis that:
 - (i) amounts deposited in the account are held in the account for no more than 10 days; and
 - (ii) amounts advanced by way of an overdraft on the account are repaid within 10 days.

(1AA) In this Division and in an Act imposing withholding tax:

income includes a royalty and a dividend.

(1AB) For the purposes of this Division:

interest includes an amount, other than an amount referred to in subsection 26C(1):

- (a) that is in the nature of interest; or

- (b) to the extent that it could reasonably be regarded as having been converted into a form that is in substitution for interest; or
- (c) to the extent that it could reasonably be regarded as having been received in exchange for interest in connection with a washing arrangement; or
- (d) that is a dividend paid in respect of a non-equity share; or
- (e) if regulations under the *Income Tax Assessment Act 1997* are made having the effect that instruments known as upper tier 2 capital instruments, or a class of instruments of that kind, are debt interests—that is paid on such a debt interest and is not a return of an investment;

but does not include an amount to the extent to which it is a return on an equity interest in a company.

washing arrangement means an arrangement under which the title to a security is transferred to a resident shortly before an interest payment is made where the sole or dominant purpose of the arrangement is to reduce the amount of withholding tax payable by a person.

- (1AC) An example of an amount in the nature of interest is an amount representing a discount on a security.
 - (1AD) An example of an amount in substitution for interest is a lump sum payment made instead of payments of interest.
 - (1AE) For the purposes of this Division, if a lender assigns a loan, or the right to interest under a loan, any payment from the borrower to the assignee that represents an amount that would have been interest if the assignment had not taken place is taken to be a payment of interest.
 - (1AF) For the purposes of this Division, if a person acquires a security, or the right to interest under a security, any payment from the issuer of the security to that person that represents an amount that would have been interest if the acquisition had not taken place is taken to be a payment of interest.
 - (1A) Subject to subsection (1B), for the purposes of this subsection and sections 128AA, 128AB, 128AD, 128C, 128NA and 128NBA:
 - (a) a reference to the reduced issue price of a security that has been partially redeemed on one or more occasions is a
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reference to the issue price of the security reduced by the amount of the partial redemption or the sum of the amounts of the partial redemptions, as the case may be;

- (b) expressions used in this subsection or those sections that are also used in Division 16E have the same respective meanings as in that Division; and
 - (c) sections 159GV (other than subsection 159GV(2)) and 159GZ apply as if references in those sections to “this Division” were references to “subsection 128A(1A) and sections 128AA, 128AB, 128AD, 128C, 128NA and 128NBA”.
- (1B) Subsection (1A) applies as if:
- (a) paragraph (c) of the definition of *qualifying security* in subsection 159GP(1) were omitted; and
 - (b) paragraph (a) of the definition of *security* in that subsection included a reference to debt interests.
- (2) For the purposes of this Division, interest or a royalty shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs.
- (3) For the purposes of this Division, a beneficiary who is presently entitled to a dividend, to interest or to a royalty included in the income of a trust estate shall be deemed to have derived income consisting of that dividend, interest or royalty at the time when he became so entitled.
- (4) In section 260, *income tax* or *tax* includes withholding tax.
- (5) For the purposes of this Division:
- (a) the borrowing of moneys by a company by means of the issue of a number of debentures or debt interests in one borrowing operation shall be deemed to be the raising of a loan;
 - (b) subject to paragraph (a), each receipt of moneys by a borrower under a contract under which moneys are to be, or may be, advanced by way of loan shall be deemed to be the raising of a loan; and

- (c) the moneys received by the raising of a loan, less the expenses of borrowing, shall be deemed to be the loan moneys in respect of the loan.
- (6) A reference in this Division to beneficial interests in relation to an entity shall be read:
- (a) in the case of an entity being a company or the partners in a partnership—as a reference to beneficial interests in respect of the capital of, and in respect of any profits or income of, the company or partnership;
 - (b) in the case of an entity being persons carrying on a joint venture—as a reference to beneficial interests in respect of the enterprise; and
 - (c) in the case of an entity being the trustees of a trust—as a reference to beneficial interests under the trust.
- (7) A reference in this Division to the use of moneys for the purposes of an enterprise shall be read as not including use of those moneys in the course of carrying on an enterprise:
- (a) by way of providing capital for another enterprise; or
 - (b) by way of the making of loans.
- (9) For the purposes of this Division:
- (a) a reference to particular loan moneys (including the reference in paragraph (b)) includes a reference to moneys that, in the opinion of the Commissioner, represent those loan moneys; and
 - (b) without limiting the generality of paragraph (a):
 - (i) moneys received by way of repayment of a loan made out of particular loan moneys; and
 - (ii) moneys received in respect of shares in the capital of a company, being shares purchased or subscribed for by the expenditure of particular loan moneys, upon a sale of the shares, a return of capital by the company or liquidation of the company;shall be deemed to represent those loan moneys.
- (10) For the purposes of this Division, the trustee of a provident, benefit, superannuation or retirement fund is a non-resident at a particular time if, and only if, the fund is a foreign superannuation fund at that time.
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- (11) If, apart from this subsection, there is, in relation to a fund, no person who is a trustee of the fund for the purposes of this Division, the person, or each of the persons, who manages the fund is taken, for the purposes of this Division, to be the trustee, or a trustee, as the case requires, of the fund.

128AA Deemed interest in respect of transfers of certain securities

- (1) Where:
- (a) a person transfers a qualifying security; and
 - (b) the transfer price of the security exceeds the issue price or, where the security has been partially redeemed, the reduced issue price of the security;
- so much of the transfer price as equals the excess referred to in paragraph (b) shall, for the purposes of this Division, be deemed to be income that consists of interest.
- (2) For the purposes of references to the transfer price, issue price or reduced issue price of a qualifying security in subsection (1), any application of subsection 159GP(2) shall be disregarded.

128AB Certificates relating to issue price of certain securities

- (1) Where:
- (a) a qualifying security is or was transferred either before or after the commencement of this section; and
 - (b) at the time of transfer either:
 - (i) the transferor is or was a resident; or
 - (ii) the transferor is or was a non-resident and the transfer price is or was derived from a source in Australia;
- the transferee may at any time after the transfer (including a time after the transferee ceases to be the holder of the security) apply to the Commissioner for the issue of a certificate under this section.
- (2) An application under subsection (1) shall be in accordance with the form required by the Commissioner, by notice in writing published in the *Gazette*, for the purposes of applications under that subsection.
- (3) Where the Commissioner is satisfied that the requirements of paragraph (1)(b) are satisfied in relation to the transfer of the qualifying security to which an application under subsection (1)
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relates and that the security was transferred on a particular date and for a particular consideration to the applicant, the Commissioner shall issue to the applicant a certificate that:

- (a) is expressed to be issued under this section;
 - (b) identifies the security to which it relates;
 - (c) specifies that date as the date of transfer;
 - (d) specifies that consideration, or, where subsection 159GP(2) applies, the amount that is taken under that subsection to be the consideration for the transfer, as the transfer price; and
 - (e) specifies the name of the applicant as the transferee.
- (4) Where the Commissioner issues a certificate under this section in relation to a qualifying security that has been transferred to a person, the following provisions have effect:
- (a) for the purposes of the application of this Division in relation to the first subsequent transfer (if any) of the qualifying security by the person:
 - (i) the amount specified in the certificate shall be taken to be the issue price of the security; and
 - (ii) where the security was partially redeemed before the transfer to the person—any such partial redemption shall be taken not to have occurred;
 - (b) if the security is redeemed or partially redeemed without having been subsequently transferred by the person—in determining for the purposes of the application of this Division the extent (if any) to which the redemption payment comprises an amount that is interest by reason only of the definition of *interest* in subsection 128A(1AB):
 - (i) the amount specified in the certificate as the transfer price shall be taken to be the issue price of the security; and
 - (ii) where the security was partially redeemed before the transfer to the person—any such partial redemption shall be taken not to have occurred.
- (5) If the Commissioner refuses an application under subsection (1), the Commissioner shall serve on the applicant, by post or otherwise, notice in writing that the application has been refused.

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Division 11A Dividends, interest and royalties paid to non-residents and to certain other persons

Section 128AC

128AC Deemed interest in respect of hire-purchase and certain other agreements

(1) In this section:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

attributable agreement payment, in relation to a relevant agreement, means so much of any payment made or liable to be made under the agreement as represents consideration for the use, sale or disposal of the relevant agreement property.

carry forward interest, in relation to an attributable agreement payment in relation to a relevant agreement, means so much (if any) of the notional interest in relation to the payment as exceeds the amount of the payment.

eligible value, in relation to the relevant agreement property in relation to a relevant agreement, means the market value of the property at the time at which the agreement commences or commenced to apply in relation to the property.

formula interest, in relation to an attributable agreement payment in relation to a relevant agreement, means the amount ascertained in accordance with the formula $\frac{2 AC}{B (B + 1)}$, where:

A is the total interest in relation to the relevant agreements.

B is the total number of attributable agreement payments liable to be made under the relevant agreements; and

C is the number that is **B**, reduced by the number of attributable agreement payments made under the relevant agreement before the attributable agreement payment concerned.

notional interest, in relation to an attributable agreement payment in relation to a relevant agreement, means the sum of the formula interest (if any) in relation to the payment and the carry forward interest (if any) in relation to the immediately preceding

attributable agreement payment in relation to the relevant agreement.

relevant agreement means an agreement entered into after 16 December 1984, being:

- (a) a hire-purchase agreement; or
- (b) a lease or any other agreement relating to the use by a person of property owned by another person, being a lease or agreement under which:
 - (i) the lessee or person using the property is entitled to purchase or require the transfer of the lease property or property subject to the agreement on the termination or expiration of the lease or agreement; or
 - (ii) the lease term or term of the agreement is for all, or substantially all, of the effective life of the lease property or property subject to the agreement.

relevant agreement property, in relation to a relevant agreement, means:

- (a) in the case of a hire-purchase agreement—the property that is the subject of the agreement; and
- (b) in any other case—the property in relation to which subparagraph (b)(i) or (ii) of the definition of **relevant agreement** applies.

total interest, in relation to a relevant agreement, means the sum of all of the attributable agreement payments liable to be made under the relevant agreement, reduced by the eligible value of the relevant agreement property.

- (2) Where an agreement (including a hire-purchase agreement and a lease) relates to the use by a person of 2 or more items of property owned by another person, this section applies as if, instead of the single agreement, there were separate agreements relating to the use of each of the items of property having such of the terms of the first-mentioned agreement as are relevant.
- (3) Where a variation is or was made in the terms of, or liability to make payments under, a relevant agreement, then, for the purposes of the application of this section:
 - (a) the relevant agreement shall be taken to be, or to have been, terminated at the time at which the variation has effect; and

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- (b) a new relevant agreement shall be taken to be, or to have been, entered into at the time at which the variation has effect and on the terms of the first-mentioned relevant agreement as so varied.
- (4) Where any right or option under an agreement to extend the term of, or otherwise vary the effect of, the agreement is or was exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the agreement to provide for the extension or other effect.
- (5) Where an attributable agreement payment in relation to a relevant agreement is made, so much of the attributable agreement payment as does not exceed the notional interest in relation to the payment shall, for the purposes of this Division, be deemed to be income that consists of interest.
- (6) Where:
 - (a) a relevant agreement is entered into after the commencement of this section; and
 - (b) at the time at which the relevant agreement is entered into, the total interest in relation to the relevant agreement exceeds the sum of all amounts that, if all of the attributable agreement payments liable to be made under the relevant agreement were made, would, disregarding this subsection, be deemed to be income that consists of interest under subsection (5) in relation to the relevant agreement;the amount of the notional interest in relation to the first attributable agreement payment in relation to the relevant agreement shall, for the purposes of this section, be increased by an amount equal to the excess referred to in paragraph (b).
- (7) For the purposes of section 128D, where withholding tax is payable on a part of an attributable agreement payment that is taken under subsection (5) of this section to be an amount of interest, the withholding tax shall be taken to be payable on the whole of the attributable agreement payment.

128AD Indemnification etc. agreements in relation to bills of exchange and promissory notes

(1) Where:

- (a) the drawer of a bill of exchange issued after the day on which this section comes into operation pays an amount (in this subsection referred to as the *indemnification amount*) to the acceptor of the bill to indemnify, reimburse or otherwise compensate the acceptor in respect of the whole or a part of an amount (which whole or part is in this subsection referred to as the *eligible presentment amount*) that the acceptor has, or will, become liable to pay to the payee under the bill on presentment of the bill;
- (b) no part of the indemnification amount is, or will be, included in the assessable income of the acceptor of any year of income; and
- (c) the whole or a part (in this subsection referred to as the *eligible presentment interest*) of the eligible presentment amount consists or will consist of interest;

so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the acceptor in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest.

(2) Where:

- (a) a person (in this subsection referred to as the *indemnifier*) pays an amount (in this subsection referred to as the *indemnification amount*) to the issuer of a promissory note issued after the day on which this section comes into operation to indemnify, reimburse or otherwise compensate the issuer in respect of the whole or a part of an amount (which whole or part is in this subsection referred to as the *eligible presentment amount*) that the issuer has, or will, become liable to pay to the payee under the note on presentment of the note;
- (b) no part of the indemnification amount is, or will be, included in the assessable income of the issuer of any year of income; and
- (c) the whole or a part (in this subsection referred to as the *eligible presentment interest*) of the eligible presentment amount consists or will consist of interest;

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so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the issuer in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest.

128AE Interpretation provisions relating to offshore banking units

(1) In this Division, unless the contrary intention appears:

borrow includes raise finance by the issue of a security.

lend includes provide finance by the purchase of a security.

OB activity has the same meaning as in section 121D.

offshore banking unit has the meaning given by this section.

offshore borrowing means:

- (a) a borrowing in any currency, by a person who is or has been an offshore banking unit, from a non-resident who is not a related person (within the meaning of Division 9A); or
- (b) a borrowing in a currency other than Australian currency, by a person who is or has been an offshore banking unit, from a resident or a related person (within the meaning of Division 9A).

offshore gold borrowing means borrowing gold from an offshore person within the meaning of section 121E.

prevailing borrowing rate, in relation to a person who is or has been an offshore banking unit, in relation to a particular time, means the effective annual interest rate that the Commissioner considers was payable by the person on borrowings at or about that time or, where there were none, by offshore banking units generally at or about that time.

prevailing borrowing term, in relation to a person who is or has been an offshore banking unit, in relation to a particular time, means the period that the Commissioner considers was the usual term of borrowings by the person at or about that time or, where there were none, by offshore banking units generally at or about that time.

security means a bond, debenture, debt interest, bill of exchange, promissory note or other security or similar instrument.

tax exempt gold means gold that is tax exempt gold under this section.

tax exempt loan money means an amount that is tax exempt loan money under this section.

transfer to a person includes apply an amount for the benefit of a person.

- (2) The Treasurer may, by notice published in the *Gazette*, declare a person being:
- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or
 - (b) a public authority constituted by a law of a State, being a public authority that carries on the business of State banking; or
 - (ba) a company in which all of the equity interests are beneficially owned by an offshore banking unit (other than one to which paragraph (c) applies); or
 - (c) a person whom the Treasurer is satisfied is appropriately authorised to carry on business as a dealer in foreign exchange; or
 - (d) a life insurance company registered under the *Life Insurance Act 1995*; or
 - (e) a company incorporated under the *Corporations Act 2001* that provides funds management services on a commercial basis (other than solely to related persons):
 - (i) that is, under the *Financial Sector (Collection of Data) Act 2001*, a registered entity included in the category for money market corporations; or
 - (ii) all of the shares which are beneficially owned by a company covered by subparagraph (i); or
 - (iii) a financial services licensee (as defined by section 761A of the *Corporations Act 2001*) whose licence covers dealing in securities (as defined by subsection 92(3) of the *Corporations Act 2001*), providing financial advice in relation to such securities or operating a managed

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investment scheme (as defined by section 9 of the *Corporations Act 2001*); or

(f) a company that the Treasurer determines, in writing, to be an OBU under subsection (2AA);

to be an offshore banking unit for the purposes of this Division.

(2AA) The Treasurer may, on written application by a company, make a written determination that the company is an OBU.

(2AB) The determination must:

(a) specify the day when the company commences to be an OBU; and

(b) contain any other information the Treasurer considers appropriate.

(2AC) A determination of the Treasurer under subsection (2AA) must be made in accordance with guidelines determined by the Treasurer under subsection (2AD).

(2AD) The Treasurer must, by legislative instrument, determine guidelines for the making of determinations under subsection (2AA). The guidelines may require the Treasurer to take into account:

(a) specified criteria; or

(b) recommendations of particular bodies; or

(c) any other factors.

(2A) If a person who is an offshore banking unit for the purposes of this Division:

(a) is convicted of an offence against section 8L, 8N, 8Q, 8T or 8U of the *Taxation Administration Act 1953*, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law (within the meaning of the *Taxation Administration Act 1953*); or

(b) incurs a tax liability, within the meaning of that Act, by way of a penalty equal to 90% of an amount;

the Treasurer may declare, by notice published in the *Gazette*, that the person is no longer an offshore banking unit for the purposes of this Division.

(2B) If the Treasurer makes such a declaration in respect of a company that is an offshore banking unit only because of paragraph (2)(ba),

the offshore banking unit mentioned in that paragraph, and in any previous application of that paragraph that was necessary for it to apply to the company, is no longer an offshore banking unit from the time when the declaration comes into force.

- (2C) If a person who is an offshore banking unit ceases to be a person of a kind mentioned in any of paragraphs (2)(a), (b), (ba) and (c), the Treasurer must declare, by notice published in the *Gazette*, that the person is no longer an offshore banking unit for the purposes of this Division.
- (2D) Except as mentioned in subsection (2A), (2B) or (2C), a person does not cease to be an offshore banking unit for the purposes of this Division.
- (3) A declaration under subsection (2), (2A) or (2C) shall not come into force before the day on which the notice containing the declaration is published in the *Gazette*.
- (4) Where:
- (a) a person who is an offshore banking unit makes an offshore borrowing or offshore gold borrowing; and
 - (b) the lender would, but for section 128GB, be liable to pay withholding tax on income consisting of interest on the offshore borrowing or offshore gold borrowing;
- then, for the purposes of this Division, the amount borrowed is tax exempt loan money or tax exempt gold of the person.
- (5) Where:
- (a) a person who is or has been an offshore banking unit makes a loan of tax exempt loan money or tax exempt gold where the loan is an OB activity or would be if the person were an OBU; and
 - (b) the loan is repaid;
- the amount repaid is, for the purposes of this Division, deemed to be tax exempt loan money or tax exempt gold of the person.
- (7) Where a person who is or has been an offshore banking unit transfers an amount of tax exempt loan money or tax exempt gold to another person, the following provisions have effect for the purposes of this Division:

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- (a) subject to subsections (10) and (11), the amount transferred ceases to be tax exempt loan money or tax exempt gold of the person; and
 - (b) the amount transferred does not become tax exempt loan money or tax exempt gold of the other person.
- (8) Where a person who is or has been an offshore banking unit transfers to another person an amount of money or gold that, in the opinion of the Commissioner, includes tax exempt loan money or tax exempt gold, so much of the amount transferred as the Commissioner considers was tax exempt loan money or tax exempt gold is deemed, for the purposes of this Division, to have been tax exempt loan money or tax exempt gold of the person.
- (9) Where a person who is or has been an offshore banking unit deals with an amount of tax exempt loan money or tax exempt gold of the person under the person's internal accounting arrangements in such a way that the amount becomes available for possible transfer to other persons (other than by way of payment in carrying on an OB activity, or what would be an OB activity if the person were an OBU, or repayment of an offshore borrowing or an offshore gold borrowing), the following provisions have effect for the purposes of this Division:
 - (a) the person is, when the amount so becomes available, deemed to make a transfer of the amount to another person, other than by way of payment in carrying on an OB activity (or what would be an OB activity if the person were an OBU) or repayment of an offshore borrowing or an offshore gold borrowing;
 - (b) any actual transfer of the amount by the person to another person shall be disregarded.
- (10) For the purposes of this Division, where a person who is or has been an offshore banking unit transfers tax exempt loan money to another person in exchange for an equivalent amount in a different currency:
 - (a) the amount received in exchange shall be taken to be the same money as was transferred; and
 - (b) the transfer shall be taken not to have occurred.
- (11) For the purposes of this Division, where a person who is or has been an offshore banking unit transfers tax exempt loan money or

tax exempt gold to another person by way of a deposit for the purposes of temporary safe-keeping pending the making of an offshore loan or repayment of an offshore borrowing or an offshore gold borrowing:

- (a) the amount held on deposit and upon being repaid shall be taken to be the same money as was transferred; and
 - (b) the transfer shall be taken not to have occurred.
- (12) For the purposes of this section, an amount:
- (a) deposited in an account with a bank or other financial institution; or
 - (b) paid by way of consideration for the issue of a security;
- shall be taken to have been lent to, and borrowed by, the bank, financial institution or issuer of the security.
- (13) If an offshore banking unit consists of:
- (a) one or more permanent establishments in Australia at or through which the offshore banking unit carries on what are OB activities within the meaning of Division 9A; and
 - (b) one or more other permanent establishments either in Australia or outside Australia;
- then this section and section 128NB apply as if:
- (c) the offshore banking unit consisted only of the permanent establishments referred to in paragraph (a); and
 - (d) the permanent establishments referred to in paragraph (b) were separate persons.

128AF Payments through interposed entities

- (1) This section applies if:
 - (a) a payment received by a non-resident through one or more interposed companies, partnerships, trusts or other persons is attributable to an amount of dividends, interest or royalties paid by a resident; and
 - (b) one or more of the interposed companies, partnerships, trusts or other persons is exempt from tax.
- (2) If this section applies, the amount of dividends, interest or royalties paid by a resident is taken, for the purposes of this Division, to have been paid by the resident directly to the non-resident.

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- (3) For the purposes of this section, a person is exempt from tax if, at the time at which the payment was received by the non-resident, all income of the person was exempt from tax.

128B Liability to withholding tax

- (1A) In this section, a reference to a person to whom this section applies is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least 1 of whom is, a resident.

- (1) Subject to subsections (3), (3A), (3D) and (3E), this section applies to income that:
- (a) is derived, on or after 1 January 1968, by a non-resident; and
 - (b) consists of a dividend paid by a company that is a resident.

Note: An amount declared to be conduit foreign income is an amount to which this section does not apply: see sections 802-15 and 802-17 of the *Income Tax Assessment Act 1997*.

- (2) Subject to subsection (3), this section also applies to income that:
- (a) is derived, on or after 1 January 1968, by a non-resident; and
 - (b) consists of interest that:
 - (i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a country outside Australia at or through a permanent establishment of that person in that country; or
 - (ii) is paid to the non-resident by a person who, or by persons each of whom, is not a resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

Note: An amount of interest paid to a person by a temporary resident is an amount to which this section does not apply: see section 768-980 of the *Income Tax Assessment Act 1997*.

- (2A) Subject to subsection (3), where income:
- (a) is, or has, after 2 July 1973, been, derived, or derived in part, by a person to whom this section applies in carrying on business in a country outside Australia at or through a permanent establishment of the person in that country; and

- (b) consists of interest that:
- (i) is or has been paid to the person by another person to whom this section applies and is not an outgoing wholly incurred by that other person in carrying on business in a country outside Australia at or through a permanent establishment of that other person in that country; or
 - (ii) is or has been paid to the first-mentioned person by a person who is, or by persons each of whom is, not a resident and is, or is in part, an outgoing incurred by that last-mentioned person or those last-mentioned persons in carrying on business in Australia at or through a permanent establishment of that last-mentioned person or those last-mentioned persons in Australia;

this section also applies to that income or to the part of that income so derived, as the case may be.

Note: An amount of interest paid to a person by a temporary resident is an amount to which this section does not apply: see section 768-980 of the *Income Tax Assessment Act 1997*.

- (2B) Subject to subsection (3), this section also applies to income that:
- (a) is derived by a non-resident:
 - (i) during the 1993-94 year of income of the non-resident; or
 - (ii) during a later year of income of the non-resident; and
 - (b) consists of a royalty that:
 - (i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a foreign country at or through a permanent establishment of that person in that country; or
 - (ii) is paid to the non-resident by a person who, or by persons each of whom, is not a resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.
- (2C) Subject to subsection (3), where income:
- (a) is derived, or derived in part, by a person (the *recipient*) to whom this section applies in carrying on business in a

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country outside Australia at or through a permanent establishment of the person in that country; and

(b) consists of a royalty that:

- (i) is paid to the recipient by another person (the *payer*) to whom this section applies and is not an outgoing wholly incurred by the payer in carrying on business in a country outside Australia at or through a permanent establishment of the payer in that country; or
- (ii) is paid to the recipient by one or more persons (the *non-resident payers*), each of whom is not a resident, and is, or is in part, an outgoing incurred by the non-resident payers in carrying on business in Australia at or through a permanent establishment of the non-resident payers in Australia;

this section also applies to that income or to the part of that income mentioned in paragraph (a).

(2D) Subsections (2B) and (2C) do not apply to income to the extent to which it is a return on an equity interest in a company.

(3) This section does not apply to:

(aaa) income that consists of a non-share dividend that is unfrankable under section 215-10 of the *Income Tax Assessment Act 1997*; or

(a) income derived by a non-resident that is:

- (i) exempt from income tax because of section 50-5 (other than because of item 1.5A, 1.5B or 1.6 in the table in that section) or 50-10, item 6.1 or 6.2 of the table in section 50-30, section 50-40 or item 9.1 or 9.2 of the table in section 50-45 of the *Income Tax Assessment Act 1997*; and
- (ii) exempt from income tax in the country in which the non-resident resides; or

(aa) income derived by a non-resident that is an overseas charitable institution (within the meaning of section 121C) where the income is exempt under subsection 121ELA(1); or

(ab) income that is exempt from income tax because of item 9.4 of the table in section 50-45 of the *Income Tax Assessment Act 1997* (which exempts income derived by the Commonwealth Games Federation); or

- (ba) income that is exempt from income tax because of section 124ZM (which exempts dividends paid by PDFs); or
- (bb) income that is not included in assessable income because of section 159GZZZZE; or
- (d) income in respect of which a trustee is liable to be assessed under section 99 or section 99A; or
- (e) income that is derived by a trustee, being a trustee in relation to a trust created by a person who, at the time the income is derived, is a resident and in respect of which the Commissioner is empowered, under section 102, to assess the trustee to pay income tax; or
- (ga) income that consists of:
 - (i) the franked part of a dividend; or
 - (ii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) on a share acquired under an employee share scheme (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit; or
 - (iii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) to an eligible continuing substantial member (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit;other than a dividend in respect of which a determination is made under paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b) of this Act; or
- (gb) income that consists of a dividend derived from assets included in the insurance funds of a life assurance company that carries on business in Australia at or through a permanent establishment of the life assurance company in Australia; or
- (gc) income that consists of interest derived on a nostro account by a non-resident that is a foreign bank; or
- (h) income that consists of:
 - (ii) interest derived by a non-resident in carrying on business in Australia at or through a permanent

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- establishment of the non-resident in Australia (except interest derived by a limited partner in a VCLP, ESVCLP or AFOF as such a partner);
- (iv) interest to which section 128F, 128FA or 128GB applies; or
 - (j) income in respect of which a taxpayer is liable to be assessed under Division 9C; or
 - (jb) income that:
 - (i) is derived by a non-resident that is a superannuation fund for foreign residents; and
 - (ii) consists of interest, or consists of dividends or non-share dividends paid by a company that is a resident; and
 - (iii) is exempt from income tax in the country in which the non-resident resides; or
 - (k) income that is not included in assessable income because of subsection 271-105(1); or
 - (l) income derived by a trustee that, because of paragraph 102UK(2)(b) or 102UM(2)(b), is not included in the assessable income of a trustee beneficiary of the trust estate.
- (3A) Paragraph (3)(ga) does not apply to income consisting of a dividend, or a part of a dividend, that is derived by the trustee of a trust, or a partnership, to the extent (if any) to which any amount paid to, or applied for the benefit of, a taxpayer (being a beneficiary in the trust or a partner in the partnership) that:
- (a) was attributable to the dividend; and
 - (b) was paid or applied:
 - (i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or
 - (ii) under a financing arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time;
- may reasonably be regarded as equivalent to the payment of interest on a loan.
- (3B) In subsection (3A):
- commencing time*** means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.
-

financing arrangement has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

- (3C) In determining for the purposes of subsection (3A) the extent (if any) to which an amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:
- (a) the way in which the amount was calculated; and
 - (b) the conditions applying to the payment or application of the amount; and
 - (c) any other relevant matters.

- (3D) This section does not apply to a demerger dividend to which section 45B does not apply.

- (3E) This section does not apply to income that consists of a dividend that:
- (a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and
 - (b) is attributable to the permanent establishment; and
 - (c) is not paid to the person in the person's capacity as trustee.

Note: This subsection not only ensures that this section does not apply to that income to make withholding tax payable on it, but also (as a result) ensures that none of that income is non-assessable non-exempt income under section 128D. Subsection 44(1) makes that income assessable income.

- (3F) In subsection (3E):

permanent establishment of a person:

- (a) has the same meaning as in a double tax agreement (as defined in Part X) that relates to a foreign country and affects the person; or
 - (b) has the meaning given by subsection 6(1), if there is no such agreement.
- (4) A person who derives income to which this section applies that consists of a dividend is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.
- (5) A person who derives income to which this section applies that consists of interest is, subject to subsections (6) and (7), liable to

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pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.

(5A) A person who derives income to which this section applies that consists of a royalty is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.

(6) Where:

(a) income to which this section applies consists of interest and is paid to the person by whom it is derived by a person to whom this section applies; and

(b) the interest is, in part only, an outgoing incurred by that person to whom this section applies in carrying on business in a country outside Australia at or through a permanent establishment of that person to whom this section applies in that country;

income tax is payable under subsection (5) upon so much only of the income as is attributable to so much of the interest as is not an outgoing so incurred.

(7) Where:

(a) income to which this section applies consists of interest and is paid to the person by whom it is derived by a person who, or by persons each of whom, is not a resident; and

(b) the interest is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia;

income tax is payable under subsection (5) upon so much only of the income as is attributable to so much of the interest as is an outgoing so incurred.

(8) For the purposes of subparagraphs (2)(b)(i) and (2A)(b)(i) and paragraph (6)(b), where:

(a) interest is paid, or has, after 2 July 1973, been paid, to a person by another person, being a person to whom this section applies, carrying on business in a country outside Australia; and

(b) the interest or a part of the interest:

- (i) is interest incurred by the other person in gaining or producing income that is derived by the other person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country or is interest incurred by the other person for the purpose of gaining or producing income to be so derived; or
- (ii) is interest incurred by the other person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the other person otherwise than in so carrying on business at or through a permanent establishment of the other person in a country outside Australia;

the interest or the part of the interest, as the case may be, is not an outgoing incurred by the other person in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country.

- (9) For the purposes of subparagraphs (2)(b)(ii) and (2A)(b)(ii) and paragraph (7)(b), where:
 - (a) interest is paid, or has, after 2 July 1973, been paid, to a person by another person or other persons (in this subsection referred to as *the borrower*), being:
 - (i) another person who is or was carrying on business in Australia and is not or was not a resident; or
 - (ii) other persons who are or were carrying on business in Australia and each of whom is not or was not a resident; and
 - (b) the interest or a part of the interest:
 - (i) is interest incurred by the borrower in gaining or producing income that is derived by the borrower in carrying on business in Australia at or through a permanent establishment of the borrower in Australia or is interest incurred by the borrower for the purpose of gaining or producing income to be so derived; or
 - (ii) is interest incurred by the borrower in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the borrower in so carrying on

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business at or through a permanent establishment of the borrower in Australia;

the interest or the part of the interest, as the case may be, is an outgoing incurred by the borrower in carrying on business in Australia at or through a permanent establishment of the borrower in Australia.

(9A) For the purposes of subparagraphs (2B)(b)(i) and (2C)(b)(i), where:

- (a) a royalty is paid, to a person by another person, being a person to whom this section applies, carrying on business in a country outside Australia; and
- (b) the royalty, or a part of the royalty:
 - (i) is a royalty incurred by the other person in gaining or producing income that is derived by the other person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country or is a royalty incurred by the other person for the purpose of gaining or producing income to be so derived; or
 - (ii) is a royalty incurred by the other person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the other person otherwise than in so carrying on business at or through a permanent establishment of the other person in a country outside Australia;

the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the other person in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country.

(9B) For the purposes of subparagraphs (2B)(b)(ii) and (2C)(b)(ii), where:

- (a) a royalty is paid to a person by another person or other persons (the *licensee*), being:
 - (i) another person who is or was carrying on business in Australia and is not or was not a resident; or
 - (ii) other persons who are or were carrying on business in Australia and each of whom is not or was not a resident; and

- (b) the royalty or a part of the royalty:
 - (i) is a royalty incurred by the licensee in gaining or producing income that is derived by the licensee in carrying on business in Australia at or through a permanent establishment of the licensee in Australia or is a royalty incurred by the licensee for the purpose of gaining or producing income to be so derived; or
 - (ii) is a royalty incurred by the licensee in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the licensee in so carrying on business at or through a permanent establishment of the licensee in Australia;

the royalty or the part of the royalty, as the case may be, is an outgoing incurred by the licensee in carrying on business in Australia at or through a permanent establishment of the licensee in Australia.

(9C) If:

- (a) apart from this subsection, tax would be payable under subsection 126(1) on an amount of interest paid to a person; and
- (b) section 128F would apply to the interest, assuming that paragraph (1)(e) of that section had not been enacted;

then:

- (c) despite anything else in this section, the interest is taken, for the purposes of this Division, to be income derived by the person and to be income to which this section applies; and

Note: As a result of this paragraph, the interest will not be subject to tax under subsection 126(1): see paragraph 126(1)(b).

- (d) in addition to the effect of any credit arising under section 18-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the interest, the total tax payable by the person, other than under this section, is reduced by the amount of any tax payable under this section on the interest; and
- (e) tax paid under this section on the interest is not an allowable deduction.

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Section 128C

- (10) Income tax payable by a person in accordance with this section is in addition to any other income tax payable by him upon income to which this section does not apply.
- (11) Income tax payable by a person in accordance with this section upon income to which this section applies by virtue of subsection (2A) or (2C) is in addition to, and shall not be taken into account in arriving at the amount of, any other income tax payable by him in respect of that income.

128C Payment of withholding tax

- (1) Withholding tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the income to which the tax relates was derived by the person.
- (3) If any of the withholding tax which a person is liable to pay remains unpaid after the time by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) started at the beginning of the day by which the withholding tax was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the withholding tax;
 - (ii) general interest charge on any of the withholding tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

(4AA) If:

- (a) a person is liable to pay the general interest charge on an amount of withholding tax which is payable on an amount that, by virtue of the application of section 128AA, is taken to consist of interest paid in relation to the transfer of a qualifying security;
- (b) the Commissioner is satisfied that:
 - (i) before the security was transferred, a notice expressed to be issued under subsection 265B(4) identifying the security was given by the person, in connection with the transfer, to the transferee;

- (ii) one or more of the statements made in the notice is incorrect; and
 - (iii) the person did not know of the circumstance referred to in subparagraph (ii) at the time of transfer of the security; and
 - (c) the proper amount of the withholding tax liability of the person exceeds the amount that would have been the amount of the withholding tax liability if it were determined on the basis that the statements made in the notice were correct;
- the Commissioner shall remit so much of the amount of the general interest charge as bears to that amount the same proportion as the amount of the excess referred to in paragraph (c) bears to the amount of withholding tax.
- (6) The ascertainment of the amount of any withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.
 - (7) The Commissioner may serve on a person, by post or otherwise, a notice in which is specified:
 - (a) the amount of any withholding tax that the Commissioner has ascertained is payable by that person; and
 - (b) the date on which that tax became due and payable.
 - (8) The production of a notice served under subsection (7), or of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is evidence that the amount of withholding tax specified in the notice became due and payable by the person on whom the notice was served on the date so specified.

128D Certain income not assessable

Income other than income to which section 128B applies by virtue of subsection (2A), (2C) or (9C) of that section upon which withholding tax is payable, or upon which withholding tax would, but for paragraph 128B(3)(ga) or (jb), section 128F, section 128FA or section 128GB, be payable, is not assessable income and is not exempt income of a person.

Note: An amount of interest paid to a person by a temporary resident is non-assessable non-exempt income: see section 768-980 of the *Income Tax Assessment Act 1997*.

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Section 128F

128F Division does not apply to interest on certain publicly offered company debentures or debt interests

Interest to which this section applies

- (1) This section applies to interest paid by a company in respect of a debenture or debt interest in the company if:
 - (a) the company was a resident of Australia when it issued the debenture or debt interest; and
 - (b) the company is a resident of Australia when the interest is paid; and
 - (c) for a debt interest other than a debenture—the debt interest:
 - (i) is a non-equity share; or
 - (ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or
 - (iii) is a syndicated loan; or
 - (iv) is prescribed by the regulations for the purposes of this section; and
 - (d) either:
 - (i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or
 - (ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A).
- (1A) This section also applies to interest paid by a company in respect of a debenture or debt interest in the company if:
 - (a) the company was a non-resident when it issued the debenture or debt interest; and
 - (b) the company is a non-resident when the interest is paid; and
 - (c) the debenture or debt interest was issued, and the interest is paid, by the company in carrying on business at or through a permanent establishment in Australia; and
 - (d) for a debt interest other than a debenture—the debt interest:
 - (i) is a non-equity share; or
 - (ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or
 - (iii) is a syndicated loan; or

- (iv) is prescribed by the regulations for the purposes of this section; and
 - (e) either:
 - (i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or
 - (ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A).
- (1B) If:
- (a) some or all of the transfer price (within the meaning of section 128AA) of a debenture or debt interest is taken under that section to be income that consists of interest; and
 - (b) for a debt interest other than a debenture—the debt interest:
 - (i) is a non-equity share; or
 - (ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or
 - (iii) is a syndicated loan; or
 - (iv) is prescribed by the regulations for the purposes of this section; and
 - (c) either:
 - (i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or
 - (ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A);

this section applies to the interest.

Note: Subsection (6) does not apply to the interest because that subsection deals only with interest paid on a debenture or debt interest by the issuing company.

Tax not payable

- (2) Tax is not payable under this Division in respect of interest to which this section applies.

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Section 128F

Public offer test

- (3) The issue of a debenture or debt interest by a company *satisfies the public offer test* if the issue resulted from the debenture or debt interest being offered for issue:
- (a) to at least 10 persons each of whom:
 - (i) was carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets; and
 - (ii) was not known, or suspected, by the company to be an associate (see subsection (9)) of any of the other persons covered by this paragraph; or
 - (b) to at least 100 persons whom it was reasonable for the company to have regarded as either:
 - (i) having acquired debentures or debt interests in the past; or
 - (ii) being likely to be interested in acquiring debentures or debt interests; or
 - (c) as a result of being accepted for listing on a stock exchange, where the company had previously entered into an agreement with a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, requiring the company to seek such listing; or
 - (d) as a result of negotiations being initiated publicly in electronic form, or in another form, that was used by financial markets for dealing in debentures or debt interests; or
 - (e) to a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, who, under an agreement with the company, offered the debenture or debt interest for sale within 30 days in a way covered by any of paragraphs (a) to (d).
- (3A) An invitation to become a lender under a syndicated loan facility by a company *satisfies the public offer test* if the invitation was made:
- (a) to at least 10 persons each of whom:
 - (i) was carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets; and

- (ii) was not known, or suspected, by the company to be an associate (see subsection (9)) of any of the other persons covered by this paragraph; or
- (b) publicly in electronic form, or in another form, that was used by financial markets for dealing in debentures or debt interests; or
- (c) to a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, who, under an agreement with the company, made the invitation to become a lender under the facility within 30 days in a way covered by paragraph (a) or (b).

Global bonds

- (4) The issue of a debenture or debt interest by a company also **satisfies the public offer test** if the debenture or debt interest is a global bond (see subsection (10)).

Issues and invitations that always fail the public offer test

- (5) The issue of a debenture or debt interest by a company does not **satisfy the public offer test** if, at the time of the issue, the company knew, or had reasonable grounds to suspect, that:
 - (a) the debenture, an interest in the debenture or the debt interest was being, or would be, acquired either directly or indirectly by an associate of the company; and
 - (b) either:
 - (i) the associate is a non-resident and the debenture or interest, or the debt interest, was not being, or would not be, acquired by the associate in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
 - (ii) the associate is a resident of Australia and the debenture or interest, or the debt interest, was being, or would be, acquired by the associate in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
 - (c) the debenture or interest, or the debt interest, was not being, or would not be, acquired by the associate in the capacity of:
 - (i) a dealer, manager or underwriter in relation to the placement of the debenture or debt interest; or

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- (ii) a clearing house, custodian, funds manager or responsible entity of a registered scheme.
- (5AA) An invitation to become a lender under a syndicated loan facility is taken never to have *satisfied the public offer test* if, at the time the invitation is made, the company knew, or had reasonable grounds to suspect, that:
- (a) an associate of the company is or will become a lender under the facility; and
 - (b) either:
 - (i) the associate is a non-resident and the associate is not or would not become a lender under the facility in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
 - (ii) the associate is a resident of Australia and the associate is or would become a lender under the facility in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
 - (c) the associate is not or would not become a lender under the facility in the capacity of:
 - (i) a dealer, manager or underwriter in relation to the invitation; or
 - (ii) a clearing house, custodian, funds manager or responsible entity of a registered scheme.

Central borrowing authorities

- (5A) This section does not apply in relation to a debenture or debt interest issued in Australia by a company that is covered by subsection (7) or is a central borrowing authority of a State or Territory. A central borrowing authority is a body established for the purpose of raising finance for the State or Territory. The following are examples of central borrowing authorities:
- (a) the Tasmanian Public Finance Corporation;
 - (b) the Queensland Treasury Corporation;
 - (c) the South Australian Government Financing Authority;
 - (d) the Western Australian Treasury Corporation;
 - (e) the New South Wales Treasury Corporation;
 - (f) the Treasury Corporation of Victoria;

(g) the Northern Territory Treasury Corporation.

- (5B) Subsection (5A) does not apply to a bond issued in Australia by a central borrowing authority of a State or Territory. In this subsection **bond** includes debenture stock and notes.

No exemption for interest paid to certain associates of the issuing company

- (6) This section does not apply to interest paid by the company to a person in respect of the debenture or debt interest if, at the time of the payment, the company knows, or has reasonable grounds to suspect, that:
- (a) the person is an associate of the company; and
 - (b) either:
 - (i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
 - (ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and
 - (c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

Australian public bodies are treated as Australian resident companies

- (7) This section applies in relation to a debenture or debt interest issued by:
- (a) an authority of the Commonwealth; or
 - (b) a State or an authority of a State;
- as if the authority or State were a company and a resident of Australia.

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Debentures or debt interests issued through certain non-resident subsidiaries can also get the exemption

- (8) If:
- (a) a company (the **parent company**) beneficially owns all of the issued equity interests in the capital of a company (the **subsidiary**) that is not a resident of Australia; and
 - (b) the subsidiary's only business is raising finance for the purposes of the parent company; and
 - (c) the subsidiary raises finance in a country specified in the regulations (but not Australia) by issuing a debenture or debt interest in that country; and
 - (d) when the debenture or debt interest is issued, the subsidiary is treated as a resident of that country for the purposes of the tax law (see subsection (9)) of the country;

then this section has effect as if the parent company had raised the finance and issued the debenture or debt interest.

Definitions

- (9) In this section:

associate has the meaning given by section 318, except that paragraphs (1)(b), (2)(a) and (4)(a) of that section must be disregarded.

clearing house means a person who operates a facility that is used by financial markets for investing in or dealing in securities.

company includes a company in the capacity of trustee of a resident trust estate if:

- (a) the trust is not established by a will, or instrument of trust, for public charitable purposes; and
- (b) the only person who is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust is a company other than a company in the capacity of trustee.

debenture, without affecting its meaning elsewhere in this Act, includes a promissory note or a bill of exchange (in addition to the things mentioned in the definition of **debenture** in subsection 6(1)).

global bond has the meaning given by subsection (10).

registered scheme has the same meaning as in the *Corporations Act 2001*.

responsible entity, of a registered scheme, has the same meaning as in the *Corporations Act 2001*.

syndicated loan means a loan or other form of financial accommodation that is provided under a syndicated loan facility, being a facility that has 2 or more lenders.

syndicated loan facility has the meaning given by subsections (11), (12) and (13).

tax law, in relation to a country other than Australia, means:

- (a) if the country has federal foreign tax—the law of the country that imposes the federal foreign tax; or
- (b) in any other case—the law of the country that imposes foreign tax.

Global bond

- (10) A debenture or debt interest issued by a company is a **global bond** if:
- (a) it describes itself as a global bond or a global note; and
 - (b) it is issued to a clearing house (see subsection (9)) or to a person as trustee or agent for, or otherwise on behalf of, one or more clearing houses; and
 - (c) in connection with the issue, the clearing house or houses:
 - (i) confer rights in relation to the debenture or debt interest on other persons; and
 - (ii) record the existence of the rights; and
 - (d) before the issue:
 - (i) the company; or
 - (ii) a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, on behalf of the company;
announces that, as a result of the issue, such rights will be able to be created; and
 - (e) the announcement is made in a way or ways covered by any of paragraphs (3)(a) to (e) (reading a reference in those paragraphs to “debentures or debt interests” as if it were a

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reference to such a right, and a reference to the “company” as if it included a reference to the dealer, manager or underwriter); and

- (f) under the terms of the debenture or debt interest, interests in the debenture or debt interest are able to be surrendered, whether or not in particular circumstances, in exchange for other debentures or debt interests issued by the company that are not themselves global bonds.
- (11) A written agreement is a *syndicated loan facility* if:
- (a) the agreement describes itself as a syndicated loan facility or syndicated facility agreement; and
 - (b) the agreement is between one or more borrowers and at least 2 lenders; and
 - (c) under the agreement each lender severally, but not jointly, agrees to lend money to, or otherwise provide financial accommodation to, the borrower or borrowers; and
 - (d) the amount to which the borrower or borrowers will have access at the time the first loan or other form of financial accommodation is to be provided under the agreement is at least \$100,000,000 (or a prescribed amount).
- (12) A written agreement is also a *syndicated loan facility* if:
- (a) the agreement describes itself as a syndicated loan facility or syndicated facility agreement; and
 - (b) the agreement is between one or more borrowers and one lender where the agreement provides for the addition of other lenders; and
 - (c) the agreement provides that, when other lenders are added, each lender severally, but not jointly, agrees to lend money to, or otherwise provide financial accommodation to, the borrower or borrowers; and
 - (d) the amount to which the borrower or borrowers will have access at the time the first loan or other form of financial accommodation is to be provided under the agreement is at least \$100,000,000 (or a prescribed amount).
- (13) However, an agreement under which there are 2 or more borrowers is a *syndicated loan facility* only if all of them are:
- (a) members of the same wholly-owned group (within the meaning of the *Income Tax Assessment Act 1997*); or
-

- (b) parties to the same joint venture; or
 - (c) associates of each other.
- (14) For the purposes of this section, a change (including by novation) to the lenders under a syndicated loan facility does not result in a different agreement.
- (15) For a debt interest that consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share, this section applies only to interest paid in respect of the non-equity share.
- Note: Subsection 128A(1AB) defines *interest* for the purposes of this Division. Under that subsection, dividends paid in respect of a non-equity share are treated as being interest.
- (16) The rule in subsection (15) does not apply to the extent that interest in respect of the other related scheme or schemes would be interest to which this section applies in respect of a debenture or debt interest.

128FA Division does not apply to interest on certain publicly offered unit trust debentures or debt interests

Interest to which this section applies

- (1) This section applies to interest paid by the trustee of an eligible unit trust in respect of a debenture or debt interest issued by the trustee if:
- (a) for a debt interest other than a debenture—the debt interest:
 - (i) is a syndicated loan; or
 - (ii) is prescribed by the regulations for the purposes of this section; and
 - (b) either:
 - (i) the issue of the debenture or debt interest satisfies the public offer test set (see subsection (6)); or
 - (ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test (see subsection (6A)).
- (2) If:
- (a) some or all of the transfer price (within the meaning of section 128AA) of a debenture or debt interest issued by the

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trustee of an eligible unit trust is taken under that section to be income that consists of interest; and

- (b) for a debt interest other than a debenture—the debt interest:
 - (i) is a syndicated loan; or
 - (ii) is prescribed by the regulations for the purposes of this section; and
- (c) either:
 - (i) the issue of the debenture or debt interest satisfies the public offer test set (see subsection (6)); or
 - (ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test (see subsection (6A));

this section applies to the interest.

Note: Subsection (4) does not apply to the interest because that subsection deals only with interest paid on a debenture or debt interest by the issuing eligible unit trust.

Tax not payable

- (3) Tax is not payable under this Division in respect of interest to which this section applies.

No exemption for interest paid to certain associates of the issuing trustee

- (4) This section does not apply to interest paid by the trustee of an eligible unit trust to a person in respect of the debenture or debt interest if, at the time of the payment, the trustee knows, or has reasonable grounds to suspect, that:
 - (a) the person is an associate of the trustee; and
 - (b) either:
 - (i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or
 - (ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in a country outside Australia at or through a

permanent establishment of the associate in that country; and

- (c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

Debentures or debt interests issued through certain non-resident subsidiaries can also get the exemption

- (5) If:
 - (a) the trustee of an eligible unit trust holds all of the issued equity interests in the capital of a company that is not a resident of Australia; and
 - (b) the company's only business is raising finance for the purposes of the eligible unit trust; and
 - (c) the company raises finance in a country specified in the regulations (but not Australia) by issuing a debenture or debt interest in that country; and
 - (d) when the debenture or debt interest is issued, the company is treated as a resident of that country for the purposes of the tax law (see subsection (8)) of the country;

then this section has effect as if the trustee had raised the finance and issued the debenture or debt interest.

Public offer test

- (6) For the purposes of working out under this section whether the issue of a debenture or debt interest by the trustee of an eligible unit trust **satisfies the public offer test**, subsections 128F(3) to (5) apply to the trustee of the eligible unit trust in a corresponding way to the way in which those subsections apply to a company, subject to subsection (7) of this section.
- (6A) For the purposes of working out under this section whether an invitation to become a lender under a syndicated loan facility satisfies the public offer test, subsections 128F(3A) and (5AA) apply to the trustee of the eligible unit trust in a corresponding way to the way in which those subsections apply to a company, subject to subsection (7) of this section.
- (7) For the purposes of applying subsection 128F(3), (3A), (4), (5) or (5AA) as mentioned in subsection (6) or (6A) of this section:

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- (a) a reference in any of those subsections to a company knowing, suspecting or having reasonable grounds to suspect something, or it being reasonable for a company to have regarded something, is taken to be a reference to the trustee of the eligible unit trust knowing, suspecting or having reasonable grounds to suspect that thing, or it being reasonable for the trustee of the eligible unit trust to have regarded that thing; and
 - (b) a reference in any of those subsections to an associate is taken to be a reference to an associate within the meaning of this section; and
 - (c) a reference in any of those subsections to a global bond is taken to be a reference to a global bond within the meaning of subsection 128F(10).
- (7A) For the purposes of this section, a change (including by novation) to the lenders under a syndicated loan facility does not result in a different agreement.

Definitions

- (8) In this section:

associate has the meaning given by section 318, except that:

- (a) paragraphs (1)(b), (2)(a) and (4)(a) of that section must be disregarded; and
- (b) subsection (5) of that section applies to a unit trust mentioned in paragraph (b) of the definition of **eligible unit trust** in this subsection in the same way as that subsection applies in relation to a public unit trust.

clearing house has the same meaning as in section 128F.

company has the same meaning as in section 128F.

debenture:

- (a) in relation to the trustee of an eligible unit trust, includes debenture stock, bonds, promissory and other notes, bills of exchange and any other securities issued by the trustee, whether constituting a charge on the assets of the eligible unit trust or not; and
- (b) in relation to a company, has the same meaning as in section 128F.

eligible unit holder means:

- (a) the trustee of a public unit trust; or
- (b) the trustee (within the meaning of the *Income Tax Assessment Act 1997*) of a complying superannuation fund that has 50 or more members; or
- (c) the trustee of a pooled superannuation trust within the meaning of the *Income Tax Assessment Act 1997*; or
- (d) the trustee (within the meaning of the *Income Tax Assessment Act 1997*) of a complying approved deposit fund; or
- (e) a life insurance company within the meaning of the *Income Tax Assessment Act 1997*; or
- (f) a public company within the meaning of section 103A; or
- (g) the trustee of a unit trust in which all of the issued units are held by 2 or more entities that are eligible unit holders because of:
 - (i) the application of another paragraph of this definition (whether or not the same paragraph); or
 - (ii) a previous application of this paragraph; or
 - (iii) any combination of subparagraphs (i) and (ii).

eligible unit trust means:

- (a) a public unit trust; or
- (b) a unit trust in which all of the issued units are held by 2 or more eligible unit holders.

public unit trust has the same meaning as in section 102G.

registered scheme has the same meaning as in section 128F.

responsible entity has the same meaning as in section 128F.

syndicated loan has the same meaning as in section 128F.

syndicated loan facility has the same meaning as in section 128F.

tax law has the same meaning as in section 128F.

- (9) For the purposes of this section, a trust or fund of a kind mentioned in any of paragraphs (a) to (d) of the definition of ***eligible unit holder*** in subsection (8) in relation to a year of income is taken to

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be a trust or fund of that kind at all times during the year of income.

128GB Division not to apply to interest payments on offshore borrowings by offshore banking units

- (1) This section applies to:
 - (a) interest paid by a person in respect of an offshore borrowing of the person; or
 - (b) interest consisting of gold paid by a person in respect of an offshore gold borrowing of the person;if, when the borrowing took place, the person was an offshore banking unit (whether or not the person is still an offshore banking unit when the interest is paid).
- (2) Tax is not payable in accordance with this Division in respect of interest to which this section applies.

128NA Special tax payable in respect of certain securities and agreements

- (1) Where, but for subsection 128AA(2):
 - (a) the transferor of a qualifying security who is not liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay withholding tax in relation to the transfer; or
 - (b) the transferor of a qualifying security who is liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay additional withholding tax in relation to the transfer;then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person who is the transferee of the qualifying security of an amount equal to the withholding tax or the additional withholding tax, as the case may be, that the person would be so liable to pay.
- (2) Where:
 - (a) an attributable agreement payment or attributable agreement payments were made by a person under a relevant agreement before the commencement of section 128AC; and

(b) the Commissioner is of the opinion that the payment or payments were made before the commencement of that section, or that the payment or payments were of a greater amount than they would otherwise have been, for the sole or dominant purpose of securing the result that the total amount (in this subsection referred to as the *actual withholding tax*) of withholding tax payable under that section in relation to all attributable agreement payments made under the relevant agreement after the commencement of that section would be less than the amount (in this subsection referred to as the *notional withholding tax*) that would otherwise have been payable;

then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person of an amount equal to the amount by which the notional withholding tax exceeds the actual withholding tax.

- (3) For the purposes of subsection (2), expressions used in that subsection that are also used in section 128AC have the same respective meanings in that subsection as in that section.
- (4) Where there is an avoided withholding tax amount in relation to a person under this section, the person is liable to pay income tax, as imposed by the *Income Tax (Securities and Agreements) (Withholding Tax Recoupment) Act 1986*, in respect of the avoided withholding tax amount.

128NB Special tax payable in respect of certain dealings by current and former offshore banking units

- (1) Where a person who is or has been an offshore banking unit transfers to another person an amount of tax exempt loan money or tax exempt gold, other than by way of:
- (a) payment in carrying on an OB activity or what would be an OB activity if the person were an OBU; or
 - (b) repayment of an offshore borrowing or offshore gold borrowing;

the person is liable to pay income tax, as imposed by the *Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Act 1988*, on the lost withholding tax amount in respect of the transfer.

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- (2) For the purposes of subsection (1), the lost withholding tax amount in respect of the transfer is an amount ascertained in accordance with the formula:

$$\text{IWT rate} \times \text{PB rate} \times \text{PB term} \times \text{TA}$$

where:

IWT rate is the rate declared by the Parliament in respect of income to which subsection 128B(5) applies.

PB rate is the prevailing borrowing rate in relation to the person at the time of the transfer.

PB term is the number of years in the prevailing borrowing term in relation to the person at the time of the transfer; and

TA is the amount of tax exempt loan money or tax exempt gold transferred.

- (3) Tax under this section is due and payable by the person liable to pay the tax at the end of:
- (a) 21 days after the end of the month in which the transfer to which it relates takes place; or
 - (b) such further period as the Commissioner, in special circumstances, allows.

Application

- (3A) The Commissioner must not exercise his or her power under paragraph (3)(b) on or after 1 July 2000.

Note: For provisions about collection and recovery of tax on or after 1 July 2000, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (4) Section 128C (other than subsections (1) and (4AA)) applies, in addition to its application apart from this subsection, as if references in that section to withholding tax were references to tax payable under this section.
- (5) The Commissioner may remit the whole or part of an amount of tax payable under this section in relation to the transfer of an amount of tax exempt loan money or tax exempt gold to another person if:
- (a) the Commissioner is satisfied that:

- (i) the liability to pay the amount of tax arose because the person mistakenly believed, on reasonable grounds, that the other person was a non-resident or an offshore banking unit, that interest payable to the person in respect of the amount transferred would be an outgoing of a particular kind or that the amount transferred was not tax exempt loan money or tax exempt gold; and
 - (ii) the person had taken reasonable steps to ascertain the matter to which the mistaken belief related; or
- (b) the Commissioner is satisfied that there are special circumstances justifying the remission of the whole or part of the amount of tax.

128NBA Credits in respect of amounts assessed under Division 16E of Part III

When section applies

- (1) This section applies if:
- (a) the amount of any withholding tax that has become payable by a taxpayer on a payment of interest under, or in relation to the transfer of, a qualifying security has been paid; and
 - (b) there is a net Division 16E amount (see subsection (5)) in relation to the taxpayer in relation to:
 - (i) if the payment of interest is a payment in relation to the transfer of the qualifying security—the security; or
 - (ii) if the payment of interest is such a payment by virtue of the application of section 128AC in relation to an attributable agreement payment within the meaning of that section—the attributable agreement payment; or
 - (iii) in any other case—the payment of interest; and
 - (c) the amount of the withholding tax payable on the interest exceeds the amount that would have been payable on the interest if the interest were reduced by the net Division 16E amount.

Entitlement to apply for credit

- (2) The taxpayer may apply to the Commissioner for a credit of an amount equal to the excess.

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Requirements for application

- (3) The application must be in the approved form.

Entitlement to credit

- (4) If the Commissioner is satisfied as to the matters mentioned in paragraphs (1)(a), (b) and (c), the applicant is entitled to a credit of an amount equal to the excess.

Net Division 16E amount

- (5) For the purposes of this section, if:
- (a) the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the qualifying security, attributable agreement payment or payment of interest under section 159GQ;
exceeds:
 - (b) the sum of all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the security or the payment, as the case may be, under that section;
- there is a net Division 16E amount equal to the excess.

128P Objections

If an applicant for a certificate under this Division is dissatisfied with a decision of the Commissioner:

- (a) in any case—to refuse to issue the certificate; or
- (b) in the case of a certificate under section 128AB—to specify a particular amount in the certificate;

the applicant may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

128Q Power of Commissioner to obtain information

Section 264 applies, for the purposes of this Division, as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

128R Informal arrangements

For the purposes of this Division, the Commissioner may have regard to arrangements, understandings and practices not having legal force in the same manner as if they had legal force.

Division 11B—Equity investments in small-medium enterprises

128TG Summary of this Division

- (1) The following is a summary of this Division.
- (2) If, in connection with a money-lending business, a taxpayer is issued shares in a small-medium enterprise, any profit or loss the taxpayer makes when it disposes of certain shares that would be dealt with under section 6-5 or 8-1 of the *Income Tax Assessment Act 1997* is, to the extent that it relates to the period after the issue, instead dealt with under Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*.
- (3) For this to apply, the taxpayer must, after the issue, hold shares representing at least 10% of the value of the small-medium enterprise.

128TH When Division applies

This Division applies if:

- (a) a taxpayer acquires a threshold interest in an SME (see section 128TJ); and
- (b) afterwards, the taxpayer disposes of ordinary shares, or an interest in ordinary shares, in the SME that were issued to the taxpayer (whether before, at the time of, or after acquiring the threshold interest); and
- (ba) the disposal takes place:
 - (i) in any case—in the course of the taxpayer carrying on a business of lending money or otherwise in connection with such a business of the taxpayer; or
 - (ii) if the taxpayer is a company that is a subsidiary of another company—while the one or more members of the direct ownership group of the taxpayer (see subsection 128TL(3)) are each carrying on a business of lending money; and
- (c) the shares are not trading stock of the taxpayer; and

- (d) apart from this section:
 - (i) any profit on the disposal would be included in the taxpayer's assessable income of a year of income under section 6-5 of the *Income Tax Assessment Act 1997*; and
 - (ii) any loss on the disposal would be allowable as a deduction from the taxpayer's assessable income of a year of income under section 8-1 of that Act.

128TI Consequences of Division applying

If this Division applies:

- (a) no profit on the disposal is included in the taxpayer's assessable income of any year of income under section 6-5 of the *Income Tax Assessment Act 1997*; and
- (b) no loss on the disposal is allowable as a deduction from the taxpayer's assessable income of any year of income under section 8-1 of that Act; and
- (c) the taxpayer is taken:
 - (i) to have disposed of the shares, at the time of acquiring the threshold interest in the SME, for a consideration equal to their market value at the time; and
 - (ii) to have re-acquired the shares immediately afterwards (for the purposes of this section, as if they had been issued to the taxpayer) for an amount equal to that consideration; and
- (d) any profit or loss on the disposal that is taken to have happened by subparagraph (c)(i) is included in the taxpayer's assessable income under section 6-5 of that Act, or is an allowable deduction under section 8-1 of that Act, in the year of income in which the shares are actually (disregarding that subparagraph) disposed of, and not in any other year of income.

Note: As a result of this section, the tax consequences of the actual disposal will be dealt with under section 6-5 or 8-1 of that Act in respect of any period of holding before the acquisition of the threshold interest and under Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* in respect of any period after the acquisition of that interest.

128TJ Acquiring a threshold interest in an SME

A taxpayer *acquires a threshold interest in an SME* if:

- (a) ordinary shares in an SME (see section 128TK) are issued to the taxpayer; and
- (b) the shares are issued:
 - (i) in any case—in the course of the taxpayer carrying on a business of lending money or otherwise in connection with such a business of the taxpayer; or
 - (ii) if the taxpayer is a company that is a subsidiary of another company—while the one or more members of the direct ownership group of the taxpayer (see subsection 128TL(3)) are each carrying on a business of lending money; and
- (c) immediately after the shares, and any other ordinary shares forming part of the same issue, are issued to the taxpayer and any other persons, the percentage of the value of the SME represented by ordinary shares issued to the taxpayer (whether before or as part of the threshold share issue) is at least 10%; and
- (d) no previous issue of shares to the taxpayer had resulted in the taxpayer acquiring a threshold interest in the SME.

128TK SME or small-medium enterprise

- (1) An *SME* or *small-medium enterprise* is a company the total value of whose assets, as determined under this section, is no more than \$50 million.
- (2) The total value of the company's assets is the total value of its assets (both current and non-current) as shown in the last audited accounts prepared in relation to the company for the purposes of Division 4 of Part 3.6 of the *Corporations Act 2001* before the investment is made.
- (3) If:
 - (a) no such audited accounts have been prepared within the 12 months ending when the shares are issued; or
 - (b) the last such audited accounts prepared relate to a period that ended more than 18 months before the shares are issued;

then the company is not an **SME** unless:

- (c) before the shares are issued, the taxpayer gets an audited statement (see subsection (4)) showing the total value of the company's assets as at a time no more than 12 months before the shares are issued; and
 - (d) that value is no more than \$50 million.
- (4) In subsection (3), an **audited statement** is a statement audited by a person or firm:
- (a) who is appointed as the company's auditor in accordance with the *Corporations Act 2001*; or
 - (b) who is eligible to consent to being so appointed.

128TL Subsidiary and direct ownership group

- (1) A company (the **first company**) is a **subsidiary** of another company (the **second company**) if all the shares in the first company are beneficially owned by:
- (a) the second company; or
 - (b) a company that is, or 2 or more companies each of which is, a subsidiary of the second company; or
 - (c) the second company and a company that is, or 2 or more companies each of which is, a subsidiary of the second company.
- (2) For the purposes of subsection (1), if a company is a subsidiary of another company (including a company that is such a subsidiary because of a previous application or applications of this subsection), every company that is a subsidiary of the first-mentioned company is taken to be a subsidiary of that other company.
- (3) The one or more companies in whichever of paragraph (1)(a), (b) or (c) applies are the **direct ownership group** of the first company.

Division 11C—Payments in respect of mining operations on Aboriginal land

128U Interpretation

- (1) In this Division, unless the contrary intention appears:

Aboriginal means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a member of the race to which Torres Strait Islanders belong.

Aboriginal land means any estate or interest in land that, under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals, is held for the use or benefit of Aboriginals.

Aboriginals Benefit Account means the Aboriginals Benefit Account continued in existence by section 62 of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

distributing body means:

- (a) an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- (b) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (d) any other incorporated body that:
 - (i) is established by or under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals; and
 - (ii) is empowered or required (whether under that law or otherwise) to pay moneys received by the body to Aboriginals or to apply such moneys for the benefit of Aboriginals, either directly or indirectly.

mineral royalties means royalties payable in respect of the mining of minerals.

minerals means:

- (a) gold, silver, copper, tin and other metals;

- (b) coal, shale, petroleum (within the meaning of the *Income Tax Assessment Act 1997*) and valuable earths and substances;
 - (c) mineral substances;
 - (d) gems and precious stones; and
 - (e) ores and other substances containing minerals;
- whether suspended in water or not, and includes water.

miner's right means a miner's right or other authority issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals, being a right or authority that empowers the holders to take possession of, mine or occupy land or take any other action in relation to land for any purpose in connection with mining.

mining includes the obtaining of minerals from alluvial or surface deposits.

mining interests, in relation to any land, means any lease or other interest in the land (including a right to prospect or explore for minerals in or on the land) issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals.

mining payment means a payment made to a distributing body or made to, or applied for the benefit of, an Aboriginal or Aborigines, being:

- (a) a payment made on or after 1 July 1979 and before the day that the *Financial Management Legislation Amendment Act 1999* commenced, out of the Aborigines Benefit Reserve to the extent that the payment represents money paid into the Aborigines Benefit Reserve on or after 1 July 1979 in pursuance of subsection 63(2) or (4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
- (aa) a payment made on or after the day that the *Financial Management Legislation Amendment Act 1999* commenced by the Commonwealth in respect of a debit from the Aborigines Benefit Account to the extent that the payment represents an amount credited to the Aborigines Benefit Account in pursuance of subsection 63(1) or (4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and

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- (b) any payment made on or after 1 July 1979 that is of the kind referred to in subsection 44 (1) or (2) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
 - (c) any other payment made on or after 1 July 1979 under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals or under an agreement made in accordance with such provisions, being a payment made:
 - (i) in consideration of the issuing, granting or renewal of a miner's right or mining interest in respect of Aboriginal land;
 - (ii) in consideration of the granting of permission to a person to enter or remain on Aboriginal land or to do any act on Aboriginal land in relation to prospecting or exploring for, or mining of, minerals; or
 - (iii) by way of payment of mineral royalties payable in respect of the mining of minerals on Aboriginal land or by way of payment of an amount determined by reference to an amount of mineral royalties received by the Commonwealth, a State or the Northern Territory in respect of the mining of minerals on Aboriginal land;but does not include a payment made by a distributing body.
- (2) In section 260, *income tax* or *tax* includes mining withholding tax.
- (3) For the purposes of this Division, a mining payment is taken to include any amount that has been, or purports to have been, withheld from the mining payment for the purposes of section 12-320 in Schedule 1 to the *Taxation Administration Act 1953*.
- (4) For the purposes of the succeeding provisions of this Division, where a mining payment (in this subsection referred to as the *relevant mining payment*) is made to, or applied for the benefit of, 2 or more persons, there shall be deemed to have been made to, or applied for the benefit of, each of those persons, a mining payment of an amount equal to so much of the relevant mining payment as bears to the relevant mining payment the same proportion as 1 bears to the number of persons to whom the relevant mining payment was made or for whose benefit the relevant mining payment was applied, as the case may be.

128V Liability to mining withholding tax

- (1) Where a mining payment is made to, or applied for the benefit of, a person, that person is liable to pay income tax on the amount of the mining payment at the rate declared by the Parliament for the purposes of this section.
- (2) Income tax payable by a person in accordance with this section is in addition to other income tax payable by that person upon amounts that are not mining payments.

128W Payment of mining withholding tax

- (1) Mining withholding tax is due and payable by a person liable to pay the tax at the expiration of 21 days after the end of the month in which the payment of the amount to which the tax relates was made, or of such further period as the Commissioner, in special circumstances, allows.
- (2) Mining withholding tax, when it becomes due and payable, is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner.
- (3) Any unpaid mining withholding tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.
- (4) The ascertainment of the amount of any mining withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.
- (5) The Commissioner may serve on a person liable to pay mining withholding tax, by post or otherwise, a notice in which is specified:
 - (a) the amount of any mining withholding tax that the Commissioner has ascertained is payable by that person; and
 - (b) the date on which that tax became due and payable.
- (6) The production of a notice served under subsection (5), or of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is evidence that the amount of mining withholding tax specified in the notice became due and payable by the person

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on whom the notice was served on the date specified in the notice as the date on which that tax became due and payable.

Application

- (7) Subsections (2) and (3) do not apply in relation to any mining withholding tax that becomes due and payable on or after 1 July 2000.

Note: For provisions about collection and recovery of mining withholding tax and other amounts on or after 1 July 2000, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

128X Power of Commissioner to obtain information

Section 264 applies, for the purposes of this Division, as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Division 12—Oversea ships

129 Taxable income of ship-owner or charterer

Where a ship belonging to or chartered by a person whose principal place of business is out of Australia carries passengers, live-stock, mails or goods shipped in Australia, 5% of the amount paid or payable to him in respect of such carriage, whether that amount is payable in or out of Australia, shall be deemed to be taxable income derived by him in Australia.

130 Master or agent to make return

The master of the ship, or the agent or other representative in Australia of the owner or charterer, shall, when called upon by the Commissioner by notice in the *Gazette* or by any other notice to him, make a return of the amounts so paid or payable.

131 Determination by Commissioner

If such return is not made, or if the Commissioner is not satisfied with the return, he may determine the amount so paid or payable.

132 Assessment of tax

The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

133 Master liable to pay

- (1) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.
- (2) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom the notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

134 Notice of assessment

Where any person is liable to pay tax under this Division, the Commissioner shall give notice to him of the assessment, and he shall forthwith pay the tax.

135 Clearance of ship

A collector or officer of customs for any State or Territory shall not grant a clearance to the ship until he is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

135A Freights payable under certain agreements

Where goods are shipped in pursuance of an agreement of the kind specified in section 7C of the *Australian Industries Preservation Act 1906-1937*, the amount paid or payable to the owner or charterer of the ship in respect of the carriage of those goods shall, for the purposes of this Division, be deemed to be the amount remaining after deducting from the amount which would be payable according to the gross rate of freight specified in the agreement the amount of any rebate allowed in pursuance of the agreement or any payment, whenever made, by the owner or charterer, or out of funds provided by the owner or charterer, to any person or persons being the owner or shipper of the goods or the agent of either of them in respect of the shipment.

Division 13—International agreements and determination of source of certain income

136AA Interpretation

- (1) In this Division, unless the contrary intention appears:

acquire includes:

- (a) acquire by way of purchase, exchange, lease, hire or hire-purchase; and
- (b) obtain, gain or receive.

agreement means any agreement, arrangement, transaction, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

area covered by an international tax sharing treaty has the meaning given by subsection (4).

derive includes gain or produce.

expenditure includes loss or outgoing.

income includes any amount that is, or may be, included in assessable income or taken into account in calculating an amount that is, or may be, included in assessable income.

permanent establishment, in relation to a taxpayer, means:

- (a) a place that is a permanent establishment of the taxpayer by virtue of the definition of *permanent establishment* in section 6; or
- (b) a place at which any property of the taxpayer is manufactured or processed for the taxpayer, whether by the taxpayer or another person.

property includes:

- (a) a chose in action;
- (b) any estate, interest, right or power, whether at law or in equity, in or over property;
- (c) any right to receive income; and

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(d) services.

right to receive income means a right of a person to have income that will or may be derived (whether from property or otherwise) paid to, or applied or accumulated for the benefit of, the person.

services includes any rights, benefits, privileges or facilities and, without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

- (a) an agreement for or in relation to:
 - (i) the performance of work (including work of a professional nature);
 - (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction;
 - (iii) the conferring of rights, benefits or privileges for which consideration is payable in the form of a royalty, tribute, levy or similar exaction; or
 - (iv) the carriage, storage or packaging of any property or the doing of any other act in relation to property;
- (b) an agreement of insurance;
- (c) an agreement between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) an agreement for or in relation to the lending of moneys.

supply includes:

- (a) supply by way of sale, exchange, lease, hire or hire-purchase; and
- (b) provide, grant or confer.

taxpayer includes a partnership and a taxpayer in the capacity of a trustee.

- (2) The definition of **taxpayer** in subsection (1) shall not be taken to affect in any way the interpretation of that expression where it is used in this Act other than this Division.
- (3) In this Division, unless the contrary intention appears:
 - (a) a reference to the supply or acquisition of property includes a reference to agreeing to supply or acquire property;

- (b) a reference to consideration includes a reference to property supplied or acquired as consideration and a reference to the amount of any such consideration is a reference to the value of the property;
 - (c) a reference to the arm's length consideration in respect of the supply of property is a reference to the consideration that might reasonably be expected to have been received or receivable as consideration in respect of the supply if the property had been supplied under an agreement between independent parties dealing at arm's length with each other in relation to the supply;
 - (d) a reference to the arm's length consideration in respect of the acquisition of property is a reference to the consideration that might reasonably be expected to have been given or agreed to be given in respect of the acquisition if the property had been acquired under an agreement between independent parties dealing at arm's length with each other in relation to the acquisition; and
 - (e) a reference to the supply or acquisition of property under an agreement includes a reference to the supply or acquisition of property in connection with an agreement.
- (4) If, under an international tax sharing treaty, Australia and another country share tax revenues from activities undertaken in an area identified by or under the agreement, that area is referred to in this Division as the *area covered by the international tax sharing treaty*.

136AB Operation of Division

- (1) Nothing in the provisions of this Act other than this Division shall be taken to limit the operation of this Division.
- (2) In the application of this Division, the operation of section 70-20 of the *Income Tax Assessment Act 1997* shall be disregarded.

136AC International agreements

For the purposes of this Division, an agreement is an international agreement if:

- (a) a non-resident supplied or acquired property under the agreement otherwise than in connection with a business

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- carried on in Australia by the non-resident at or through a permanent establishment of the non-resident in Australia; or
- (b) a resident carrying on a business outside Australia supplied or acquired property under the agreement, being property supplied or acquired in connection with that business; or
 - (c) a taxpayer:
 - (i) supplied or acquired property under the agreement in connection with a business; and
 - (ii) carries on that business in an area covered by an international tax sharing treaty.

136AD Arm's length consideration deemed to be received or given

(1) Where:

- (a) a taxpayer has supplied property under an international agreement;
- (b) the Commissioner, having regard to any connection between any 2 or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any 2 or more of those parties, were not dealing at arm's length with each other in relation to the supply;
- (c) consideration was received or receivable by the taxpayer in respect of the supply but the amount of that consideration was less than the arm's length consideration in respect of the supply; and
- (d) the Commissioner determines that this subsection should apply in relation to the taxpayer in relation to the supply;

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the supply shall be deemed to be the consideration received or receivable by the taxpayer in respect of the supply.

(2) Where:

- (a) a taxpayer has supplied property under an international agreement;
- (b) the Commissioner, having regard to any connection between any 2 or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any 2 or more of those parties, were not

dealing at arm's length with each other in relation to the supply;

(c) no consideration was received or receivable by the taxpayer in respect of the supply; and

(d) the Commissioner determines that this subsection should apply in relation to the taxpayer in relation to the supply;

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the supply shall be deemed to have been received and receivable by the taxpayer in respect of the supply at the time when the property was supplied or, as the case requires, any of the property was first supplied, or at such later time or times as the Commissioner considers appropriate.

(3) Where:

(a) a taxpayer has acquired property under an international agreement;

(b) the Commissioner, having regard to any connection between any 2 or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any 2 or more of those parties, were not dealing at arm's length with each other in relation to the acquisition;

(c) the taxpayer gave or agreed to give consideration in respect of the acquisition and the amount of that consideration exceeded the arm's length consideration in respect of the acquisition; and

(d) the Commissioner determines that this subsection should apply in relation to the taxpayer in relation to the acquisition;

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the acquisition shall be deemed to be the consideration given or agreed to be given by the taxpayer in respect of the acquisition.

(4) For the purposes of this section, where, for any reason (including an insufficiency of information available to the Commissioner), it is not possible or not practicable for the Commissioner to ascertain the arm's length consideration in respect of the supply or acquisition of property, the arm's length consideration in respect of

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the supply or acquisition shall be deemed to be such amount as the Commissioner determines.

136AE Determination of source of income etc.

(1) Where:

- (a) by the application of section 136AD in relation to a taxpayer other than a partnership or trustee, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; and
- (b) a question arises whether, and if so, as to the extent to which:
 - (i) any income, being that consideration, is derived by the taxpayer from sources in Australia or sources out of Australia;
 - (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Australia or sources out of Australia; or
 - (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Australia or sources out of Australia;

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner determines.

(2) Where:

- (a) by the application of section 136AD in relation to a taxpayer being a partnership, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; and
- (b) in determining the net income, exempt income or partnership loss of the taxpayer or the extent to which the individual interest of a partner in the net income, exempt income or partnership loss of the taxpayer is attributable to sources in Australia, a question arises whether, and if so, as to the extent to which:

- (i) any income, being that consideration, is derived by the taxpayer from sources in Australia or sources out of Australia;
- (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Australia or sources out of Australia; or
- (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Australia or sources out of Australia;

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner determines.

(3) Where:

- (a) by the application of section 136AD in relation to a taxpayer being the trustee of a trust estate, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; and
- (b) in determining the net income or exempt income of the trust estate or the extent to which the share of a beneficiary of the net income or exempt income of the trust estate is attributable to sources in Australia, a question arises whether, and if so, as to the extent to which:
 - (i) any income, being that consideration, is derived by the taxpayer from sources in Australia or sources out of Australia;
 - (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Australia or sources out of Australia; or
 - (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Australia or sources out of Australia;

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner determines.

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- (4) Where:
- (a) a taxpayer (other than a partnership or trustee):
 - (i) is a resident and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is a resident and carries on a business in an area covered by an international tax sharing treaty; or
 - (iii) is a non-resident and carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia; or
 - (iv) is a non-resident and carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia; and
 - (b) a question arises whether, and if so, as to the extent to which:
 - (i) any income derived by the taxpayer is derived from sources in Australia or sources out of Australia; or
 - (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Australia or sources out of Australia;
 - (c) none of the preceding provisions of this section applies in relation to the determination of that question;
 - (d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable to the taxpayer than the result that would occur if that question were determined in accordance with this subsection; and
 - (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
 - (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv);
- the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner determines.

- (5) Where:
- (a) a taxpayer:
 - (i) is a partnership and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is a partnership and carries on a business in an area covered by an international tax sharing treaty; or
 - (iii) carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia and is a partnership in which any of the partners is a non-resident; or
 - (iv) carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia and is a partnership in which any of the partners is a non-resident; and
 - (b) in determining the net income, exempt income or partnership loss of the taxpayer or the extent to which the individual interest of a partner in the net income, exempt income or partnership loss of the taxpayer is attributable to sources in Australia, a question arises whether, and if so, as to the extent to which:
 - (i) any income derived by the taxpayer is derived from sources in Australia or sources out of Australia; or
 - (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Australia or sources out of Australia;
 - (c) none of the preceding provisions of this section applies in relation to the determination of that question;
 - (d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable to a taxpayer than the result that would occur if that question were determined in accordance with this subsection; and
 - (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
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- (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv); the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner determines.
- (6) Where:
- (a) a taxpayer:
 - (i) is the trustee of a trust estate and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is the trustee of a trust estate and carries on a business in an area covered by an international tax sharing treaty; or
 - (iii) carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia and is the trustee of a trust estate of which any of the beneficiaries is a non-resident; or
 - (iv) carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia and is the trustee of a trust estate of which any of the beneficiaries is a non-resident; and
 - (b) in determining the net income or exempt income of the trust estate or the extent to which the share of a beneficiary of the net income or exempt income of the trust estate is attributable to sources in Australia, a question arises whether, and if so, as to the extent to which:
 - (i) any income derived by the taxpayer is derived from sources in Australia or sources out of Australia; or
 - (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Australia or sources out of Australia;
 - (c) none of the preceding provisions of this section applies in relation to the determination of that question;
 - (d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable to a taxpayer than the result that would occur if that question were determined in accordance with this subsection; and
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- (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
 - (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv);the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or such sources and in such proportions, as the Commissioner determines.
- (7) In the application of the preceding provisions of this section in determining the source or sources of any income derived by a taxpayer or the extent to which expenditure incurred by the taxpayer was incurred in deriving income from a particular source or sources, the Commissioner shall have regard to:
 - (a) the nature and extent of any relevant business carried on by the taxpayer and the place or places at which the business is carried on;
 - (b) if any relevant business carried on by the taxpayer is carried on at or through a permanent establishment—the circumstances that would have, or might reasonably be expected to have, existed if the permanent establishment were a distinct and separate entity dealing at arm's length with the taxpayer and other persons; and
 - (c) such other matters as the Commissioner considers relevant.
- (8) A reference in this section to expenditure incurred by a taxpayer in deriving income includes a reference to expenditure incurred by the taxpayer in carrying on a business for the purpose of deriving income.
- (8A) In this section:
 - (a) a reference to income being derived from a source in Australia is to be read as including a separate reference to income being derived from a source in an area in Australia that is covered by an international tax sharing treaty; and
 - (b) a reference to expenditure being incurred in deriving income from a source in Australia is to be read as including a separate reference to expenditure being incurred in deriving

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income from a source in an area in Australia that is covered by an international tax sharing treaty.

Note: This means that the following are the 3 different kinds of sources referred to in this section:

- (a) a source in Australia (but not in an area covered by an international tax sharing treaty);
- (b) a source in an area in Australia that is covered by an international tax sharing treaty;
- (c) a source out of Australia.

136AF Consequential adjustments to assessable income and allowable deductions

(1) Where, by reason of the application of section 136AD in relation to the supply or acquisition of property by a taxpayer, an amount is included in the assessable income of the taxpayer of a year of income or a deduction is not allowable or is not, in part, allowable, to the taxpayer in respect of a year of income, the Commissioner may, in relation to any taxpayer (in this subsection referred to as the *relevant taxpayer*):

(a) if, in the opinion of the Commissioner:

- (i) there has been included, or would but for this subsection be included, in the assessable income of the relevant taxpayer of a year of income an amount that would not have been included or would not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income if the property had been supplied or acquired, as the case may be, under an agreement between independent parties dealing at arm's length with each other in relation to the supply or acquisition; and
- (ii) it is fair and reasonable that that amount or a part of that amount should not be included in the assessable income of the relevant taxpayer of that year of income;

determine that that amount or that part of that amount, as the case may be, should not have been included or shall not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income; and

(b) if, in the opinion of the Commissioner:

- (i) an amount would have been allowed or would be allowable to the relevant taxpayer as a deduction in

relation to a year of income if the property had been supplied or acquired, as the case may be, under an agreement between independent parties dealing at arm's length with each other in relation to the supply or acquisition, being an amount that was not allowed or would not, but for this subsection, be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; and

- (ii) it is fair and reasonable that that amount or a part of that amount should be allowable as a deduction to the relevant taxpayer in relation to that year of income;

determine that that amount or that part of that amount, as the case may be, should have been allowed or shall be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income;

and the Commissioner shall take such action as he considers necessary to give effect to any such determination.

- (1A) Subsection (1) also has the effect that it would have if the reference in that subsection to the application of section 136AD in relation to a taxpayer included references to:

- (a) the application of section 136AD in accordance with section 102AAZA for the purpose of calculating the attributable income of a trust estate; and
(b) the application of section 136AD in accordance with section 400 for the purpose of calculating the attributable income of a CFC.

- (2) Where the Commissioner makes a determination under subsection (1) by virtue of which an amount is allowed as a deduction to a taxpayer in relation to a year of income, that amount shall be deemed to be so allowed as a deduction by virtue of such provision of this Act as the Commissioner determines.

- (3) Where:

- (a) by reason of the application of section 136AD in relation to the supply or acquisition of property by a taxpayer, an amount is included in the assessable income of the taxpayer of a year of income or a deduction is not allowable or is not, in part, allowable, to the taxpayer in respect of a year of income;

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- (b) in the opinion of the Commissioner, an amount of withholding tax has become payable and has been paid in respect of interest or royalties paid to a taxpayer (in this subsection referred to as the *relevant taxpayer*), being withholding tax that would not have become payable if the property had been supplied or acquired by the first-mentioned taxpayer under an agreement between independent parties dealing at arm's length with each other in relation to the supply or acquisition; and
 - (c) in the opinion of the Commissioner, it is fair and reasonable that that amount of withholding tax or part of that amount of withholding tax should not have become payable by the relevant taxpayer;
the Commissioner may determine that that amount of withholding tax or that part of that amount of withholding tax, as the case may be, should not have become payable by the relevant taxpayer and the Commissioner shall take such action as he considers necessary to give effect to any such determination.
- (4) Where, at any time, a taxpayer considers that the Commissioner ought to make a determination under subsection (1) or (3) in relation to the taxpayer, the taxpayer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under the subsection concerned.
 - (5) The Commissioner shall consider the request and serve on the taxpayer, by post or otherwise, a written notice of his decision on the request.
 - (6) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Division 13A—Employee share schemes

Subdivision A—Key principle and overview of Division

139 The key principle

This Division provides for the taxation treatment of shares and rights acquired under employee share schemes.

Any discount from the market price of the shares or rights is assessable. However, 2 alternative concessions are available for shares or rights provided under schemes that satisfy certain requirements.

The first concession is that the discount will not be included in the employee's assessable income until a later year of income.

The second concession is that the employee may make an election that reduces the amount assessed. Additional requirements must be satisfied to obtain this concession.

139A Overview of Division

The following table summarises the contents of this Division:

OVERVIEW	
Subdivision	Coverage
A	Key principle and overview
B	The basic requirement that the discount be included in assessable income
C	Key concepts: <i>employee share scheme, discount, cessation time, qualifying shares, qualifying rights and exemption conditions</i>
D	Special provisions
DA	Takeovers and restructures
DB	Stapled securities
E	Elections

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OVERVIEW

Subdivision	Coverage
F	Special provisions about the market value of a share or right
G	Definitions (including a list of all terms defined in the Division)

Subdivision B—Inclusion of discount in assessable income

139B Discount to be included in assessable income

- (1) If a taxpayer has acquired a share or right under an employee share scheme, the assessable income of the taxpayer includes the discount given in relation to the share or right.

Note: *Employee share scheme* is defined in section 139C.

- (1A) However, for any period during which the taxpayer is a non-resident, the discount is not included under subsection (1) in the assessable income of the taxpayer to the extent that the discount is given in respect of, or for or in relation directly or indirectly to, the taxpayer's engagement in foreign service that relates to the acquisition of the share or right.

Note: *Foreign service* is defined in section 139GBA.

When the discount is to be included

- (2) Unless subsection (2A) or (3) applies, the discount is included in the taxpayer's assessable income of the year of income in which the share or right is acquired.
- (2A) Unless subsection (3) applies, if the taxpayer:
- (a) acquired the share or right while the taxpayer was not an employee; and
 - (b) subsequently became an employee while holding the share or right;

the discount is included in the taxpayer's assessable income in the year of income in which, after the acquisition, the taxpayer first becomes an employee in respect of employment or services that affect the acquisition or holding of the share or right.

Note: Subsection 139GA(2) limits the meaning of *employee* in this subsection, so that engagement in foreign service is not of itself sufficient.

- (3) If the share or right is a qualifying share or right and the taxpayer has not made an election under section 139E covering the share or right, the discount is included in the taxpayer's assessable income of the year of income in which the cessation time (see sections 139CA and 139CB) occurs.

139BA Reduction of amounts included—elections

- (1) This section applies if a taxpayer has made an election under section 139E for a year of income and the exemption conditions (see section 139CE) are satisfied in relation to shares or rights covered by the election. It applies to the total amount otherwise included in a taxpayer's assessable income for the year of income under section 139B in respect of those shares or rights.
- (2) The total amount is only included in the assessable income to the extent that it is greater than \$1,000.

Subdivision C—Key concepts: employee share scheme, discount, cessation time, qualifying shares and rights and exemption conditions

139C Employee share schemes

- (1) A taxpayer acquires a share or right under an *employee share scheme* if the share or right is acquired by the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of the taxpayer or an associate of the taxpayer.
- (2) A taxpayer acquires a share or right under an employee share scheme if the share or right is acquired by the taxpayer in respect of, or for or in relation directly or indirectly to, any services provided by the taxpayer or an associate of the taxpayer.
- (3) The taxpayer does not acquire a share or right under an employee share scheme if the consideration for the acquisition is equal to, or more than, the market value of the share or right at the time that it is acquired.

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- (4) The taxpayer does not (except for the purposes of Subdivision DA) acquire a share under an employee share scheme if the taxpayer acquires the share as the result of exercising a right that the taxpayer acquired under an employee share scheme.
- (5) The taxpayer does not acquire a share or right under an employee share scheme if the taxpayer is the trustee of a trust whose sole activities are obtaining shares, or rights to acquire shares, and providing those shares or rights to employees of a company or to associates of those employees.

139CA Cessation time—shares

- (1) The *cessation time* for a share is the time when the taxpayer acquires the share if:
 - (a) there is no restriction preventing the taxpayer from disposing of the share before a particular time; and
 - (b) the scheme under which the share was acquired did not have any conditions that could result in the taxpayer forfeiting ownership of the share.
- (2) If subsection (1) does not apply, the *cessation time* for a share is the earliest of the following:
 - (a) the time when the taxpayer disposes of the share;
 - (b) subject to subsection (4), the later of:
 - (i) the time when any restriction preventing the taxpayer from disposing of the share ceases to have effect; and
 - (ii) the time when any condition that could result in the taxpayer forfeiting ownership of shares ceases to have effect;
 - (c) the time when the employment in respect of which the share was acquired ceases;
 - (d) the end of the 10 year period starting when the taxpayer acquired the share.
- (3) For the purposes of subsection (2), a taxpayer only ceases the employment in respect of which the share was acquired when the taxpayer is no longer employed by any of the following:
 - (a) the employer of the taxpayer in that employment;
 - (b) a holding company of the employer;

- (c) a subsidiary of the employer or of a holding company of the employer.
- (4) Paragraph (2)(b) does not apply in relation to a share that, because of section 139DQ, is treated, for the purposes of this Division, as if it were a continuation of a share acquired under an employee share scheme.

Note: Subdivision DA can affect whether the taxpayer is treated as having disposed of a share or ceased employment.

139CB Cessation time—rights

- (1) The *cessation time* for a right is the earliest of the following:
 - (a) the time when the taxpayer disposes of the right (other than by exercising it);
 - (b) the time when the employment in respect of which the right was acquired ceases;
 - (c) subject to subsection (3), if the right is exercised and there is a restriction preventing the taxpayer from disposing of the share acquired as a result of the exercise of the right or a condition that could result in the taxpayer forfeiting ownership of the share—the time when the last such restriction or condition ceases to have effect;
 - (d) subject to subsection (3), if the right is exercised and there is no such restriction or condition—the time when the right is exercised;
 - (da) if subsection (3) applies—the time when the taxpayer disposes of the share referred to in paragraph (3)(b);
 - (e) the end of the 10 year period starting when the taxpayer acquired the right.
- (2) For the purposes of subsection (1), a taxpayer only ceases the employment in respect of which the right was acquired when the taxpayer is no longer employed by any of the following:
 - (a) the employer of the taxpayer in that employment;
 - (b) a holding company of the employer;
 - (c) a subsidiary of the employer or of a holding company of the employer.

Note: Subdivision DA can affect whether the taxpayer is treated as having disposed of a right or ceased employment.

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- (3) Paragraphs (1)(c) and (d) do not apply in relation to a right if:
- (a) a share has been or is acquired as a result of the exercise of the right; and
 - (b) because of section 139DQ, another share is treated, for the purposes of this Division, as if it were a continuation of that share.

139CC Calculation of discount

- (1) This section sets out how to calculate the *discount* given in relation to a share or right.

Case 1—discount covered by subsection 139B(2) or (2A)

- (2) If subsection 139B(2) or (2A) applies to the discount, the discount is the market value of the share or right at the time when it was acquired by the taxpayer less any consideration paid or given by the taxpayer as consideration for the acquisition of the share or right.

Case 2—discount covered by subsection 139B(3)—share or right disposed of at arm's length within 30 days

- (3) If subsection 139B(3) applies to the discount, and the share or right (or any share acquired as a result of the exercise of the right) is disposed of by the taxpayer in an arm's length transaction at the cessation time or within 30 days after the cessation time, the discount is:

- (a) the amount or value of any consideration received by the taxpayer for the disposal;

reduced by:

- (b) the amount or value of any consideration paid or given by the taxpayer as consideration for the acquisition of the share or right; and
- (c) for a right that has been exercised—the amount or value of any consideration paid or given to exercise the right.

Case 3—discount covered by subsection 139B(3)—share or right not disposed of at arm's length within 30 days

- (4) If subsection 139B(3) applies to the discount, and the share or right (or any share acquired as a result of the exercise of the right) is not

disposed of by the taxpayer in an arm's length transaction at the cessation time or within 30 days after the cessation time, the discount is:

- (a) the market value of the share or right (or the share acquired as a result of the exercise of the right) at the cessation time; reduced by:
- (b) the amount of any consideration paid or given by the taxpayer as consideration for the acquisition of the share or right; and
- (c) for a right that has been exercised—the amount of any consideration paid or given by the taxpayer to exercise the right.

Note: Section 139DS can affect the amount of consideration that the taxpayer is treated as having paid or given.

139CD Meaning of *qualifying shares* and *qualifying rights*

- (1) For the purposes of this Division:
 - (a) a share in a company is a ***qualifying share*** if:
 - (i) the 6 conditions below are satisfied; and
 - (ii) in the case of a share that a taxpayer has acquired while engaged in foreign service—section 139CDA applies to the share; and
 - (b) a right to acquire a share in a company is a ***qualifying right*** if:
 - (i) the first, second, third, fifth and sixth of the 6 conditions below are satisfied; and
 - (ii) in the case of a right that a taxpayer has acquired while engaged in foreign service—section 139CDA applies to the right.

Note 1: Section 139DF excludes certain shares from being qualifying shares.

Note 2: ***Foreign service*** is defined in section 139GBA.

- (2) The first condition is that the share or right is acquired by a taxpayer under an employee share scheme.
- (3) The second condition is that the company is the employer of the taxpayer or a holding company of the employer of the taxpayer.
- (4) The third condition is that all the shares available for acquisition under the scheme are ordinary shares and all the rights available

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for acquisition under the scheme are rights to acquire ordinary shares.

- (5) The fourth condition is that, at the time the share was acquired, at least 75% of the permanent employees of the employer were, or at some earlier time had been, entitled to acquire:
 - (a) shares or rights under the scheme; or
 - (b) shares or rights in the employer, or a holding company of the employer, under another employee share scheme.
- (6) The fifth condition is that, immediately after the acquisition of the share or right, the taxpayer does not hold a legal or beneficial interest in more than 5% of the shares in the company.
- (7) The sixth condition is that, immediately after the acquisition of the share or right, the taxpayer is not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company.
- (8) The Commissioner may determine that the fourth condition (see subsection (5)) is taken to have been satisfied in relation to a share if the Commissioner considers that the employer has done everything reasonably practicable to ensure that the condition was satisfied.

139CDA Additional requirement for shares or rights acquired while engaged in foreign service

This section applies to a share in a company, or a right to acquire a share in a company, if the taxpayer in question first becomes an employee, in respect of employment or services that affect the acquisition or holding of the share or right, before the cessation time for the share or right.

Note: Subsection 139GA(2) limits the meaning of *employee* in this section, so that engagement in foreign service is not of itself sufficient.

139CE Exemption conditions

- (1) This section sets out the 3 exemption conditions that, subject to subsection (3A), must be satisfied for section 139BA to apply to a share or right acquired under an employee share scheme.

- (2) The first condition is that the scheme did not have any conditions that could result in any recipient forfeiting ownership of shares or rights acquired under it.
- (3) The second condition is that the scheme was operated so that no recipient would be permitted to dispose of a share or right (the *scheme share* or *scheme right*) acquired under it, or of a share acquired as a result of a scheme right, before the earlier of the following times:
 - (a) the end of the period of 3 years after the time of the acquisition of the scheme share or scheme right;
 - (b) the time when the taxpayer ceased, or first ceased, to be employed by the employer.
- (3A) Subsection (3) does not apply in relation to a share or right that, because of section 139DQ, is treated, for the purposes of this Division, as if it were a continuation of a share or right acquired under an employee share scheme.
- (4) The third condition is that both the employee share scheme and any scheme for the provision of financial assistance in respect of acquisitions of shares or rights under the employee share scheme are operated on a non-discriminatory basis (see section 139GF).
- (5) For the purposes of subsection (3), a taxpayer only ceases the employment in respect of which the share or right was acquired when the taxpayer is no longer employed by any of the following:
 - (a) the employer of the taxpayer in that employment;
 - (b) a holding company of the employer;
 - (c) a subsidiary of the employer or of a holding company of the employer.

Subdivision D—Special provisions

139D Discount assessable to associate if share acquired by taxpayer in respect of associate's employment

- (1) This section applies if:
 - (a) a taxpayer has acquired a share or right under an employee share scheme; and

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- (b) the share or right was acquired by the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of, or services rendered by, an associate of the taxpayer; and
 - (c) apart from this section, an amount:
 - (i) would be included in respect of the acquisition in the assessable income of the taxpayer of a year of income under this Division; or
 - (ii) would have been so included if the taxpayer had been a resident at the time of the acquisition.
- (2) Subject to subsection (3), if this section applies, the amount is included in the associate's assessable income of the year of income instead of in the taxpayer's assessable income.
- (3) If:
- (a) this section applies; and
 - (b) the taxpayer acquired the share or right while the associate was not an employee; and
 - (c) the associate subsequently became an employee while the taxpayer was holding the share or right;
- the amount is included in the associate's assessable income in the year of income in which, after the acquisition, the associate first becomes an employee in respect of employment or services that affect the acquisition or holding of the share or right.

Note: Subsection 139GA(2) limits the meaning of *employee* in this subsection, so that engagement in foreign service is not of itself sufficient.

139DA Acquisition of legal interest in shares or rights—certain discounts not assessable

- If:
- (a) a taxpayer has acquired the legal interest in a share or right; and
 - (b) the taxpayer, or an associate of the taxpayer, is required to include an amount under section 139B in the taxpayer's or the associate's assessable income as a result of the acquisition; and
 - (c) the taxpayer, or the associate, is, or would apart from section 139BA be, required to include an amount under

section 139B in his or her assessable income as a result of the acquisition of the beneficial interest in the share or right; the taxpayer, or the associate, is not required to include the amount mentioned in paragraph (b).

139DB No deduction until share or right acquired

If, at a particular time, a person (the *provider*) provides another person with money or other property:

- (a) under an arrangement; and
- (b) for the purpose of enabling another person (the *ultimate beneficiary*) to acquire, directly or indirectly, a share or right, under an employee share scheme;

then, for the purpose of determining when any deduction is allowable to the provider in respect of provision of the money or other property, the provider is taken to have provided it not before the time when the ultimate beneficiary acquires the share or right.

Note: The amount included in assessable income for the acquisition of an interest in a share is the same as for the acquisition of the share—see Subdivision F and section 139G.

139DC Deduction for provider of certain qualifying shares or rights

- (1) A taxpayer is entitled to an allowable deduction in the taxpayer's assessment in respect of income of a year of income (the *benefit year*) if the taxpayer provides one or more qualifying shares or qualifying rights to another person in the benefit year that satisfy the following conditions:
 - (a) the exemption conditions (see section 139CE);
 - (b) the condition that no amount has been allowed, is allowable, or will be allowable, as a deduction in the assessment of the taxpayer in respect of income of any year of income in respect of expenditure incurred in providing the share or right.
- (2) The amount of the deduction in respect of the shares or rights provided by the taxpayer to the person in the benefit year is the lesser of:
 - (a) \$1,000; and
 - (b) the sum of the market values, at the time that the share or right is provided, of each qualifying share or qualifying right

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that satisfies the conditions in subsection (1) reduced by the sum of any amounts paid by the person as consideration for those shares or rights.

Note: Only one deduction is allowable under this section in respect of each person to whom the taxpayer provided shares or rights in a year.

139DD No benefit where rights lost

- (1) For the purposes of this Division, a right to acquire a share in a company is never acquired by a taxpayer if the following 2 requirements are satisfied.
- (2) The first requirement is that the taxpayer loses the right without having exercised it.
- (2A) To avoid doubt:
 - (a) the taxpayer does not lose the right if, because of section 139DQ, another right is treated, for the purposes of this Division, as if it were a continuation of that right; but
 - (b) the taxpayer loses the right if the taxpayer loses the other right without having exercised it.
- (3) The second requirement is that the company was, at the time the right was acquired, the employer of the taxpayer or a holding company of the employer of the taxpayer.
- (3A) To avoid doubt, the company does not cease to be the employer of the taxpayer or a holding company of the employer of the taxpayer if, because of section 139DQ, the taxpayer's employment by another company is treated, for the purposes of this Division, as if it were a continuation of that employment.
- (3B) If, but for subsection 139DR(2), rights acquired by the taxpayer would, because of section 139DQ, be treated for the purposes of this Division as a continuation of other rights, the rights are to be treated for the purposes of this section as if they were a continuation of the other rights.
- (4) Section 170 does not prevent the amendment of an assessment at any time for the purpose of giving effect to this section.

139DE Amount not assessable under other provisions

Section 21A of this Act and section 15-2 of the *Income Tax Assessment Act 1997* do not apply to:

- (a) a share or right that a taxpayer acquires under an employee share scheme; or
- (b) any share acquired by a taxpayer as a result of a right covered by paragraph (a).

139DF Anti-avoidance—certain shares and rights not qualifying shares and qualifying rights

- (1) Despite any other provision of this Part, a share in a company, or a right to acquire a share in a company, acquired by a taxpayer is not a qualifying share or right if:
 - (a) the predominant business of the company (whether or not stated in its constituent documents) is the acquisition, sale or holding of shares, securities or other investments (whether directly or indirectly through one or more companies, partnerships or trusts); and
 - (b) the taxpayer is employed by the company and is also employed by another company; and
 - (c) the company and the other company are members of the same company group.
- (2) A company is a *member of the same company group* as another company if one of the companies is a holding company of the other or if another company is a holding company of both companies.

139DG Amendment of assessments to account for reductions of amounts included in assessable income

- (1) If:
 - (a) an amount has been included in a taxpayer's assessable income of a particular year of income; and
 - (b) that amount is reduced or increased because of a change in the extent (if any) of the application of section 23AF or 23AG or subsection 139B(1A) in relation to the amount during a subsequent year of income;section 170 does not prevent the amendment of an assessment, for the purpose of giving effect to the reduction or increase, at any

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time during the period of 4 years starting immediately after the income year during which the period of employment or service relating to the acquisition of the share or right in question ends.

- (2) In paragraph (1)(b):
- (a) the reference to an amount being reduced includes a reference to the amount being reduced to a nil amount; and
 - (b) the reference to an amount being increased includes a reference to the amount being increased from a nil amount.

Subdivision DA—Takeovers and restructures

139DP Object of this Subdivision

The object of this Subdivision is to allow this Division to continue to apply, in appropriate circumstances, to 100% takeovers or restructures of companies that have employee share schemes.

139DQ The effect of 100% takeovers and restructures on employee share schemes

Treating acquisitions as continuations of existing shares etc.

- (1) To the extent that:
- (a) a taxpayer acquires:
 - (i) shares in a company (the ***new company***) that can reasonably be regarded as matching shares in another company (the ***old company***) that the taxpayer had acquired under an employee share scheme; or
 - (ii) rights in a company (the ***new company***) that can reasonably be regarded as matching rights in another company (the ***old company***) that the taxpayer had acquired under an employee share scheme; and
 - (b) the acquisition occurs in connection with a 100% takeover, or a restructure, of the old company; and
 - (c) as a result of the takeover or restructure, the taxpayer ceased to hold the shares or rights in the old company;
- then, if the conditions in section 139DR are met, the matching shares or rights are treated, for the purposes of this Division and Subdivision 768-R of the *Income Tax Assessment Act 1997*, as if they were a continuation of the shares or rights in the old company.

Note: In determining to what extent something can reasonably be regarded as matching shares or rights in the old company, one of the factors to consider is the respective market values of that thing and of those shares or rights.

Treating acquisitions as disposals of existing shares etc.

- (2) However, to the extent that, in connection with the takeover or restructure, the taxpayer acquires anything that:
- (a) can reasonably be regarded as matching shares or rights in the old company that the taxpayer had acquired under an employee share scheme; but
 - (b) is not a matching share or right to which subsection (1) applies;

the taxpayer is treated, for the purposes of this Division and Subdivision 768-R of the *Income Tax Assessment Act 1997*, as having disposed of shares, or disposed of rights (other than by exercising them), that the taxpayer held, under an employee share scheme, in the old company immediately before the takeover or restructure.

Treating new employment as continuation of existing employment

- (3) If subsection (1) applies, any employment of the taxpayer in:
- (a) the new company; or
 - (b) a holding company of the new company; or
 - (c) a subsidiary of the new company or of a holding company of the new company;

is treated, for the purposes of this Division and Subdivision 768-R of the *Income Tax Assessment Act 1997*, as a continuation of the employment in respect of which he or she acquired the shares or rights in the old company or in a subsidiary of the old company.

139DR Conditions for the continuation of shares or rights

- (1) The first condition is that, immediately before the takeover or restructure, the taxpayer held shares or rights in the old company under an employee share scheme.
- (2) The second condition is that, if the taxpayer has not made an election under section 139E covering the share or right, the taxpayer is, at or about the time the taxpayer acquires the matching shares or rights, an employee of:

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- (a) the new company; or
 - (b) a holding company of the new company; or
 - (c) a subsidiary of the new company or of a holding company of the new company.
- (3) The third condition is that:
- (a) to the extent that the matching shares or rights are shares, they are ordinary shares; or
 - (b) to the extent that the matching shares or rights are rights, they are rights to acquire ordinary shares.
- (5) The fourth condition is that, at the time the taxpayer acquires the matching shares or rights, the taxpayer does not hold a legal or beneficial interest in more than 5% of the shares of the new company.
- (6) The fifth condition is that, at that time, the taxpayer is not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of the new company.

139DS Apportionment rules

- (1) If:
- (a) subsection 139DQ(1) applies to shares or rights that the taxpayer has acquired; and
 - (b) the taxpayer had paid or given consideration (the ***original consideration***) for an acquisition, under an employee share scheme, of any of the shares or rights in the old company (the ***original shares or rights***);
- the taxpayer is treated as having paid or given, for any of the apportionable assets for the original shares or rights, consideration of an amount worked out by spreading the original consideration proportionately among all the apportionable assets according to their market values immediately after the takeover or restructure.
- Note: Subsection 139FA(4) alters the meaning of market value of a share or right for the purposes of this section.
- (2) The ***apportionable assets*** for the original shares or rights are:
- (a) all matching shares or rights held by the taxpayer that are treated because of this Division as a continuation of the original shares or rights; and

- (b) anything else that the taxpayer acquired in connection with the takeover or restructure and that can reasonably be regarded as matching the original shares or rights; and
- (c) in the case of a restructure—any shares or rights in the old company that the taxpayer held immediately before, and continues to hold immediately after, the restructure and that can reasonably be regarded as matching the original shares or rights.

Subdivision DB—Stapled securities

139DSA Object of this Subdivision

The object of this Subdivision is to allow this Division to apply to stapled securities that include an ordinary share and are listed for quotation on the stock market operated by ASX Limited, and to rights to acquire such stapled securities.

139DSB Application of Division to stapled securities

- (1) This Division (except this Subdivision) applies, with the modifications set out in this Subdivision, in relation to a stapled security in the same way as it applies in relation to a share (including an ordinary share) in a company.
 - Note 1: For the definition of *stapled security*, see subsection 139GCD(1).
 - Note 2: This means the Division also applies to rights to acquire a stapled security in the same way it applies to rights to acquire a share.
 - Example: Subsection 139CD(4) will be satisfied if all the securities available for acquisition under the scheme are stapled securities, and all the rights available for acquisition are rights to acquire stapled securities.
- (2) For the purposes of the application of this Division (except this Subdivision) in relation to a stapled security or right to acquire a stapled security, a company, the shares in which are the subject of this Division, is taken to include (as part of the company) each stapled entity for the stapled security.
 - Note 1: For the definition of *stapled entity*, see subsection 139GCD(2).
 - Note 2: There are some modifications to this rule in this Subdivision.
 - Note 3: This rule has the effect that the company is treated as having all the interests in another entity that stapled entities for the stapled security have.

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Example: The condition in subsection 139CD(3) will be satisfied if the company would be a holding company of the employer if all those stapled entities' interests in the employer were counted together.

139DSC Discount not to be included in assessable income unless stapled security or right is qualifying

Section 139B includes a discount given in relation to a stapled security or right to acquire a stapled security in the assessable income of the taxpayer only if the stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of this Subdivision.

139DSD Division does not also apply to share part of stapled security

- (1) If a stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of this Subdivision, this Division does not also apply separately in relation to a share that is a part of the stapled security.
- (2) However, if a stapled security is not treated as a qualifying share because of this Subdivision, the rest of this Division applies separately in relation to each share that is a part of the stapled security. To avoid doubt, section 139DSC does not prevent a discount given in relation to such a share from being included in the assessable income of a taxpayer.

139DSE Modifications relating to employment

Proportion of permanent employees of employer

- (1) Subsection 139DSB(2) does not affect a provision setting out a condition relating to a specified proportion of the permanent employees of a stapled entity that is the employer.

Example: In applying subsection 139CD(5), the employer of the taxpayer is not taken to include any other stapled entities. The condition in that subsection will be satisfied if it is satisfied for the employing entity alone.

- (2) The reference in paragraph 139CD(5)(b) to a holding company of an employer includes a reference to the stapled entities for the stapled security if:

- (a) the employer is not a stapled entity for the stapled security;
and
- (b) a company that included the stapled entities as parts of the company would be a holding company of the employer.

Cessation of employment

- (3) For the purposes of working out the time when a taxpayer ceases to be employed by the employer of the taxpayer, that employer is taken to include (as part of it) each other stapled entity for the stapled security.

Note: This rule affects the operation of subsections 139CA(2), 139CB(1) and 139CE(3).

139DSF Modification relating to legal or beneficial interest

A taxpayer is taken to satisfy a condition that the taxpayer not hold a legal or beneficial interest in more than 5% of the shares in a company at a time only if the taxpayer does not hold a legal or beneficial interest in more than 5% of any of the following at that time:

- (a) the shares in any company that is a stapled entity for the stapled security;
- (b) the units in any unit trust that is a stapled entity for the stapled security.

Note: This rule affects the operation of subsections 139CD(6) and 139DR(5).

139DSG Modification relating to voting rights

A taxpayer is taken to satisfy a condition that the taxpayer not be in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of a company only if the taxpayer is not in a position to control the casting of more than 5% of the maximum number of votes that might be cast at a general meeting of:

- (a) a company that is a stapled entity for the stapled security because an ordinary share in the company is part of the stapled security; or
- (b) if more than one company is a stapled entity for the stapled security because an ordinary share in the company is part of the stapled security—each of those companies.

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Note: This rule affects the operation of subsections 139CD(7) and 139DR(6).

139DSH Cessation time when stapling arrangement ceases

The cessation time for a stapled security or right to acquire a stapled security is the earlier of:

- (a) the time when any of the interests forming the stapled security cease to be stapled together; and
- (b) the time when the stapled security ceases to be listed for quotation in the official list of ASX Limited;

if that time is earlier than:

- (c) in the case of a stapled security where subsection 139CA(1) does not apply—the earliest time when an event described in any of paragraphs 139CA(2)(a) to (d) happens; and
- (d) in the case of a right to acquire a stapled security—the earliest time when an event described in any of paragraphs 139CB(1)(a) to (e) happens.

Note: The times mentioned in paragraphs (a) and (b) are additional to the times mentioned in subsections 139CA(2) and 139CB(1). The actual cessation time is the time that is the earliest, unless subsection 139CA(1) applies (when the cessation time is the time of acquisition).

139DSI Deduction to be apportioned

- (1) If a stapled security is jointly provided by 2 or more taxpayers to another person in a year of income, each of those taxpayers is entitled to an allowable deduction in respect of income of the year of income under section 139DC if, because of this Subdivision:
 - (a) the stapled security is treated as a qualifying share; and
 - (b) the conditions in subsection 139DC(1) are satisfied for the stapled security.
- (2) The amount of the deduction worked out under subsection 139DC(2) in respect of the stapled security must be apportioned between each of the taxpayers on a reasonable basis.

Subdivision E—Elections

139E Taxpayer may make election

- (1) A taxpayer may make an election under this section that subsection 139B(2) applies for a year of income. The election covers each qualifying share or qualifying right acquired in that year (the *acquisition year*) by the taxpayer.
- (2) An election under subsection (1) in relation to each such share or right must be made in the taxpayer's return of income for the acquisition year.
- (2A) The Commissioner may, after receiving a request made by the taxpayer in the approved form, allow the election to be made at a later time.
- (2B) This Act applies to a taxpayer as if the taxpayer had made an election under subsection (1) for a year of income if:
 - (a) the total discount for the taxpayer for the year of income is \$1,000 or less; and
 - (b) the exemption conditions (see section 139CE) are satisfied in relation to the relevant shares or rights.
- (3) If:
 - (a) a taxpayer becomes an employee during a year of income (the *employment year*); and
 - (b) before the employment year, the taxpayer had acquired a qualifying share or qualifying right, being an acquisition that occurred:
 - (i) while the taxpayer was not an employee; and
 - (ii) after the year of income (if any) in which the taxpayer last became an employee;

the taxpayer may make an election under this section that subsection 139B(2A) applies for each of the years of income before the employment year and after the year referred to in paragraph (b). The election covers each qualifying share or qualifying right acquired in any of those years by the taxpayer.

Note: Subsection 139GA(2) limits the meaning of *employee* in this subsection, so that engagement in foreign service is not of itself sufficient.

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- (4) An election under subsection (3) must be made in the taxpayer's return of income for the employment year.
- (5) The Commissioner may, after receiving a request made by the taxpayer in the approved form, allow the election to be made at a later time.

Subdivision F—Special provisions about the market value of a share or right

139F Meaning of *market value* of a share or right

This Subdivision sets out how to determine the *market value* of a share or right to acquire a share on a particular day.

139FA Listed shares or rights—market value

- (1) If the share or right is quoted on a stock market of an approved stock exchange on that day, the market value is:
 - (a) if there was at least one transaction on that stock market in shares or rights of that class during the one week period up to and including that day—the weighted average of the prices at which those shares or rights were traded on that stock market during the one week period up to and including that day; or
 - (b) if there were no transactions on that stock market in that one week period in such shares and rights:
 - (i) the last price at which an offer was made on that stock market in that period to buy such a share or right; or
 - (ii) if, in the case of a share, no such offer has been made—the value of the share that would have been determined under section 139FB if that section applied to the share; or
 - (iii) if, in the case of a right, no such offer has been made—the value of the right that would have been determined under section 139FC if that section applied to the right.
- (2) If a share or right is quoted on 2 or more approved stock markets on that day, the market value is the value determined under subsection (1) in respect of whichever of those the taxpayer chooses.

- (3) This section does not apply to a share if section 139FAA applies to the share.
- (4) This section applies for the purposes of section 139DS as if references in this section to the one week period up to and including that day were references to the period consisting of that day.

139FAA Listed shares—market value where public offer

- (1) This section applies to a share in a company if:
 - (a) the share is acquired within the period starting 7 days before and ending 7 days after the day on which shares are first acquired under a public offer of shares in the company; and
 - (b) the following rights attached to the share are the same as those attached to the shares acquired under the public offer:
 - (i) rights in respect of voting;
 - (ii) rights in respect of dividends;
 - (iii) rights in respect of distribution of share capital in consequence of a reduction of share capital;
 - (iv) rights in respect of distribution of the property of the company in the event of the winding up of the company; and
 - (c) there is at least one price at which shares were sold under the public offer that satisfies the following requirements:
 - (i) 1,000 Australian residents (other than residents who are employees of the company or who held shares in the company immediately before the offer was made) acquired shares at the price;
 - (ii) the total cost of shares acquired by such Australian residents at the price was at least \$1,000,000; and
 - (d) the company has been a listed public company for at least 6 months immediately before the share is acquired.

However, this section does not apply if subsection 139CC(4) applies to the share.

- (2) The market value of a share is the lowest price that satisfies the requirements of subparagraphs (1)(c)(i) and (ii) at which shares were sold under the public offer.

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What is a public offer?

- (3) A public offer of shares is an offer of shares in a company where:
- (a) the offer is by the company or by a person who, immediately before the offer is made, owns at least 20% of the shares with rights in respect of voting in the company; and
 - (b) the offer is made to at least 10,000 Australian residents (other than residents who are employees of the company or who held shares in the company immediately before the offer was made).

139FB Unlisted shares—market value

- (1) If the share is not quoted on an approved stock exchange on that day, the market value is the arm's length value of the share:
- (a) as specified in a written report, in a form approved by the Commissioner, given to the person from whom the taxpayer acquires the share by a person who is a qualified person in relation to valuing the share (see section 139FG); or
 - (b) as calculated in accordance with any other method approved in writing by the Commissioner as a reasonable method of calculating the arm's length value of unlisted shares.

Partly paid unlisted shares

- (2) Without limiting the factors that must be taken into account in valuing, under paragraph (1)(a), a share that is partly paid, the qualified person must take into account:
- (a) the amount unpaid on the share; and
 - (b) the amount and timing of future calls; and
 - (c) rights to dividends that arise from holding the share.

139FC Unlisted rights—market value

- (1) If the right is not quoted on an approved stock exchange on that day, the market value is the greater of:
- (a) the market value, on the particular day, of the share that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right to acquire the share; and
- whichever of the following applies:

- (b) if the right can not be exercised more than 10 years after the day when the right was acquired—subject to section 139FE, the value determined in accordance with regulations for the purpose of this paragraph or, if no such regulations are in force, the value determined in accordance with sections 139FJ to 139FN;
 - (c) if the right can be exercised more than 10 years after the day when the right was acquired—the greater of:
 - (i) the arm's length value of the right as specified in a written report, in a form approved by the Commissioner, given to the person from whom the taxpayer acquires the right by a suitably qualified valuer; and
 - (ii) the value that would have been determined under paragraph (b) if the right could be exercised 10 years after the particular day.
- (2) In calculating, for the purpose of subsection (1), the market value of the share that may be acquired by exercising the right, subsection 139FAA(1) applies as if the share were acquired on the particular day.

139FD Conditions and restrictions to be disregarded

In determining the market value of a share or right under section 139FB or 139FC, the share or right, and any share that may be acquired as a consequence of the exercise or operation of the right, is taken not to be subject to any conditions or restrictions.

139FE Value of right nil or can not be determined

- (1) If the lowest amount that must be paid to exercise a right to acquire a share is nil or can not be determined, the market value of the right on a particular day is the same as the market value of the share on that day.
- (2) In calculating, for the purpose of subsection (1), the market value of the share that may be acquired by exercising the right, subsection 139FAA(1) applies as if the share were acquired on the particular day.

139FF Value of legal and beneficial interests

To avoid doubt, if a person acquires either the beneficial interest or the legal interest in a share or right, the value that is applicable for the purposes of this Division is the value of the share or right, not the value of the interest in the share or right.

- Notes:
1. It is the value of the share or right that is relevant because the taxpayer is taken to have acquired the share or right—see section 139G.
 2. Double taxation is avoided by section 139DA.

139FG Meaning of *qualified person*

A person is a *qualified person* in relation to valuing a share in a company if the person is registered as a company auditor under a law in force in a State or a Territory, and is not:

- (a) a director, secretary or employee of the company; or
- (b) a partner, employer or employee of a person referred to in paragraph (a); or
- (c) a partner or employee of an employee of a person so referred to.

139FI Provision of information about market value

If a taxpayer requests the person from whom he or she acquired a share or right to provide information necessary for the taxpayer to calculate the market value of the share or right at a particular time, the person must take all reasonable steps to provide that information within 60 days after the request.

139FJ Outline of remainder of Subdivision

The remainder of this Subdivision sets out the method of calculating, for the purposes of paragraph 139FC(b), the market value, on a particular day, of a right to acquire a share.

139FK Step 1—calculate the calculation percentage

- (1) Apply the following formula. The result is the *calculation percentage*.

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$$\frac{\text{Market value, on the particular day, of the share that is the subject of the right}}{\text{Amount, or lowest amount, that must be paid to exercise the right}} \times 100\%$$

- (2) In calculating, for the purpose of subsection (1), the market value of the share that is the subject of the right, subsection 139FAA(1) applies as if the share were acquired on the particular day.

139FL Step 2—how to use calculation percentage

If calculation percentage is less than 50%

- (1) If the calculation percentage is less than 50%, the **market value of the right** is nil.

If calculation percentage is equal to or greater than 50% but less than 110%

- (2) If the calculation percentage is equal to, or greater than, 50% but less than 110%, go to the instructions for using Table 1 in section 139FM that are set out below that Table.

If calculation percentage is equal to or greater than 110%

- (3) If the calculation percentage is equal to, or greater than, 110%, go to the instructions for using Table 2 in section 139FN that are set out below that Table.

139FM Table 1 and instructions

Table 1

- (1) The following is Table 1:

Calculation percentage								
Exercise period (months)	50% to 60%	60% to 70%	70% to 75%	75% to 80%	80% to 85%	85% to 90%	90% to 92.5%	92.5% to 95%
108 to 120	0.6%	2.1%	4.8%	6.7%	8.9%	11.4%	14.1%	15.5%
96 to 108	0.4%	1.5%	4.0%	5.8%	7.9%	10.3%	13.0%	14.5%

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Calculation percentage

Exercise period (months)	50% to 60%	60% to 70%	70% to 75%	75% to 80%	80% to 85%	85% to 90%	90% to 92.5%	92.5% to 95%
84 to 96	0.2%	1.1%	3.2%	4.8%	6.8%	9.2%	11.8%	13.3%
72 to 84	0.1%	0.7%	2.4%	3.8%	5.6%	7.9%	10.5%	11.9%
60 to 72	0.0%	0.4%	1.6%	2.8%	4.4%	6.5%	9.0%	10.4%
48 to 60	0.0%	0.1%	0.9%	1.8%	3.1%	4.9%	7.3%	8.6%
36 to 48	0.0%	0.0%	0.4%	0.9%	1.9%	3.3%	5.4%	6.6%
24 to 36	0.0%	0.0%	0.1%	0.3%	0.8%	1.8%	3.4%	4.4%
18 to 24	0.0%	0.0%	0.0%	0.1%	0.4%	1.0%	2.3%	3.2%
12 to 18	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%	1.3%	2.0%
9 to 12	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%	0.8%	1.3%
6 to 9	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.7%
3 to 6	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
0 to 3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Calculation percentage

Exercise period (months)	95% to 97.5%	97.5% to 100%	100% to 102.5%	102.5% to 105%	105% to 107.5%	107.5% to 110%
108 to 120	16.9%	18.4%	20.0%	21.5%	23.1%	24.7%
96 to 108	15.9%	17.5%	19.0%	20.6%	22.2%	23.9%
84 to 96	14.8%	16.3%	17.9%	19.5%	21.2%	22.9%
72 to 84	13.4%	15.0%	16.6%	18.2%	19.9%	21.7%
60 to 72	11.8%	13.4%	15.0%	16.7%	18.5%	20.3%
48 to 60	10.1%	11.6%	13.2%	14.9%	16.7%	18.6%
36 to 48	8.0%	9.5%	11.1%	12.9%	14.7%	16.5%
24 to 36	5.7%	7.1%	8.7%	10.4%	12.2%	14.1%
18 to 24	4.4%	5.7%	7.2%	8.9%	10.8%	12.7%
12 to 18	2.9%	4.1%	5.6%	7.3%	9.1%	11.2%
9 to 12	2.2%	3.3%	4.7%	6.3%	8.2%	10.3%
6 to 9	1.4%	2.3%	3.6%	5.3%	7.2%	9.4%
3 to 6	0.5%	1.2%	2.4%	4.1%	6.1%	8.4%

Calculation percentage						
Exercise period (months)	95% to 97.5%	97.5% to 100%	100% to 102.5%	102.5% to 105%	105% to 107.5%	107.5% to 110%
0 to 3	0.1%	0.4%	1.3%	3.0%	5.3%	7.8%

Instructions for using Table 1

- (2) From Table 1, select the percentage (the **Table 1 percentage**) that corresponds to:
- (a) the period, in months, from the particular day until the last day on which the right may be exercised (the **exercise period**); and
 - (b) the calculation percentage;
- and then multiply the amount, or lowest amount, that must be paid to exercise the right by the Table 1 percentage. The result is the **market value of the right**.

139FN Table 2 and instructions

Table 2

- (1) The following is Table 2:

Exercise period (months)	Column 1	Column 2
108 to 120	24.7%	0.6%
96 to 108	23.9%	0.6%
84 to 96	22.9%	0.7%
72 to 84	21.7%	0.7%
60 to 72	20.3%	0.7%
48 to 60	18.6%	0.7%
36 to 48	16.5%	0.8%
24 to 36	14.1%	0.8%
18 to 24	12.7%	0.8%
12 to 18	11.2%	0.9%
9 to 12	10.3%	0.9%
6 to 9	9.4%	0.9%

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Exercise period (months)	Column 1	Column 2
3 to 6	8.4%	0.9%
0 to 3	7.8%	1.0%

Instructions for using Table 2—calculating the base percentage

- (2) From column 1 of Table 2, select the percentage that corresponds to the period, in months, from the particular day until the last day on which the right may be exercised (the *exercise period*). This percentage is called the *base percentage*.

Instructions for using Table 2—calculating the additional percentage

- (3) From column 2 of Table 2, select the percentage that corresponds to the exercise period. This percentage is called the *additional percentage*.

Instructions for using Table 2—calculating the excess

- (4) Work out the result of the following formula. Disregard any fraction. The result is called the *excess*.

$$100 \times \left[\frac{\text{Calculation percentage}}{\text{percentage}} - 110\% \right]$$

Instructions for using Table 2—calculating the market value

- (5) The *market value of the right* is the amount worked out using the following formula:

$$\text{Amount or lowest amount that must be paid to exercise the right} \times \left[\frac{\text{Base percentage}}{\text{percentage}} + \left(\text{Excess} \times \frac{\text{Additional percentage}}{\text{percentage}} \right) \right]$$

Note: If:

- (a) the exercise period; or
 (b) the calculation percentage in relation to a particular right;

is the top of one range in Table 1 or 2 and is also the bottom of another range in that Table, it is taken to be in the lower range and not in the higher range.

Subdivision G—Definitions

139G Meaning of *acquiring* or *providing* a share or right

A person *acquires* a share or right if:

- (a) another person transfers the share or right to that person (other than, in the case of a share, by issuing the share to that person); or
- (b) in the case of a share—another person allots the share to that person; or
- (c) in the case of a right—another person creates the right in that person; or
- (d) the person otherwise acquires a legal interest in the share or right from another person; or
- (e) the person acquires a beneficial interest in the share or right from another person.

In those circumstances, the other person *provides* the share or right.

139GA Meaning of *employee* and *employer*

- (1) The expression *employee* means:
 - (a) a person who receives, or is entitled to receive, work and income support related withholding payments and benefits; or
 - (b) a person who is engaged in foreign service.
- (2) However:
 - (a) subsection (1) does not apply in relation to section 139GBA; and
 - (b) paragraph (1)(b) does not apply in relation to subsection 139B(2A), section 139CDA or subsection 139D(3), 139E(3) or 139GB(1).
- (3) The expression *employer* means:
 - (a) a person who pays, or is liable to pay, work and income support related withholding payments and benefits; or
 - (b) a person who engages another person in foreign service.

139GB Meaning of *permanent employee*

(1) Subject to subsections (2) and (3), *permanent employee* of an employer is:

- (a) a full-time employee of the employer; or
- (b) a permanent part-time employee of the employer; with at least 36 months service (whether continuous or non-continuous).

Note: Subsection 139GA(2) limits the meaning of *employee* in this subsection, so that engagement in foreign service is not of itself sufficient.

(2) A person is not a permanent employee of an employer that is a company at any time when the person is a director of the company.

(3) A person is not a permanent employee at any time when the person:

- (a) is a temporary resident within the meaning of the *Income Tax Assessment Act 1997*; or
- (b) is not a resident; or
- (c) is not physically present in Australia.

(4) For the purposes of subsection (1), the length of a person's service includes any period when the person is, in accordance with the terms and conditions of that service:

- (a) absent on recreation leave; or
- (b) absent from work because of accident or illness.

(5) In paragraph (4)(a), *recreation leave* does not include:

- (a) long service leave, furlough, extended leave or leave of a similar kind (however described); or
- (b) leave without pay or on reduced pay.

139GBA Meaning of *foreign service*

Foreign service is service in a foreign country as the holder of an office or in the capacity of an employee.

139GC Meaning of *holding company*

The expression "holding company" has the same meaning as in the *Corporations Act 2001*.

139GCA Meaning of *subsidiary*

The expression *subsidiary* has the same meaning as in the *Corporations Act 2001*.

139GCB Meaning of *100% takeover*

A *100% takeover* of a company by another company is an arrangement that is intended to result in the company becoming a 100% subsidiary of the other company, or of a holding company or subsidiary of the other company.

139GCC Meaning of *restructure*

A *restructure* of a company is a change in the ownership, or the structure of the ownership, of the company as a result of which some or all shares or rights held in the company under an employee share scheme immediately before the change:

- (a) are replaced; or
- (b) could reasonably be regarded as having been replaced; wholly or partly by shares or rights in one or more other companies.

139GCD Meaning of *stapled security and stapled entity*

- (1) A security consisting of 2 or more interests is a *stapled security* if:
 - (a) each interest is either a share in a company or a unit in a unit trust; and
 - (b) at least one of the interests is an ordinary share; and
 - (c) all the interests are stapled together; and
 - (d) the security is listed for quotation in the official list of ASX Limited.
- (2) A *stapled entity* for a stapled security is a company or a unit trust covered by subsection (1) for the stapled security.

139GD Meaning of *approved stock exchange*

A stock exchange is an *approved stock exchange* if:

- (a) the stock exchange is named in regulations made for the purposes of this section; or

- (b) if no such regulations are in force—the stock exchange is an approved stock exchange within the meaning of Part XI.

139GE Meaning of associate

The expression *associate* has the same meaning as it would have in section 318 if references in that section to subsection (1) included a reference to subsection (1A) and the following subsection were inserted before subsection (1):

- (1A) For the purposes of this Part, if an entity holds (whether directly or indirectly through one or more interposed companies, partnerships or trusts) a share in a company, or a right to acquire a share in a company, the company is an associate of the entity.

139GF Meaning of conducting a scheme on a *non-discriminatory basis*

- (1) This section sets out the conditions that must be satisfied for the employee share scheme mentioned in subsection 139CE(4) or a scheme for the provision of financial assistance in respect of acquisitions of shares or rights under the employee share scheme to be operated on a *non-discriminatory basis*.

Non-discriminatory employee share scheme

- (2) The employee share scheme is operated on a *non-discriminatory basis* if, and only if, the following conditions are satisfied in relation to all offers to acquire shares or rights under the scheme:
- (a) participation in the scheme is open to at least 75% of permanent employees of the employer;
 - (b) the time for acceptance of each offer is reasonable;
 - (c) the essential features of each offer are the same for at least 75% of permanent employees of the employer.

Essential features of offer

- (3) The essential features of an offer for an employee share scheme are:
- (a) the consideration for the acquisition of the share or right concerned (whether that consideration is determined by reference to the value of the share or right or otherwise); and

- (b) the number of shares or rights, the minimum number of shares or rights or the maximum number of shares or rights, offered to each employee, as the case may be; and
- (c) the time for acceptance of the offer; and
- (d) the steps taken for the circulation of information about the offer.

Non-discriminatory financial assistance schemes

- (4) The scheme for the provision of financial assistance in respect of acquisitions of shares or rights under the employee share scheme is operated on a non-discriminatory basis if, and only if, the following conditions are satisfied in relation to all financial assistance provided under the scheme:
 - (a) the time for taking up each offer of assistance is reasonable;
 - (b) the essential features of each offer of assistance are the same for at least 75% of permanent employees of the employer.

Essential features of offer of financial assistance

- (5) The essential features of an offer of financial assistance are:
 - (a) the terms and conditions of the offer; and
 - (b) the amount, the minimum amount, or the maximum amount, of assistance offered to each employee, as the case may be.
- (6) The Commissioner may determine that the condition mentioned in paragraph (2)(a), (2)(c) or (4)(b) is taken to have been satisfied in relation to a scheme if the Commissioner considers that the employer has done everything reasonably practicable to ensure that the condition was satisfied.

139GG Meaning of *provision of financial assistance*

The expression “provision of financial assistance” includes the making of a loan, giving of a guarantee, provision of security, release of an obligation and forgiving of a debt.

139GH Index of definitions

The following table lists the definitions in this Division and shows their location:

Part III Liability to taxation
Division 13A Employee share schemes

Section 139GH

Definition	Provision
100% takeover	139GCB
Acquiring a share or right	139G
Approved stock exchange	139GD
Associate	139GE
Cessation time-rights	139CB
Cessation time-shares	139CA
Discount	139CC
Employee	139GA
Employee share scheme	139C
Employer	139GA
Exemption conditions	139CE
Financial assistance	139GG
Foreign service	139GBA
Holding company	139GC
Market value of a share or right	Subdivision F
Non-discriminatory schemes	139GF
Permanent employee	139GB
Providing a share or right	139G
Qualified person	139FG
Qualifying shares and qualifying rights	139CD
Restructure	139GCC
Stapled entity	139GCD
Stapled security	139GCD
Subsidiary	139GCA

Division 15—Insurance with non-residents

141 Interpretation

In this Division:

insurance contract means a contract or guarantee whereby liability is undertaken, contingent upon the happening of any specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance.

insured event means an event upon the happening of which the liability under an insurance contract arises.

insured person means a person with whom any insurance contract is entered into by an insurer.

insured property means the property the subject of an insurance contract made or given by an insurer.

insurer means any non-resident who undertakes liability under an insurance contract.

142 Income derived by non-resident insurer

- (1) Where an insured person, whether a resident or non-resident, has entered into an insurance contract with an insurer, and the insured property at the time of the making of the contract is situated in Australia, or the insured event is one which can happen only in Australia, the premium paid or payable under the contract shall be included in the assessable income of the insurer, and shall be deemed to be derived by him from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.
- (2) Where an insured person who is a resident has entered into an insurance contract with an insurer, and an agent or representative in Australia of the insurer was in any way instrumental in inducing the entry of the insured person into that contract, any premium paid or payable under the contract shall, wherever the insured property is situate, or the insured event may happen, be included in the

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assessable income of the insurer and shall be deemed to be derived by him from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

143 Taxable income of non-resident insurer

The insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under such contracts, a taxable income equal to 10% of the total amount of such premiums:

Provided that, where the actual profit or loss derived or made by the insurer in respect of such premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer in respect thereof, or the amount of the loss so made by him shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

144 Liability of agents of insurer

The insured person and any person in Australia acting on behalf of the insurer shall be the agents of the insurer, and shall be jointly and severally liable as such for all purposes of this Act. If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under this Division in respect of that amount, that person shall be personally liable to pay that tax.

145 Deduction of premiums

Notwithstanding any other provision of this Act, no such premium shall be an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed in respect of that premium.

146 Exporter to furnish information

Every person who exports any goods from Australia shall furnish to the Collector of Customs for transmission to the Commissioner a

copy of the customs entry for such goods, and shall show thereon such information as is prescribed regarding the insurance of such goods.

147 Rate of tax in special circumstances

Where the insurer satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax so payable in respect of premiums paid during any financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

148 Reinsurance with non-residents

- (1) Notwithstanding anything contained in this Act other than section 177F, but subject to this section, where a person carrying on the business of insurance in Australia reinsures out of Australia the whole or part of any risk with a non-resident:
 - (a) the premiums paid or credited in respect of the reinsurance shall not be:
 - (i) an allowable deduction to the person carrying on the business of insurance in Australia; or
 - (ii) included in the assessable income of the non-resident; and
 - (b) the income of the person carrying on the business of insurance in Australia shall not include sums recovered from that non-resident in respect of a loss on any risk so reinsured.
- (2) A person carrying on the business of insurance in Australia who reinsures out of Australia the whole or part of any risk with a non-resident may elect, in accordance with this section, that the provisions of subsection (1) shall not be applied in arriving at his taxable income, and thereupon:
 - (a) those provisions shall not apply in arriving at his taxable income of a year of income to which the election applies; and
 - (b) that person shall be liable to furnish returns, and to pay tax, in accordance with the succeeding provisions of this section, as agent for all non-residents with whom he so reinsures.

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- (3) Where a person makes an election under subsection (2), he shall, subject to subsection (5), be assessed and liable to pay tax as agent, on an amount equal to 10% of the sum of the gross amounts of the premiums paid or credited by him in the year of income (being a year of income to which the election applies) to non-residents in respect of all such reinsurances, as if that amount were the taxable income of a non-resident company (not being a private company) not carrying on business in Australia by means either of a principal office or a branch.
- (4) A person who has made an election under this section shall, as agent, furnish to the Commissioner, within the prescribed time, or within such further time as the Commissioner allows, in respect of every year of income to which the election applies:
- (a) a return showing the gross amounts of the premiums paid or credited by him to non-residents in respect of all such reinsurances; or
 - (b) 2 returns, of which:
 - (i) one shall show the gross amounts of such premiums paid or credited by him to non-residents which are companies; and
 - (ii) the other shall show the gross amounts of such premiums paid or credited by him to non-residents who are not companies.
- (5) Where returns are furnished by a person in accordance with paragraph (4)(b), there shall be excluded from the amount on which that person shall be assessed and liable to pay tax as agent in pursuance of subsection (3) an amount equal to 10% of the sum of the gross premiums properly shown in the return specified in subparagraph (4)(b)(ii), and that person shall, in addition to any other tax which he is liable under this section to pay as agent, be assessed and liable to pay tax as agent on the amount so excluded as if it were the taxable income of a non-resident company (being a private company) not carrying on business in Australia by means either of a principal office or a branch.
- (6) An election for the purposes of this section shall:
- (c) be made on or before the last day for the furnishing of the taxpayer's return of income of the year of income in respect of which the election is first to apply, or within such further time as the Commissioner allows;

- (d) first apply in respect of a year of income which shall be specified in the election; and
 - (e) apply in respect of all subsequent years of income.
- (7) An assessment for the purposes of subsection (3) or (5) shall be made and notified separately from any other assessment.
- (8) Where a person is liable, in pursuance of an assessment for the purposes of this section, to pay tax, in respect of any premiums, as agent for more than one non-resident, the amount which he shall be liable to pay as agent for any one of those non-residents shall be so much of the tax so payable as bears to the whole of that tax the same proportion as the total amount of such of those premiums as were paid to that non-resident bears to the total amount of those premiums.
- (9) Where a person is or may become liable under this section to pay tax as agent for a non-resident in respect of any premium paid or credited by him to that non-resident:
- (a) he shall, for the purposes of section 254, be deemed to have received the premium in his representative capacity immediately before it was so paid or credited; and
 - (b) if he pays or credits the premium before arrangements have been made to the satisfaction of the Commissioner for the payment of any tax which may be assessed in respect of that premium, he shall be personally liable to pay that tax.

Application to a life assurance company

- (10) This section applies to a life assurance company in relation to the whole or a part of a risk if, and only if, the risk or that part of the risk:
- (a) is covered by a disability policy as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*; and
 - (b) relates to a benefit that is payable in an event mentioned in that definition.

Division 16—Averaging of incomes

149 Average income

- (1) For the purposes of the application of this Division in relation to a taxpayer in relation to a year of income, a reference in this Division to the average income of the taxpayer shall be construed as a reference to the average of the taxable incomes of the taxpayer of the years of income (in this Division referred to as *average years*) beginning with the first average year and ending with the first-mentioned year of income.

149A Capital gains, abnormal income and certain death benefits to be disregarded

- (1) For the purposes of this Division (including the purpose of determining whether this Division applies to the income of a taxpayer):
 - (a) references in this Division to the assessable income of a taxpayer shall be read as references to the amount that would have been the assessable income if the assessable income did not include any net capital gain and did not include any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997*; and
 - (b) references in this Division to the taxable income of a taxpayer shall be read as references to the amount that would have been the taxable income if:
 - (i) the assessable income did not include any net capital gain and did not include any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997*; and
 - (ii) the taxable income were reduced by so much of the taxable income as consists of above-average special professional income within the meaning of the *Income Tax Assessment Act 1997*.
- (2) A reference in subsection (1) to the assessable income or taxable income of a taxpayer of a year of income shall, in relation to a taxpayer in the capacity of trustee of a trust estate, be read as a

reference to the assessable income or net income, as the case may be, of the trust estate of the year of income.

150 First average year

Subject to this Division, the first average year shall be the fourth year before the year of income. A year the income of which was subject to assessment under the previous Act shall be capable of being a first or subsequent average year.

151 First application of Division in relation to a taxpayer

- (1) For the purposes of the first application of this Division in determining the tax payable by a taxpayer, the first average year shall be the first year which is otherwise capable of being an average year, and in which the taxable income is not greater than that of the next succeeding year. No year prior to that first average year shall, for the purposes of any application of this Division in determining the tax payable by a taxpayer, be capable of being an average year.
- (2) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year for the purposes of the first application of this Division in determining the tax payable by a taxpayer.
- (3) This section shall not apply to a taxpayer whose income has been or is liable to be assessed at an average rate of tax determined under the provisions of the previous Act.

152 Taxpayer not in receipt of assessable income

Any year in which the taxpayer was not carrying on business and was not in receipt of assessable income shall not be counted as an average year, and the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

153 Taxpayer with no taxable income

Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being an average year.

154 Excess of allowable deductions

Any excess of allowable deductions over the assessable income of the taxpayer in any average year shall not be taken into account in calculating the average income.

155 Permanent reduction of income

- (1) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause (but not including a change in the investment of assets from which assessable income was derived into assets from which the taxpayer derives income which is not liable to be assessed under this Act), his taxable income has been permanently reduced to an amount which is less than two-thirds of his average taxable income, he shall be assessed, and the provisions of this Division shall apply to the income thereafter derived by him, as if he had never been a taxpayer before that year.
- (2) For the purposes of the application of subsection (1) in relation to a taxpayer in relation to a year of income, a reference in that subsection to the average taxable income of the taxpayer shall be construed as a reference to the amount that would be the average income of the taxpayer in relation to that year of income ascertained in accordance with section 149 if there were excluded from the assessable income of the taxpayer of the average years any income received by him from sources from which he does not usually receive income.

156 Rebate of tax for, or complementary tax payable by, certain primary producers

- (1) In this section:

actual taxable income from primary production, in relation to a taxpayer in relation to a year of income, means the amount (if any) remaining after deducting from the assessable primary production income of the taxpayer of the year of income so much of the aggregate of the relevant primary production deductions of the taxpayer of the year of income as does not exceed that assessable income.

assessable primary production income, in relation to a taxpayer in relation to a year of income, means so much of the assessable

income of the taxpayer of the year of income as was derived from the carrying on of a primary production business by the taxpayer or was included in the assessable income of the taxpayer of the year of income in consequence of the carrying on of a primary production business by the taxpayer.

deemed taxable income from primary production, in relation to a taxpayer in relation to a year of income, means:

- (a) if the taxpayer did not have a non-primary production profit in relation to the year of income—the taxable income of the taxpayer; and
- (b) in any other case—the sum of the actual taxable income from primary production of the taxpayer of the year of income and the notional taxable income from primary production of the taxpayer of the year of income.

notional taxable income from primary production, in relation to a taxpayer in relation to a year of income, being a taxpayer who had a non-primary production profit in relation to the year of income, means:

- (a) where the taxpayer did not incur a primary production loss in relation to the year of income:
 - (i) in a case to which subparagraph (ii) does not apply—the amount ascertained by deducting from the taxable income of the taxpayer of the year of income the actual taxable income from primary production of the taxpayer of the year of income; and
 - (ii) where the taxable income of the taxpayer of the year of income exceeds the actual taxable income from primary production of the taxpayer of the year of income and that excess is greater than \$5,000—\$5,000 reduced by \$1 for each whole dollar by which the amount of that excess exceeds \$5,000; and
- (b) where the taxpayer incurred a primary production loss in relation to the year of income:
 - (i) in a case where the sum of the taxable income of the taxpayer of the year of income and the amount of the primary production loss is less than or equal to \$5,000—the taxable income of the taxpayer of the year of income; and

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- (ii) in a case where the sum of the taxable income of the taxpayer of the year of income and the amount of the primary production loss (which sum is in this subparagraph referred to as the *non-farm income*) exceeds \$5,000—an amount ascertained by deducting from \$5,000 one dollar for each whole dollar by which so much of the non-farm income as does not exceed \$10,000 exceeds \$5,000 and deducting from the resultant amount so much (if any) of the amount of the primary production loss as does not exceed that resultant amount.

relevant primary production deductions, in relation to a taxpayer in relation to a year of income, means:

- (a) any deductions allowed or allowable in his assessment in respect of income of the year of income that relate exclusively to assessable primary production income of the taxpayer of a year of income;
 - (b) so much of any other deductions (other than apportionable deductions) allowed or allowable in his assessment in respect of income of the year of income as, in the opinion of the Commissioner, may appropriately be related to assessable primary production income of the taxpayer of a year of income; and
 - (c) the amount that bears to the apportionable deductions allowed or allowable in his assessment the same proportion as the amount ascertained by deduction from the assessable primary production income of the taxpayer of the year of income any deductions allowable from that assessable income in accordance with paragraphs (a) and (b) bears to the sum of the taxable income of the taxpayer of the year of income and the apportionable deductions.
- (2) For the purposes of subsection (1), a taxpayer shall be taken to have a non-primary production profit in relation to a year of income if the assessable income of the taxpayer of the year of income other than assessable primary production income exceeds the aggregate of the deductions (other than relevant primary production deductions) allowable to the taxpayer in respect of the year of income.

(3) For the purposes of subsection (1), a taxpayer shall be taken to have incurred a primary production loss in relation to a year of income if the aggregate of the relevant primary production deductions in relation to the year of income exceeds the assessable primary production income of the taxpayer of the year of income, and the amount of that loss shall be taken to be the amount of the excess.

(5) Where:

(a) this Division applies to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the *eligible net income*); and

(b) the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income exceeds the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income if the notional rates declared by the Parliament for the purposes of this section were the rates of tax payable by the trustee in respect of the eligible net income;

the trustee is entitled, in his assessment in respect of the eligible net income, to a rebate of tax of an amount ascertained in

accordance with the formula $\frac{AB}{C}$, where:

A is the number of whole dollars in the amount of the deemed net income from primary production.

B is the excess referred to in paragraph (b); and

C is the number of whole dollars in the eligible net income.

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(5A) Where:

- (a) this Division applies to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the *eligible net income*); and
- (b) the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income if the notional rates declared by the Parliament for the purposes of this section were the rates of tax payable by the trustee in respect of the eligible net income exceeds the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income;

the trustee is liable to pay complementary tax, at the rate declared by the Parliament for the purposes of this subsection, on so much of the net income of the trust estate as is equal to the deemed net income from primary production.

- (6) For the purposes of the application of this section in relation to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or in relation to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the *eligible net income*):

actual net income from primary production means so much of the net income from primary production of the trust estate as is included in the eligible net income.

assessable primary production income means so much of the assessable income of the trust estate of the year of income as was

derived from the carrying on of a primary production business by the trustee or was included in the assessable income of the trust estate of the year of income in consequence of the carrying on of a primary production business by the trustee.

deemed net income from primary production means:

- (a) if the trust estate did not have a non-primary production profit in relation to the year of income—the eligible net income; and
- (b) in any other case—the sum of the actual net income from primary production of the trust estate of the year of income and the notional net income from primary production of the trust estate of the year of income.

eligible part of the primary production loss, in relation to a primary production loss incurred by the trust estate in the year of income, means so much of the primary production loss as is equal to the amount by which the eligible net income would have been increased if the aggregate of the relevant primary production deductions allowable in calculating the amount of the net income of the trust estate of the year of income had been equal to the assessable primary production income of the trust estate of the year of income.

net income from primary production means the amount (if any) remaining after deducting from the assessable primary production income of the trust estate of the year of income so much of the aggregate of the relevant primary production deductions allowable in calculating the net income of the trust estate as does not exceed that assessable primary production income.

notional net income from primary production means:

- (a) where the trust estate had a non-primary production profit in relation to the year of income and did not incur a primary production loss in relation to the year of income:
 - (i) in a case to which subparagraph (ii) does not apply—the amount ascertained by deducting from the eligible net income the actual net income from primary production (if any); and
 - (ii) where the eligible net income exceeds the actual net income from primary production in relation to the year of income and that excess is greater than \$5,000—

\$5,000 reduced by \$1 for each whole dollar by which the amount of that excess exceeds \$5,000; and

- (b) where the trust estate had a non-primary production profit in relation to the year of income and incurred a primary production loss in relation to the year of income:
 - (i) in a case where the sum of the eligible net income and the eligible part of the primary production loss is less than or equal to \$5,000—the eligible net income; and
 - (ii) in a case where the sum of the eligible net income and the eligible part of the primary production loss (which sum is in this subparagraph referred to as the *non-farm income*) exceeds \$5,000—an amount ascertained by deducting from \$5,000 one dollar for each whole dollar by which so much of the non-farm income as does not exceed \$10,000 exceeds \$5,000 and deducting from the resultant amount so much (if any) of the eligible part of the primary production loss as does not exceed that resultant amount.

relevant primary production deductions means:

- (a) any deductions allowed or allowable in calculating the amount of the net income of the trust estate of the year of income that relate exclusively to assessable primary production income of a year of income;
 - (b) so much of any other deductions (other than apportionable deductions) allowed or allowable in calculating the amount of that net income as, in the opinion of the Commissioner, may appropriately be related to assessable primary production income of the trust estate of a year of income; and
 - (c) the amount that bears to the apportionable deductions allowed or allowable in calculating the amount of that net income the same proportion as the amount ascertained by deducting from the assessable primary production income of the trust estate of the year of income any deductions allowable from that assessable primary production income in accordance with paragraphs (a) and (b) bears to the sum of the net income of the trust estate and the apportionable deductions.
- (7) For the purposes of subsection (6), a trust estate shall be taken to have incurred a primary production loss in relation to a year of income if the aggregate of the relevant primary production

deductions allowable in calculating the amount of the net income of the trust estate of the year of income exceeds the assessable primary production income of the trust estate of the year of income, and the amount of that loss shall be taken to be the amount of the excess.

- (8) For the purposes of subsection (6), a trust estate shall be taken to have a non-primary production profit in relation to a year of income if the assessable income of the trust estate of the year of income other than assessable primary production income exceeds the aggregate of the deductions (other than relevant primary production deductions) allowable in calculating the amount of the net income of the trust estate of the year of income.

157 Application of Division to primary producers

- (1) In respect of income derived during the year ending on 30 June 1938 and during any subsequent year or during any accounting period adopted in lieu of any such year, the foregoing provisions of this Division shall not apply except in respect of income derived by a primary producer.
- (2) For the purposes of this section, *primary producer* means a person who carries on in Australia a primary production business.
- (3) Subject to subsection (3A), for the purposes only of determining whether a person is carrying on a primary production business, a beneficiary in a trust estate shall, to the extent to which he is presently entitled to the income or part of the income of that estate, be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.
- (3A) Subsection (3) does not operate to deem a beneficiary in a trust estate who is presently entitled to the income or a part of the income of that estate to be carrying on the business carried on by the trustees of the trust estate in a year of income unless:
- (a) the share of the income of that trust estate of the year of income to which the beneficiary is presently entitled is not less than \$1,040; or
 - (b) the Commissioner is satisfied that the interest of the beneficiary in the trust estate was not acquired by, or granted to, the beneficiary for the purpose, or primarily for the

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purpose, of enabling the provisions of this Division to apply in respect of income derived by the beneficiary.

- (4) If in any year in respect of which this Division applies only to taxpayers who are primary producers, a taxpayer was not carrying on business as a primary producer, that year shall not be counted as an average year and the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

158 Application of Division

This Division shall not apply in any case where there are not at least 2 average years or where the taxpayer is assessed in accordance with section 99A in respect of the year of income, and shall not apply to the taxable income of a company except income in respect of which it is assessable as a trustee.

158A Election that Division not apply

- (1) A taxpayer may elect that this Division shall not apply in relation to income of the taxpayer of a year of income specified in the election and of all subsequent years of income.
- (2) An election in pursuance of subsection (1) shall be made in writing and lodged with the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income specified in the election or within such further time as the Commissioner allows.
- (3) Where a taxpayer makes an election under subsection (1), this Division shall not apply in relation to income of the taxpayer of the year of income specified in the election or of any subsequent year of income.

Division 16D—Certain arrangements relating to the use of property

159GE Interpretation

(1) In this Division:

arrangement includes:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct whether unilateral or otherwise.

arrangement payment, in relation to an arrangement relating to the use, or the control of the use, of an item of property, means so much of any payment liable to be made under the arrangement as represents consideration for any one or more of the following:

- (a) the use of the item;
- (b) the control of the use of the item;
- (c) the sale or disposal of the item.

arrangement period, in relation to an item of eligible property that is, or is included in, arrangement property in relation to an arrangement at a particular time, means the period that is at that time the total period during which the arrangement is likely to be in force in relation to that item of eligible property (including any period before that time when the arrangement was in force in relation to that item of eligible property).

arrangement property means property that is, or is to be, used, or the use of which is, or is to be, controlled, under an arrangement.

assessable arrangement payment means an arrangement payment that, apart from this Division, would be included in whole or in part in the assessable income of a taxpayer of a year of income.

associate means, in relation to a person other than an exempt public body, any person who is an associate, within the meaning of

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section 318, in relation to the person or, in relation to an exempt public body:

- (a) a partner of the exempt public body or a partnership in which the exempt public body is a partner; or
- (b) if a partner of the exempt public body is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner; or
- (c) a trustee of a trust where the exempt public body, or another entity that is an associate of the exempt public body because of paragraph (a), (b) or (d), benefits under the trust; or
- (d) a company where:
 - (i) the company is sufficiently influenced by:
 - (A) the exempt public body; or
 - (B) another entity that is an associate of the exempt public body because of paragraph (a), (b) or (c); or
 - (C) another company that is an associate of the exempt public body because of another application of this paragraph; or
 - (D) 2 or more entities covered by the preceding sub-subparagraphs; or
 - (ii) a majority voting interest in the company is held by:
 - (A) the exempt public body; or
 - (B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and paragraphs (a), (b) and (c); or
 - (C) the exempt public body and the entities that are associates of the exempt public body because of subparagraph (i) of this paragraph and because of paragraphs (a), (b) and (c).

Subsections 318(6) and (7) apply for the purposes of paragraphs (a) to (d) in the same way as those subsections apply for the purposes of section 318.

capital expenditure deduction means a deduction:

- (a) under the former Division 10, 10AAA, 10AA, 10A, 10C or 10D of this Part; or
- (b) under Subdivision 40-B of the *Income Tax Assessment Act 1997* for a depreciating asset that is a forestry road or timber mill building; or

- (c) under Division 43 of that Act; or
- (d) under section 40-830 of that Act for an amount that is a project amount under subsection 40-840(1) (about mining capital expenditure and transport capital expenditure); or
- (e) under the former Subdivision 330-C, 330-H or 387-G of that Act.

control means effectively control.

depreciation deduction means a deduction:

- (a) in respect of depreciation under Division 3 of this Act or the former Division 42 of the *Income Tax Assessment Act 1997*; or
- (b) for the decline in value of a depreciating asset under Division 40 of the *Income Tax Assessment Act 1997*.

Division 10, 10AA or 10A property means property in relation to which there has been incurred:

- (a) allowable capital expenditure within the meaning of the former Division 10 or 10AA of this Part or the former Subdivision 330-C of the *Income Tax Assessment Act 1997* or mining capital expenditure within the meaning of section 40-860 of that Act;
- (b) expenditure taken into account in ascertaining an amount of residual capital expenditure specified in the former paragraph 122C(1)(a); or
- (c) capital expenditure specified in the former subsection 124F(1) or 124JA(1) of this Act or the former section 387-460 of the *Income Tax Assessment Act 1997*; or
- (d) capital expenditure on a forestry road in connection with a timber operation, or capital expenditure for the construction or acquisition of a timber mill building.

Division 10AAA property means property in relation to which there has been incurred capital expenditure to which the former Division 10AAA of this Part applies or transport capital expenditure within the meaning of the former Subdivision 330-H, or section 40-865 of the *Income Tax Assessment Act 1997*.

Division 10C or 10D property means property in relation to which there has been incurred qualifying expenditure within the meaning of the former Division 10C or 10D or for which there is a pool of

construction expenditure within the meaning of Division 43 of the *Income Tax Assessment Act 1997*.

effective life, in relation to an item of eligible property at a particular time, means the period (if any) that the Commissioner estimates will be, or would be, at that time the effective life of the property after that time assuming that it is or would be maintained in reasonably good order and condition.

eligible amount, in relation to an item of eligible property, means:

- (a) where the item is an item of eligible depreciation property—the amount that:
 - (i) was the cost of the item of property within the meaning of Division 40, or the former Division 42, of the *Income Tax Assessment Act 1997* to the taxpayer who holds it; or
 - (ii) would have been the cost of the item of property to the taxpayer for the purposes of that Division if that Division had applied in relation to the item of property; and
- (b) where the item is an item of eligible capital expenditure property—any amount of eligible capital expenditure in relation to the item of property.

eligible capital expenditure, in relation to an item of eligible capital expenditure property, means expenditure by reason of which the item of property is eligible capital expenditure property.

eligible capital expenditure property means Division 10, 10AA or 10A property, Division 10AAA property, Division 10C or 10D property or eligible spectrum licences.

eligible depreciation property means:

- (a) plant or articles within the meaning of the former section 54 of this Act; or
- (b) plant within the meaning of the former section 42-18 of the *Income Tax Assessment Act 1997* or plant within the meaning of section 45-40 of that Act; or
- (c) a depreciating asset within the meaning of Division 40 of that Act.

eligible property means:

- (a) eligible depreciation property;
- (b) Division 10, 10AA or 10A property;
- (c) Division 10AAA property;
- (d) Division 10C or 10D property; or
- (e) eligible spectrum licences.

eligible real property, means eligible property that is:

- (a) a building or a part of a building; or
- (b) a structure that is a fixture or a part of such a structure.

eligible spectrum licence means a spectrum licence within the meaning of the *Income Tax Assessment Act 1997*.

exempt public body means:

- (a) the Commonwealth, a State or a Territory; or
- (aa) an STB (within the meaning of Division 1AB) the income of which is wholly exempt from tax; or
- (b) a municipal corporation or other local governing body, the income of which is wholly exempt from tax; or
- (c) a public authority:
 - (i) that is constituted by or under a law of the Commonwealth, a State or a Territory; and
 - (ii) the income of which is wholly exempt from tax.

payment portion, in relation to an arrangement payment in relation to an eligible amount in relation to an item of eligible property, means so much of the arrangement payment as the Commissioner considers is attributable to the eligible amount in relation to the item of eligible property.

person includes an exempt public body.

total notional principal, in relation to an eligible amount in relation to an item of eligible property in relation to an application period, means the sum of all notional principal amounts (if any) in relation to payment portions of arrangement payments in relation to the eligible amount in relation to the application period.

Note: This Division applies to deductions under Division 40 (Capital allowances) and Division 43 (Capital works) of the *Income Tax Assessment Act 1997* as if you were the owner of an asset you hold

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(under that Division) instead of any other person: see section 40-135 of that Act.

- (2) For the purposes of the definition of *arrangement period* in subsection (1), a reference in that definition to the total period during which an arrangement is, at a particular time, likely to be in force in relation to an item of eligible property that at that time is, or is included in, arrangement property in relation to the arrangement is a reference to:
- (a) where at that time the total period during which the arrangement was, or is, to be in force in relation to that item of eligible property (including any period before that time when the arrangement was in force in relation to that item) was or is specified in or ascertainable in accordance with the arrangement—that period; and
 - (b) in any other case—such period as would have been, or is, at that time the period during which the arrangement would be, or is, likely to be in force in relation to the item of property (including any period before that time when the arrangement was in force in relation to the item), having regard to the provisions of the arrangement and any other relevant circumstances in relation to the arrangement, or in relation to the item of property.
- (3) Nothing in this Division prevents an item of eligible property from being an item of eligible property by reason of the application of 2 or more paragraphs of the definition of *eligible property* in subsection (1).
- (4) For the purposes of the definition of *total notional principal* in subsection (1), where:
- (a) under section 159GK there is an interest amount within the meaning of that section in relation to a payment portion (not being a notional final payment portion within the meaning of that section) in relation to an arrangement payment; and
 - (b) the interest amount is less than the amount of the payment portion;
- there shall be taken to be a notional principal amount in relation to the payment portion of an amount equal to the difference between the interest amount and the amount of the payment portion.

- (5) Where:
- (a) under 2 or more successive arrangements relating to the use by a person, or the control by a person of the use, of property owned by another person, the same property is used by, or the use of the same property is controlled by, the same person or by persons who, in relation to each other, are associates; and
 - (b) the Commissioner considers that the arrangements should be taken, for the purposes of this Division, to be a single arrangement;
- the arrangements shall, for the purposes of this Division, be deemed to be a single arrangement entered into at the same time as the first of the arrangements, coming into force at the same time as the first of the arrangements and continuing in force until the expiration of the second or last, as the case requires, of the arrangements.
- (6) A reference in subsection (5) to successive arrangements includes a reference to:
- (a) where the arrangement periods of 2 or more arrangements overlap—those arrangements; and
 - (b) where there is a period between the expiration of an arrangement and the commencement of another arrangement and the Commissioner considers that the arrangements should be taken to be successive arrangements for the purposes of that subsection—those arrangements.
- (7) Where this Division applies in relation to an item of eligible property in relation to a qualifying arrangement, a reference in this Division to the application period in relation to that application of this Division in relation to the item of eligible property is a reference to the period commencing at the time at which this Division in that application commences to apply and ending at the time at which this Division in that application ceases to apply.
- (8) For the purposes of this Division, where one or more of the partners in a partnership uses, or controls the use of, an item of property, each of the partners in the partnership shall be taken to use, or to control the use of, the item of property and the partnership shall be taken not to use, or to control the use of, the item of property.

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- (10) For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

159GEA Division applies to certain State/Territory bodies

In addition to any other operation that this Division has, this Division operates as if the references to an exempt public body included a reference to a prescribed excluded STB (within the meaning of Division 1AB).

159GF Residual amounts

- (1) Subject to subsection 159GJ(1), in this Division a reference to the residual amount at a particular time (in this subsection referred to as the *relevant time*) in relation to the eligible amount by reason of which an item of property is eligible depreciation property at the relevant time is a reference to the eligible amount reduced by:
- (a) where the item of property was not dealt with by the taxpayer who holds the item in the prescribed manner at any time during the period (in this subsection referred to as the *relevant period*) before the relevant time when it was held by the taxpayer (within the meaning of Division 40 of the *Income Tax Assessment Act 1997*)—the total amount of deductions for depreciation or decline in value that would, but for any deduction denying provision, have been allowable to the taxpayer under this Act or the *Income Tax Assessment Act 1997* in respect of that item of property for the relevant period if:
 - (i) at all times during the relevant period the taxpayer had wholly and exclusively dealt with the item of property in the prescribed manner; and
 - (ii) those deductions were calculated using the diminishing value method; and
 - (iii) section 57AG, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act 1992*, did not apply in relation to the item of property;

- (b) where the item of property was wholly and exclusively dealt with by the taxpayer who held the item in the prescribed manner at all times during the relevant period—the total amount of deductions for depreciation or decline in value that were or, but for any deduction denying provision, would have been, allowed or allowable to the taxpayer in respect of the item of property for that period under this Act or the *Income Tax Assessment Act 1997*; and
- (c) in any other case—the total amount of deductions for depreciation or decline in value that, but for any deduction denying provision, would have been allowable to the taxpayer who holds the item of property in respect of the item under this Act or the *Income Tax Assessment Act 1997* for the relevant period if:
 - (i) the taxpayer had wholly and exclusively dealt with the item of property in the prescribed manner at all times during the relevant period; and
 - (ii) in respect of any part of the relevant period for which deductions for depreciation or decline in value were or, but for any deduction denying provision, would have been allowed or allowable under this Act or the *Income Tax Assessment Act 1997*—the deductions were allowable on the same basis and at the same percentage as was or would have been allowed or allowable for that part of the relevant period; and
 - (iii) in respect of any other part (in this subparagraph referred to as the **relevant part**) of the relevant period—the deductions were allowable:
 - (A) where the relevant part was immediately succeeded by another part of the relevant period in respect of which deductions for depreciation or decline in value were or, but for any deduction denying provision, would have been allowed or allowable under this Act or the *Income Tax Assessment Act 1997*—on the same basis and at the same percentage as was or would have been allowed or allowable in respect of that other part; and
 - (B) in any other case—on the same basis and at the same percentage as was or, but for any deduction denying provision, would have been

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allowed or allowable under this Act or the *Income Tax Assessment Act 1997* in respect of the part of the relevant period for which deductions for depreciation or decline in value was or would have been allowed or allowable, being the part that immediately preceded the relevant part.

- (2) For the purposes of subsection (1):
- (a) an item of eligible depreciation property shall be taken to be dealt with by a taxpayer in the prescribed manner at a particular time if:
 - (i) the item of property is used by the taxpayer at that time for the purpose of producing assessable income; or
 - (ii) the item of property is, at that time, installed ready for use for the purpose of producing assessable income and held in reserve by the taxpayer; and
 - (b) a reference to a deduction denying provision is a reference to a provision of this Act that would have the effect of denying an entitlement in whole or in part to a deduction otherwise wholly allowable under this Act.
- (3) Subject to subsection 159GJ(2), where any of the following amounts (in this subsection referred to as the *attributable amount*):
- (a) an amount of residual previous capital expenditure within the meaning of the former Division 10 or 10AA;
 - (b) an amount of residual capital expenditure within the meaning of the former Division 10, 10AA or 10A;
 - (c) an amount of residual (1 May 1981 to 18 August 1981) capital expenditure within the meaning of the former Division 10 or 10AA;
 - (d) an amount of residual (19 August 1981 to 19 July 1982) capital expenditure within the meaning of the former Division 10 or 10AA;
 - (e) so much as is unrecouped of an amount of allowable (post-19 July 1982) capital expenditure within the meaning of the former Division 10 or 10AA;
 - (f) so much as is unrecouped of an amount of allowable capital expenditure within the meaning of the former Subdivision 330-C of the *Income Tax Assessment Act 1997*;

- (fa) so much of an amount of mining capital expenditure or transport capital expenditure (within the meaning of the *Income Tax Assessment Act 1997*) as has not been deducted under Division 40 of that Act;
- (g) the difference between capital expenditure and previous deductions as defined in the former subsection 387-470(1) of the *Income Tax Assessment Act 1997*;
- (h) the difference between the cost of a forestry road or timber mill building for the purposes of Division 40 of the *Income Tax Assessment Act 1997* and its adjustable value for the purposes of that Division;

ascertained as at the end of a year of income, is attributable in whole or in part to an amount of expenditure (in this subsection referred to as the *relevant expenditure*) by reason of which an item of property is Division 10, 10AA or 10A property, in this Division a reference to the residual amount at any time during the year of income in relation to the relevant expenditure is a reference to so much of the attributable amount as is attributable to the relevant expenditure.

- (4) Subject to subsection 159GJ(3), in this Division a reference to the residual amount at a particular time in relation to an amount of expenditure by reason of which an item of property is Division 10AAA property is a reference to the amount of expenditure reduced by any part of that expenditure that has been allowed or is allowable as a deduction under the former Division 10AAA of this Part or the former Subdivision 330-H of the *Income Tax Assessment Act 1997*, or under Subdivision 40-I of that Act for transport capital expenditure, from the assessable income of any taxpayer of a year of income preceding the year of income in which the particular time occurs.
- (5) Subject to subsection 159GJ(4), in this Division a reference to the residual amount at a particular time in relation to an amount of expenditure by reason of which an item of property is Division 10C or 10D property is a reference to the residual capital expenditure within the meaning of the former Division 10C or 10D of this Part, or to the undeducted construction expenditure within the meaning of Division 43 of the *Income Tax Assessment Act 1997*, as appropriate, at that time in relation to the amount of expenditure.

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- (6) In this Division, a reference to the residual amount at a particular time in relation to an amount of expenditure because of which an item of property is an eligible spectrum licence is a reference to:
- (a) the amount of unrecouped expenditure (within the meaning of the former section 380-20 of the *Income Tax Assessment Act 1997*) on that licence at that time; or
 - (b) the adjustable value of that licence (within the meaning of Division 40 of that Act) at that time.

159GG Qualifying arrangements

- (1) For the purposes of this Division, where at any time (in this subsection referred to as the *relevant time*) any of the following conditions is satisfied in relation to an arrangement relating to the use by a person (in this subsection referred to as the *end-user*), or to the control by a person (in this subsection also referred to as the *end-user*) of the use, of property owned by another person who is a party to the arrangement, being property that is or includes an item of eligible property:
- (a) the arrangement contains provision to the effect that:
 - (i) if:
 - (A) on the termination or expiration of the arrangement, the owner sells or otherwise disposes of the whole of the arrangement property, or part of the arrangement property that is or includes the item of eligible property, to any person; and
 - (B) the owner or an associate receives in respect of the sale or disposal no consideration, or consideration of an amount less than an amount (in this subparagraph referred to as the *guaranteed residual value*) specified in, or ascertainable under, the provision;
the end-user or an associate will pay to the owner or an associate an amount equal to the guaranteed residual value, or to the amount by which the guaranteed residual value exceeds the consideration, as the case may be;
 - (ii) at or after the termination or expiration of the arrangement, the whole of the arrangement property or part of the arrangement property that is or includes the

- item of eligible property is to be transferred (whether or not for any consideration) to the end-user or an associate;
- (iii) the end-user or an associate has or will have the right to purchase or to require the transfer of the whole of the arrangement property or part of the arrangement property that is or includes the item of eligible property; or
 - (iv) the arrangement period in relation to the item of eligible property in relation to the arrangement is a period that exceeds 1 year and the end-user or an associate will be liable to carry out, to expend money in respect of or to reimburse the owner or an associate for expenditure in respect of, repairs that may be required to the whole of the arrangement property or to part of the arrangement property that is or includes the item of eligible property;
- (b) the arrangement period in relation to the item of eligible property in relation to the arrangement is equal to or greater than:
- (i) where the item is an item of eligible real property—50% of the effective life of that item at the commencement of the arrangement period; or
 - (ii) in any other case—75% of the effective life of that item at the commencement of the arrangement period;
- (c) the sum of:
- (i) the payment portions of arrangement payments that were liable to be made at or before the relevant time in relation to the eligible amount, or in relation to all of the eligible amounts (including any eligible amount in respect of expenditure incurred after the commencement of the arrangement period), in relation to the item of eligible property; and
 - (ii) the payment portions of arrangement payments that, having regard to the provisions of the arrangement and any other relevant circumstances, are or were, at the relevant time, likely to become liable to be made after the relevant time in relation to the eligible amount, or in relation to all of the eligible amounts (including any eligible amount in respect of expenditure that, having regard to the provisions of the arrangement and any other relevant circumstances, is or was likely to be

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incurred during the arrangement period), in relation to the item of eligible property;

is equal to or greater than 90% of the sum of:

- (iii) the residual amount in relation to the eligible amount, or the sum of the residual amounts in relation to the eligible amounts, in respect of which expenditure was incurred before the commencement of the arrangement period in relation to the item of eligible property, as ascertained at the commencement of the arrangement period; and
- (iv) the amount of any expenditure that was, or is likely to be, incurred during the arrangement period, being expenditure giving rise to an eligible amount in relation to the item of eligible property;

the arrangement shall be taken to be, or to have been, a qualifying arrangement in relation to the item of eligible property:

- (d) at the relevant time; and
- (e) at all times before the relevant time when the arrangement was in force in relation to the item of eligible property.

(2) For the purposes of this Division, where:

- (a) an item of eligible property is, or is included in, arrangement property in relation to an arrangement relating to the use by a person (in this subsection referred to as the *end-user*), or to the control by a person (in this subsection also referred to as the *end-user*) of the use, of property owned by another person who is a party to the arrangement; and
- (b) the ownership of the item of eligible property is transferred to the end-user or an associate within 1 year after the arrangement ceases to be in force (whether by termination or expiration) in relation to the item of eligible property;

the arrangement shall be taken to have been a qualifying arrangement in relation to the item of eligible property at all times during the period during which the arrangement was in force in relation to the item of eligible property.

(3) For the purposes of subsections (1) and (2):

- (a) a lease to a person of property owned by another person shall be taken to be an arrangement relating to the use by the person of property owned by the other person; and

- (b) any arrangement entered into in relation to the lease referred to in paragraph (a) shall be taken to be part of the arrangement referred to in that paragraph.
- (4) Where, but for this subsection, an arrangement would be a qualifying arrangement in relation to an item of eligible property at a particular time (in this subsection referred to as the *relevant time*) and the Commissioner, having regard to:
 - (a) the circumstances by reason of which the arrangement is a qualifying arrangement in relation to that item of eligible property; and
 - (b) any other relevant circumstances;considers it unreasonable that the arrangement should be a qualifying arrangement at the relevant time in relation to the item of eligible property, the arrangement shall be taken not to be a qualifying arrangement at the relevant time in relation to the item of eligible property.
- (5) Where an arrangement is a qualifying arrangement in relation to an item of eligible property at a particular time (in this subsection referred to as the *relevant time*) and the arrangement ceases to be a qualifying arrangement in relation to that item of eligible property at a later time, the arrangement shall not be taken not to have been a qualifying arrangement in relation to that item of eligible property at the relevant time by reason of it ceasing to be a qualifying arrangement in relation to that item of eligible property at the later time.

159GH Application of Division in relation to property

- (1A) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:
 - (a) starts on or after 1 July 2007; and
 - (b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.
- (1B) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:
 - (a) the tax preferred use starts on or after 1 July 2007; and

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- (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
 - (c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.
- (1) Subject to subsections (1A), (1B) and (2), where:
- (a) at a particular time (in this subsection referred to as the *relevant time*) an arrangement is a qualifying arrangement under subsection 159GG(1) or (2) in relation to an item of eligible property; and
 - (b) either of the following conditions is satisfied:
 - (i) the qualifying arrangement was entered into after 5 o'clock in the afternoon, by standard time in the Australian Capital Territory, on 15 May 1984 and the end-user referred to in subsection 159GG(1) or (2) is an exempt public body;
 - (ii) the arrangement was entered into after 5 o'clock in the afternoon, by legal time in the Australian Capital Territory, on 16 December 1984 and the use of the property referred to in subsection 159GG(1) or (2) takes place, or will take place, outside Australia and is, or will be, wholly or partly for the purpose of producing exempt income;
- this Division applies in relation to the item of eligible property at the relevant time.
- (2) This Division does not apply in relation to an item of eligible property at a particular time if at that time section 51AD applies to the item of eligible property in relation to a taxpayer.

159GJ Effect of application of Division on certain deductions etc.

- (1) Where this Division applies in relation to an item of eligible depreciation property:
- (b) in relation to any year of income the whole of which is included in or comprises the application period—no depreciation deduction shall be allowable to any taxpayer in relation to the item of property for that year of income;
 - (c) in relation to any other year of income in which the whole or a part of the application period occurs:

- (i) in relation to any part (in this subsection referred to as the *pre-application part*) of the year of income that precedes the application period—there shall be allowable to a taxpayer as a depreciation deduction in relation to the item of property:
 - (A) where this Division has not previously applied in relation to the item of property—the same depreciation deduction (if any) as would, apart from this Division, be allowable to the taxpayer; and
 - (B) in any other case—the same depreciation deduction (if any) as would, but for this application of this section, be allowable to the taxpayer;
- (ii) in relation to the part of the year of income during which this Division applies—no depreciation deduction shall be allowable to any taxpayer in relation to the item of property; and
- (iii) in relation to any part (in this subsection referred to as the *post-application part*) of the year of income that occurs after the application period (not being a part that occurs after the commencement of a subsequent application period):
 - (A) the residual amount in relation to the item of eligible depreciation property at any time (in this sub-subparagraph referred to as the *relevant time*) during the post-application part is an amount ascertained in accordance with the formula:
$$A + B - C$$
where:
 - A* is the amount that, but for this application of this section, would be the residual amount at the relevant time in relation to the eligible amount (in this subparagraph referred to as the *relevant eligible amount*) by reason of which the item is an item of eligible depreciation property.
 - B* is:
 - (a) where paragraph (b) of this component does not apply—the amount that, in

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- determining the residual amount in component A, would be taken into account as depreciation under subsection 159GF(1) in respect of the application period; and
- (b) where, in determining the residual amount in component A, depreciation deductions taken into account in respect of the post-application part would be calculated under this Act or the *Income Tax Assessment Act 1997* using the diminishing value method—the amount that, in determining the residual amount in component A, would be taken into account under subsection 159GF(1) as depreciation deductions in respect of the application period and the part of the post-application part before the relevant time; and

C is:

- (a) where paragraph (a) of component B applies—an amount equal to the total notional principal in relation to the relevant eligible amount in relation to the application period; and
- (b) where paragraph (b) of component B applies—the sum of:
- (i) the total notional principal in relation to the relevant eligible amount in relation to the application period; and
 - (ii) the amount that, in determining the residual amount in component A, would be taken into account as depreciation deductions under subsection 159GF(1) in respect of the part of the post-application part before the relevant time if the depreciated value under this Act, the undeducted cost under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of eligible depreciation property at the

beginning of the year of income in which this Division ceases to apply were equal to the residual amount at the beginning of the application period as reduced by the total notional principal in relation to the relevant eligible amount in relation to the application period;

- (B) for the purposes of any application of this Act or the *Income Tax Assessment Act 1997*, in relation to the item of property in relation to the post-application part—the depreciated value, within the meaning of Division 3 of this Part, the undeducted cost under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of property at any time during the post-application part shall be taken to be an amount equal to the residual amount in relation to the relevant eligible amount at that time as ascertained in accordance with sub-subparagraph (A); and
- (C) the depreciation deduction (if any) allowable to a taxpayer in relation to the item of property in relation to the post-application part is the depreciation deduction that would be allowable in respect of that period if this Division did not apply and, in the case of an item of property in relation to which the former paragraph 56(1)(a) of this Act or the diminishing value method under the former Division 42, or Division 40, of the *Income Tax Assessment Act 1997* would, apart from this Division, apply, if the depreciated value, within the meaning of the former section 62 of this Act, the undeducted cost, under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of property at the beginning of the year of income were equal to the residual amount, as ascertained under sub-subparagraph (A), in relation to the relevant

eligible amount at the commencement of the post-application part;

- (d) the residual amount at any time (in this paragraph referred to as the *relevant time*) after the year of income in which the application period ends (not being a time after the commencement of a subsequent application period) in relation to the eligible amount (in this paragraph referred to as the *relevant eligible amount*) by reason of which the item is an item of eligible depreciation property is the amount that would be the residual amount in relation to the relevant eligible amount in relation to the relevant time under sub-subparagraph (1)(c)(iii)(A) if the post-application part referred to in that sub-subparagraph extended to include the relevant time; and
 - (e) for the purpose of the application of this Act and the *Income Tax Assessment Act 1997* in relation to the item of property at any time after the year of income in which the application period ends—there shall be taken to have been allowed as a depreciation deduction in relation to the item of property in relation to the application period an amount equal to the total notional principal in relation to the eligible amount by reason of which the item of property is eligible depreciation property in relation to the application period.
- (2) Where this Division applies in relation to an item of Division 10, 10AA or 10A property:
- (a) no deduction is allowable to any taxpayer under:
 - (ii) section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is mining capital expenditure within the meaning of that Act; or
 - (iii) Subdivision 40-B of that Act for a depreciating asset that is a forestry road or timber mill building;in relation to any amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10, 10AA or 10A property for any year of income in which the whole or a part of the application period occurs;
 - (b) the residual amount at any time after the application period (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period)

by reason of which the item is Division 10, 10AA or 10A property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(3) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

- (c) for the purposes of the application of:
 - (ii) section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is mining capital expenditure within the meaning of that Act; or
 - (iii) Subdivision 40-B of that Act for a depreciating asset that is a forestry road or timber mill building;in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10, 10AA or 10A property at any time after the application period, there shall be taken to have been allowed in respect of the amount of expenditure a deduction under whichever of those provisions applies in respect of the amount of expenditure of an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period.

- (3) Where this Division applies in relation to an item of Division 10AAA property:
 - (a) no deduction is allowable to any taxpayer under section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is transport capital expenditure within the meaning of that Act in relation to any amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property for any year of income in which the whole or a part of the application period occurs; and
 - (b) the residual amount at any time after the application period (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the

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amount of expenditure under subsection 159GF(4) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

- (c) for the purposes of the application of section 40-830 of the *Income Tax Assessment Act 1997*, for a project amount that is transport capital expenditure within the meaning of that Act, in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property for any year of income after the year of income in which this Division ceases to apply—it is taken to be a requirement of that section that the deduction allowable under that section in respect of the amount of expenditure does not exceed the residual amount in relation to the amount of expenditure as worked out in accordance with paragraph (b).
- (4) Where this Division applies in relation to an item of Division 10C or 10D property:
 - (a) in relation to any year of income the whole of which is included in or comprises the application period—no deduction shall be allowable to any taxpayer under Division 43 of the *Income Tax Assessment Act 1997*, in relation to any amount of expenditure by reason of which the item is Division 10C or 10D property for that year of income;
 - (b) in relation to any other year of income in which the whole or a part of the application period occurs:
 - (i) in relation to any part (in this subsection referred to as the *pre-application part*) of the year of income that precedes the application period—there shall be allowable to the taxpayer as a deduction under Division 43 of the *Income Tax Assessment Act 1997* in relation to an amount of expenditure by reason of which the item is Division 10C or 10D property:
 - (A) where this Division has not previously applied in relation to the amount of expenditure—the same deduction (if any) as would, apart from this Division, be allowable under that Division; and

- (B) in any other case—the same deduction (if any) as would, but for this application of this section, be allowable under that Division;
- (ii) in relation to the part of the year of income during which this Division applies—no deduction shall be allowable to any taxpayer under Division 43 of the *Income Tax Assessment Act 1997* in relation to any amount of expenditure by reason of which the item is Division 10C or 10D property; and
- (iii) in relation to any part (in this subsection referred to as the *post-application part*) of the year of income that occurs after the application period (not being a part that occurs after the commencement of a subsequent application period):
 - (A) the residual amount at any time during the post-application part in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(5) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and
 - (C) the deduction (if any) allowable to a taxpayer in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property under Division 43 of the *Income Tax Assessment Act 1997* in relation to the post-application part is the deduction (if any) that would be allowable to the taxpayer under that Division in respect of that period if this Division (other than this sub-subparagraph) did not apply and if it were a requirement of that Division that the deduction did not exceed the residual amount in relation

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to the amount of expenditure as ascertained in accordance with sub-subparagraph (A);

- (c) the residual amount at any time after the year of income in which the application period ends (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property is the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF (5) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and
 - (d) in the application of Division 43 of the *Income Tax Assessment Act 1997* in relation to any year of income after the year of income in which this Division ceases to apply, in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property it shall be taken to be a requirement of Division 43 of the *Income Tax Assessment Act 1997* that the deduction (if any) allowable to a taxpayer under that Division in respect of the amount of expenditure does not exceed the residual amount in relation to the amount of expenditure as ascertained in accordance with paragraph (c).
- (5) If this Division applies in relation to an item of property that is an eligible spectrum licence:
- (a) an amount cannot be deducted under Division 40 of the *Income Tax Assessment Act 1997* in relation to any amount of expenditure (other than expenditure incurred after the application period) by reason of which the item is an eligible spectrum licence for any year of income in which any of the application period occurs; and
 - (b) the residual amount at any time after the application period (but before the start of a later application period) in relation to an amount of expenditure (other than expenditure incurred after the application period) because of which the item is an eligible spectrum licence is an amount equal to:

- the amount that, if not for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(6);
- reduced by:
- an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and
- (c) for the purposes of applying Division 40 of the *Income Tax Assessment Act 1997* in relation to an amount of expenditure (other than expenditure incurred after the application period) because of which the item is an eligible spectrum licence at any time after the application period, a deduction under that Division is taken to have been allowed, for the amount of expenditure, of an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period.

159GK Effect of application of Division on assessability of arrangement payments

- (1) Where this Division applies in relation to an item of eligible property in relation to which there is an assessable arrangement payment or assessable arrangement payments in relation to a taxpayer in respect of the application period, there shall be included in the assessable income of the taxpayer so much only of any payment portion of each assessable arrangement payment in relation to an eligible amount as does not exceed the interest amount (if any) in relation to the payment portion.
- (2) For the purposes of subsection (1), a reference to the interest amount in relation to a payment portion of an assessable arrangement payment in relation to an eligible amount is a reference to the amount (if any) ascertained in accordance with the formula $A(1 + B)^t - A$, where:

A is the eligible principal in relation to the payment portion;

B is:

- (a) where the sum of the payment portions of the likely arrangement payments in relation to the eligible amount in respect of the likely application period (including any notional final payment portion of an arrangement payment)

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exceeds the residual amount, as ascertained at the commencement of the application period, in relation to the eligible amount—the fraction that is the effective annual interest rate, ascertained at the commencement of the application period referred to in subsection (1), at which the sum of the present values of the payment portions equals the residual amount; and

(b) in any other case—nil; and

t is the number of whole days in the arrangement payment period divided by 365.

(3) For the purposes of subsection (2):

(a) a reference in that subsection to the eligible principal in relation to a payment portion of an arrangement payment in relation to an eligible amount is a reference to:

(i) where the arrangement payment is the first arrangement payment in the likely application period referred to in that subsection—the residual amount in relation to the eligible amount, as ascertained at the commencement of the arrangement payment period in relation to the arrangement payment; and

(ii) in the case of any other arrangement payment—an amount ascertained in accordance with the formula $A - B + C$, where:

A is the eligible principal in relation to the payment portion of the immediately preceding arrangement payment;

B is the amount of the payment portion of the immediately preceding arrangement payment; and

C is the interest amount in relation to the payment portion of the immediately preceding arrangement payment; and

(b) a reference in that subsection to the arrangement payment period in relation to an arrangement payment is a reference to:

(i) where the arrangement payment is the first arrangement payment liable to be made in respect of the application period referred to in that subsection—the period commencing at the beginning of the application period

- and ending at the time at which the arrangement payment is liable to be made; and
- (ii) in the case of any other arrangement payment—the period commencing at the time at which the immediately preceding arrangement payment was liable to be made and ending at the time at which the arrangement payment concerned is liable to be made.
- (4) Where the qualifying arrangement in relation to an item of eligible property in relation to which this Division applies does not provide for the sale or disposal of the item to a person who is a party to the qualifying arrangement or to an associate, for the purposes of this section an arrangement payment (not being an assessable arrangement payment) that includes a payment portion (which portion is in this section referred to as a ***notional final payment portion***) in relation to any eligible amount by reason of which the item is an item of eligible property shall be taken to be liable to be made at the end of the likely application period of an amount equal to:
- (a) where the qualifying arrangement is a qualifying arrangement by reason of the application of subparagraph 159GG(1)(a)(i)—so much of the guaranteed residual value referred to in that subparagraph as is attributable to the eligible amount; or
- (b) in any other case—the amount that in the opinion of the Commissioner was, or would have been, at the commencement of the application period, the market value at the end of the application period of so much of the item of eligible property as is attributable to the eligible amount.
- (5) Where an amount of eligible capital expenditure is incurred in relation to an item of eligible property at any time after this Division commences to apply in relation to the item of eligible property, this section applies in respect of that expenditure as if this Division had commenced to apply in relation to the item of eligible property at the time at which the expenditure was incurred.
- (6) In this section:
- (a) ***likely application period***, in relation to an application of this Division, means the period that, having regard to the provisions of the qualifying arrangement referred to in section 159GH and to any other relevant circumstances, was,

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at the time at which that application of this Division commenced, the likely length of the application period; and

- (b) *likely arrangement payment*, in relation to a likely application period, means an arrangement payment that, having regard to the provisions of the qualifying arrangement referred to in section 159GH and to any other relevant circumstances, was, at the time at which the likely application period commenced, likely to become liable to be made during the likely application period.

159GL Special provision relating to Division 10C or 10D property

(1) If:

- (a) section 159GH applies in relation to an item of Division 10C or 10D property; and
- (b) at the time at which that section commenced to apply in relation to the item of property, the sum of the present values of the net Division 16D amounts, for each year of income during which the whole or a part of the likely application period occurs, in relation to an amount of expenditure by reason of which the property is Division 10C or 10D property will be less than the sum of the present values, at that time, of the net Division 10C or 10D amounts for each such year of income in relation to the expenditure;

sections 159GJ and 159GK do not apply in relation to the amount of expenditure in relation to the application period.

(2) In subsection (1):

- (a) a reference to the net Division 10C or 10D amounts for a year of income in relation to an amount of expenditure by reason of which an item of property is Division 10C or 10D property is a reference to the sum of the payment portions of any assessable arrangement payments likely to become liable to be made in relation to the amount of expenditure in relation to that year of income reduced by the deduction (if any) that, but for this Division, would be allowable under the former Division 10C or 10D of this Part, or under Division 43 of the *Income Tax Assessment Act 1997*, for the year of income in respect of the amount of expenditure;
- (b) a reference to the net Division 16D amounts for a year of income in relation to an amount of expenditure by reason of

which an item of property is Division 10C or 10D property is a reference to the sum of so much of the payment portions of any assessable arrangement payments likely to become liable to be made during the year of income in relation to the amount of expenditure as would, but for this section, be included in the assessable income of any taxpayer of the year of income under section 159GK; and

- (c) *likely application period* has the same meaning as in section 159GK.

159GM Special provision where cost of plant etc. is also eligible capital expenditure

Where:

- (a) at a particular time (in this section referred to as the *relevant time*) an item of eligible property is both eligible depreciation property and eligible capital expenditure property; and
- (b) the expenditure by reason of which the item of property is eligible capital expenditure property is the amount that:
- (i) was the cost of the item of property to the taxpayer who incurred the expenditure for the purpose of the former Subdivision 42-B, or Subdivision 40-C, of the *Income Tax Assessment Act 1997*; or
 - (ii) would have been the cost to the taxpayer for the purpose of that Subdivision if it applied in relation to the item of property;

for the purpose of ascertaining the residual amount at the relevant time in relation to the amount of expenditure:

- (c) if a capital expenditure deduction would, apart from this Division, be allowable to a taxpayer in respect of the amount of eligible capital expenditure in relation to the year of income in which the relevant time occurs—the item of eligible property shall be taken to be at the relevant time an item of eligible capital expenditure property and not an item of eligible depreciation property; and
- (d) in any other case—the item of eligible property shall be taken to be at the relevant time an item of eligible depreciation property and not an item of eligible capital expenditure property.

159GN Effect of use of property under qualifying arrangement for producing assessable income

(1) Where:

- (a) this Division applies in relation to an item of eligible property by reason of the application of subparagraph 159GH(1)(b)(i) in relation to the use by an exempt public body, or the control by an exempt public body of the use, of the item of eligible property under a qualifying arrangement;
- (b) the exempt public body jointly uses, or jointly controls the use of, the item of eligible property together with another person, or one or more other persons, who are not exempt public bodies;
- (c) the item of eligible property is or will be used during the arrangement period in relation to the qualifying arrangement for producing income of an amount that, having regard to the provisions of the qualifying arrangement and any other relevant circumstances, is not likely to be less than the total amount of the arrangement payments under the qualifying arrangement in relation to the item of eligible property; and
- (d) the income, or a part of the income, referred to in paragraph (c) will be included in the assessable income of one or more persons (which person, or each of which persons, is in this subsection referred to as an *assessable person*);

the following provisions have effect:

- (e) where all of the income referred to in paragraph (c) will be included in the assessable income of one or more persons—sections 159GJ and 159GK do not apply in relation to the item of eligible property;
- (f) where paragraph (e) does not apply:
 - (i) there is allowable to a taxpayer so much of any deduction that, but for this section, would not, by reason of the application of section 159GJ, be allowable to the taxpayer in relation to any eligible amount in relation to the item of eligible property in respect of the application period as is ascertained in accordance with the formula AB , where:
 A is the amount of the deduction that, but for this section would not, by reason of the application of section 159GJ, be allowable to the taxpayer; and

B is the assessable person fraction for the purposes of the application of this Division concerned;

- (ii) for the purposes of section 159GJ, a reference in that section to the total notional principal in relation to an eligible amount in relation to the item of eligible property in respect of the application period shall be taken to be a reference to the amount that, but for this subparagraph, would be the total notional principal, as increased by the amount of any deduction allowable under subparagraph (i) of this paragraph in relation to the eligible amount in respect of the application period; and
- (iii) for the purposes of the application of section 159GK, any eligible amount in relation to the item of property in respect of the application period shall be ascertained in accordance with the formula AB , where:
 - A** is the amount that, but for this section, would be the eligible amount; and
 - B** is the non-assessable person fraction in relation to the application of this Division concerned.

(2) For the purposes of subsection (1):

- (a) a reference in that subsection to the assessable person fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the interest of all of the assessable persons in the income referred to in paragraph (1)(c) expressed as a fraction of the interests of all of the persons entitled to that income; and
- (b) a reference in that subsection to the non-assessable person fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the fraction ascertained by subtracting the assessable person fraction in relation to that application of this Division in relation to the item of eligible property from the number 1.

(3) Where:

- (a) this Division applies in relation to an item of eligible property by reason of the application of subparagraph 159GH(1)(b)(ii) in relation to the use of the item of property outside Australia partly for the purpose of producing exempt income; and

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- (b) that use is also partly for the purpose of producing assessable income;

the following provisions have effect:

- (c) there is allowable to a taxpayer so much of any deduction that, but for this section, would not, by reason of the application of section 159GJ, be allowable to the taxpayer in relation to any eligible amount in relation to the item of eligible property in respect of the application period as is ascertained in accordance with the formula AB, where:
 - A** is the amount of the deduction that, but for this section would not, by reason of the application of section 159GJ, be allowable to the taxpayer; and
 - B** is the assessable income fraction for the purposes of the application of this Division concerned;
 - (d) for the purposes of section 159GJ, a reference in that section to the total notional principal in relation to an eligible amount in relation to the item of eligible property in respect of the application period shall be taken to be a reference to the amount that, but for this paragraph, would be the total notional principal, as increased by the amount of any deduction allowable under paragraph (c) of this subsection in relation to the eligible amount in respect of the application period; and
 - (e) for the purposes of the application of section 159GK, any eligible amount in relation to the item of property in respect of the application period shall be ascertained in accordance with the formula AB, where:
 - A** is the amount that, but for this section, would be the eligible amount; and
 - B** is the exempt income fraction in relation to the application of this Division concerned.
- (4) For the purposes of subsection (3):
- (a) a reference in that subsection to the assessable income fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the amount of the assessable income referred to in paragraph (3)(b) expressed as a fraction of the sum of that assessable income and the exempt income referred to in paragraph (3)(a); and

- (b) a reference in that subsection to the exempt income fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the fraction ascertained by subtracting the assessable income fraction in relation to that application of this Division in relation to the item of eligible property from the number 1.

159GO Special provisions relating to partnerships

(1) Where:

- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the *relevant year of income*), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as the *relevant year of income*);
- (b) either a deduction or an arrangement payment, or both, were taken into account in calculating that net income or partnership loss;
- (c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the *relevant deduction*), or the arrangement payment or a part of the arrangement payment (which arrangement payment or part of the arrangement payment, as the case may be, is referred to in this subsection as the *relevant arrangement payment*) would not have been taken into account for the purpose of that calculation if this Division applied in relation to the partnership in relation to particular property that is arrangement property in relation to a qualifying arrangement;
- (d) this Division does not apply in relation to the partnership in relation to the property by reason only that the qualifying arrangement was entered into before the time (in this subsection referred to as the *earliest application time*) referred to in whichever subparagraph of paragraph 159GH(1)(b) would be applicable if this Division applied as mentioned in paragraph (c); and

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- (e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer after the earliest application time;

the following provisions have effect:

- (f) there shall be included in the assessable income of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant deduction the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss;
- (g) there shall be allowable as a deduction in the assessment of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant arrangement payment the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss.

(2) Where:

- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the **relevant year of income**), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as the **relevant year of income**);
- (b) either a deduction or an arrangement payment, or both, were taken into account in calculating that net income or partnership loss;
- (c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the **relevant deduction**), or the arrangement payment or a part of the arrangement payment (which arrangement payment or part of the arrangement payment, as the case may be, is referred to in this subsection as the **relevant arrangement payment**), would not have been taken into account for the purpose of that calculation if this Division applied in relation to the partnership in relation to

particular property that is arrangement property in relation to a qualifying arrangement;

- (d) this Division does not apply in relation to the partnership in relation to the property by reason only that the qualifying arrangement was entered into before the time (in this subsection referred to as the *earliest application time*) referred to in whichever subparagraph of paragraph 159GH(1)(b) would be applicable if this Division applied as mentioned in paragraph (c);
- (e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer before the earliest application time;
- (f) after the earliest application time, the taxpayer made or agreed to make a contribution or contributions (which contribution is or contributions are in this subsection referred to as the *additional contribution*) to the capital of the partnership in addition to any contribution or contributions to the capital of the partnership that, under a contract or contracts entered into at or before that time, the taxpayer had made or agreed to make; and
- (g) by reason of making or agreeing to make the additional contribution, the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss, is greater than it would otherwise have been;

the following provisions have effect:

- (h) where a deduction was taken into account in calculating that net income or partnership loss—there shall be included in the assessable income of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula $A(B - C)$;
- (j) where an arrangement payment was taken into account in calculating that net income or partnership loss—there shall be allowable as a deduction in the assessment of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula $A(B - C)$;

where:

A is the amount of the relevant deduction or of the relevant arrangement payment, as the case requires;

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B is the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss; and

C is the fraction that would be **B** if that fraction were ascertained on the basis of the individual interests of the partners immediately before the earliest application time and the net income or partnership loss at that time were equal to the net income or partnership loss of the relevant year of income.

Division 16E—Accruals assessability etc. in respect of certain security payments

159GP Interpretation

(1) In this Division, unless the contrary intention appears:

accrual amount has the meaning given by subsection 159GQB(1).

accrual period has the meaning given by section 159GQA.

agreement has the same meaning as in Subdivision D of Division 3.

annuity has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

associate has the same meaning as in Subdivision D of Division 3.

eligible return has the meaning given by subsection (3).

fixed return security means a qualifying security under which the amount or amounts payable are or consist of:

- (a) a specified amount or specified amounts;
- (b) an amount or amounts the method of calculation of which does not involve an interest or indexation rate or other factor, being a rate or factor that varies or may vary during the term of the security; or
- (c) any combination of amounts referred to in paragraph (a) or (b).

holder, in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be entitled to receive payment of the amount or amounts.

implicit interest rate has the meaning given by subsection 159GQB(2).

ineligible annuity means an annuity issued by a life assurance company to or for the benefit of a natural person other than in the capacity of trustee of a trust estate.

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issue, in relation to a security other than a bill of exchange, means the creation of the liability to pay an amount or amounts under the security.

issue price, in relation to a security, means the consideration (if any) for the issue of the security.

issuer, in relation to a security (other than a bill of exchange) at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the amount or amounts.

partial redemption, in relation to a security, means the discharging of a part (other than the final part) of a liability to pay an amount or amounts under the security representing a return of the issue price of the security.

partial redemption payment, in relation to a security, means a payment that has the effect of partially redeeming the security.

qualifying security means any security:

- (a) that is issued after 16 December 1984;
- (b) that is not a prescribed security within the meaning of section 26C;
- (ba) that is not part of an exempt series (see subsection (9A));
- (c) the term of which, ascertained as at the time of issue of the security will, or is reasonably likely to, exceed 1 year;
- (d) that has an eligible return; and
- (e) where the precise amount of the eligible return is able to be ascertained at the time of issue of the security—in relation to which the amount of the eligible return is greater than 1½% of the amount ascertained by multiplying the amount of the payment or the sum of the payments (excluding any periodic interest) liable to be made under the security by the number (including any fraction) of years in the term of the security;

but does not, except as provided by subsection (10), include an annuity.

redemption, in relation to a security, means the discharging of all liability to pay any amount or amounts under the security representing a return of the issue price of the security.

redemption payment, in relation to a security, means any payment that has the effect of redeeming the security.

security means:

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
- (b) a deposit with a bank or other financial institution;
- (c) a secured or unsecured loan; or
- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

taxpayer's maximum term, in relation to a security held by a taxpayer, means:

- (a) if the security was issued to the taxpayer—the term of the security; or
- (b) if the security was transferred to the taxpayer—the part of the term remaining after the transfer.

term, in relation to a security, means the period from the issue of the security until the time at which the liability to make the payment or final payment or payments, as the case requires, under the security arises.

transfer, in relation to a security, means transfer, sell, assign or dispose in any way of the security or of the right to receive payment of the amount or amounts payable under the security, but does not include a redemption or partial redemption of the security.

transfer price, in relation to the transfer of a security, means the consideration (if any) for the transfer of the security.

variable return security means a qualifying security that is not a fixed return security.

(2) Where:

- (a) the Commissioner, having regard to any connection between the parties to the issue or transfer of a security and to any other relevant circumstances, is satisfied that the parties were not dealing with each other at arm's length in relation to the issue or transfer; and
- (b) the Commissioner determines that this subsection should apply in relation to the issue or transfer;

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then, for the purposes of the application of the definition of *issue price* or *transfer price*, as the case may be, in subsection (1) in relation to the issue or transfer, the consideration for the issue or transfer shall be taken to be equal to:

- (c) the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer; or
 - (d) where, for any reason (including an insufficiency of information available to the Commissioner), it is not possible or not practicable for the Commissioner to ascertain the amount referred to in paragraph (c)—such amount as the Commissioner determines.
- (3) For the purposes of this Division, there shall be taken to be an eligible return in relation to a security if at the time when the security is issued it is reasonably likely, by reason that the security was issued at a discount, bears deferred interest or is capital indexed or for any other reason, having regard to the terms of the security, for the sum of all payments (other than periodic interest payments) under the security to exceed the issue price of the security, and the amount of the eligible return is the amount of the excess.
- (6) For the purposes of this Division, where an amount of interest is payable under a security, the amount shall be taken to be periodic interest if the period between the commencement of the period in respect of which the interest is expressed to be payable and the time at which the interest is payable is less than or equal to one year.
- (7) Where:
- (a) but for this subsection, an amount of interest payable under a security would, by reason of the application of subsection (6), be taken, for the purposes of this Division, to be periodic interest; and
 - (b) the Commissioner, having regard to the amount of the interest, considers that it is properly attributable to a period in excess of one year;
- then, for purposes of the application of this Division:
- (c) the amount of interest shall not be taken to be periodic interest; and

- (d) the amount of interest shall be taken to be attributable to the period to which the Commissioner considers it is properly attributable.
- (8) Where 2 or more of the amounts payable under a security are payable to different persons and in return for consideration given by different persons, the 2 or more amounts shall, for the purposes of this Division, be taken to be payable under a separate security having such of the terms of the first-mentioned security as are relevant.
- (9) For the purposes of the application of this Division in relation to the holding of a security acquired by a taxpayer on transfer, any prior holding of the security by the taxpayer, whether on issue or transfer, shall be disregarded.
- (9A) For the purposes of paragraph (ba) of the definition of *qualifying security* in subsection (1), if:
- (a) after 16 December 1984, a person issues a security (the *first in the series*) that is not a qualifying security; and
 - (b) during the period from the end of 16 December 1984 until the issuing of the first in the series, the person did not issue any qualifying security with exactly the same payment dates, payment amounts and other terms as the first in the series; and
 - (c) after issuing the first in the series, the person issues another security (the *later security*) with exactly the same payment dates, payment amounts and other terms as the first in the series;
- the later security is *part of an exempt series*.
- (9B) In determining for the purposes of paragraph (9A)(b) or (c) whether a security has exactly the same other terms as another security, the fact that the first-mentioned security has a different issue price than the second-mentioned security is to be disregarded.
- (10) Where:
- (a) an annuity is issued on or after 29 October 1987;
 - (b) the requirements of paragraphs (b) to (e) (inclusive) of the definition of *qualifying security* in subsection (1) are satisfied in relation to the annuity; and
 - (c) the annuity is not an ineligible annuity;

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the annuity is a qualifying security for the purposes of this Division.

159GQ Tax treatment of holder of qualifying security

Accrual amounts to be worked out

- (1) If a taxpayer holds a qualifying security for all or part of a year of income, the effect on the taxpayer's taxable income is determined by working out the accrual amount (see section 159GQB) for each accrual period (see section 159GQA) in the year of income and then summing the accrual amounts.

Positive sum assessable

- (2) If the sum is a positive amount, the amount is included in the assessable income of the taxpayer of the year of income.

Negative sum deductible

- (3) If the sum is a negative amount, a deduction of the amount is allowable in the assessment of the taxpayer of the year of income.

159GQA Accrual period

Taxpayer's maximum term to be divided into accrual periods

- (1) The taxpayer's maximum term for the qualifying security is divided into accrual periods in accordance with this section.

Whole year of income

- (2) If a year of income is wholly taken up by any of the taxpayer's maximum term, the year of income is divided into 2 accrual periods of 6 months.

Beginning of taxpayer's maximum term

- (3) If the taxpayer's maximum term begins after the beginning of the year of income:
 - (a) if it begins less than 6 months after the beginning of the year of income—the period from the beginning of the taxpayer's maximum term until the middle of the year of income is an

accrual period and the second 6 months of the year of income is an accrual period; and

- (b) in any other case—the part of the year of income taken up by the taxpayer’s maximum term is an accrual period.

End of taxpayer’s maximum term

- (4) If the taxpayer’s maximum term ends before the end of a year of income:
- (a) if it ends no later than 6 months after the beginning of the year of income—the part of the year of income taken up by the taxpayer’s maximum term is an accrual period; and
- (b) in any other case—the first 6 months of the year of income is an accrual period and the period from the middle of the year of income until the end of the taxpayer’s maximum term is an accrual period.

Example

- (5) For example, if the taxpayer’s year of income is a financial year and a security with a 2 year term is issued to the taxpayer on 1 April, the accrual periods will be as follows:

1st year of income	2nd year of income	3rd year of income		
1 Apr.	1 July	1 Jan.	1 July	1 Jan. 1 Apr.
3 month accrual period	6 month accrual period	6 month accrual period	6 month accrual period	3 month accrual period

159GQB Accrual amount

Formula

- (1) The **accrual amount** for an accrual period is worked out using the formula:

$$[\text{Implicit interest rate} \times \text{Opening balance}] - \text{Periodic interest etc.}$$

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Implicit interest rate

- (2) In the formula in subsection (1), ***Implicit interest rate*** means the rate of interest worked out under section 159GQC (for a fixed return security) or 159GQD (for a variable return security), properly adjusted to take account of the case where the accrual period is less than 6 months.

Opening balance

- (3) In the formula in subsection (1), ***Opening balance*** means the amount worked out using the formula:

Issue/transfer price + Previous accruals – Payments

where:

Issue/transfer price means the issue price or transfer price, as the case requires, of the security; and

Previous accruals means:

- (a) if paragraph (b) does not apply—the sum, whether positive or negative, of all accrual amounts for previous accrual periods in the taxpayer’s maximum term; or
- (b) if the accrual period is the first in the taxpayer’s maximum term—nil; and

Payments means all payments (other than of periodic interest) made or liable to be made under the security during all previous accrual periods in the taxpayer’s maximum term.

Periodic interest etc.

- (4) In the formula in subsection (1), ***Periodic interest etc.*** means the sum of:
- (a) all periodic interest payments made or liable to be made under the security during the accrual period, properly adjusted in the case of any payment made other than at the end of the period; and
 - (b) if any payments (other than of periodic interest) made or liable to be made under the security during the accrual period are made or liable to be made other than at its end—an amount to adjust properly for the making of the payments other than at the end of the period.

159GQC Implicit interest rate for fixed return security

For the purposes of the formula component *Implicit interest rate* in subsection 159GQB(1), the rate of interest for a fixed return security in relation to a taxpayer is the rate of compound interest per period of 6 months at which:

(a) the sum of the present values of all amounts payable under the security during the taxpayer's maximum term;

equals:

(b) the issue price or the transfer price, as the case requires, of the security.

159GQD Implicit interest rate for variable return security

Implicit interest rate to be recalculated each year etc.

- (1) For the purposes of the formula component *Implicit interest rate* in subsection 159GQB(1), the rate of interest for a variable return security must be worked out in accordance with subsection (2) separately for each year of income during the taxpayer's maximum term. If there are 2 accrual periods of 6 months in the year of income, the rate is the same for both periods. It is possible for the rate to be negative.

Rate

- (2) The rate applicable in relation to a year of income is the rate of compound interest per period of 6 months in the calculation period (see subsection (3)) at which:

(a) the sum of the present values of all amounts payable under the security during the calculation period;

equals:

(b) the opening balance, mentioned in subsection 159GQB(1), for the accrual period that begins the calculation period.

Calculation period

- (3) The *calculation period* means the part of the taxpayer's maximum term that occurs after the beginning of the year of income.

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Where amount payable is not known

- (4) For the purposes of paragraph (2)(a), if by the end of the year of income it is not possible to determine whether an amount will be payable, or the size of the amount that will be payable, after the end of the year of income, the determination is to be made by applying subsection (5), (7) or (11), or a combination of those subsections.

Assumption of constant level

- (5) Subject to subsection (7), if an amount payable is worked out to any extent by reference to the amount or level, at a particular time, of a rate, price, index or other thing, it is to be assumed that the rate, price, index or thing will be the same at all times after the end of the year of income as it was at the end of the year of income (or, if it was not available at the end of the year of income, at the time when it was last available in the year of income).

Examples

- (6) For the purposes of subsection (5):
- (a) an example of an amount worked out wholly by reference to the amount of a rate at a particular time is an interest payment under a floating rate note. The amount payable is the product of an interest rate indicator (such as the prevailing bank bill rate) and the face or par value of the note; and
 - (b) an example of an amount worked out wholly by reference to the amount of a price at a particular time is a redemption payment under a commodity linked security where the amount of the payment is the product of the prevailing price of a commodity (such as gold) and the face or par value of the security.

Assumption of continuing rate of change

- (7) If an amount payable is worked out to any extent by reference to the amount of change in an index or other thing that occurs during a period, it is to be assumed that the index or other thing will continue to change at the same rate as it did:
- (a) if the index or other thing was available at the end of the year of income—during the year of income; or

- (b) in any other case—during the period of 12 months in respect of which the index or other thing was last available in the year of income.

Example

- (8) An example for the purposes of subsection (7) is a payment whose amount is the product of the face or par value of a security and the percentage increase in the All Groups Consumer Price Index number (the *CPI*) during the year ending on 30 June 1995. If the year of income for which the implicit interest rate is being worked out is the 1993-94 year of income and the CPI increases by 2% during the year ending on 31 March 1994 (the date of the last available number during the year of income), the CPI is assumed to increase by 2% during the year ending on 30 June 1995.

Disguised continuing rate of change case

- (9) For the purposes of subsection (7), if an amount payable is worked out to any extent by reference to the quotient of:
 - (a) the amount or level of an index or other thing at a particular time; and
 - (b) either:
 - (i) the amount or level of the index or other thing at a different time; or
 - (ii) another amount that, while not expressed to be the amount or level of the index or other thing at a different time, may reasonably be regarded as representing the amount or level of the index or other thing at a different time;

the amount payable is taken to be worked out to that extent by reference to the amount of change in the index or other thing that occurs during the period between the 2 times.

Example

- (10) An example for the purposes of subsection (9) is a payment under a security issued in December 1994 that is worked out by multiplying a number of dollars by the quotient of:
 - (a) the All Groups Consumer Price Index number in respect of the quarter ending on 31 December 1997; and
 - (b) the number 114.

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Assume that the number in paragraph (b) is the same as the All Groups Consumer Price Index number in respect of the quarter ending on 31 December 1994. In this case, it would be reasonable to regard the number as representing the amount of the index at 31 December 1994, and therefore to apply subsection (7).

General assumption

- (11) If it is not possible to make the determination mentioned in subsection (4) in respect of the whole or part of any amount by applying subsection (5) or (7), or both, (for example, because no information about a rate, price or index was available during the year of income), the determination in respect of that whole or part is to be made on the basis of what is most likely in the circumstances.

159GR Consequences of actual payments

- (1) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income to a taxpayer under a qualifying security:
- (a) no amount shall be included in the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ; and
 - (b) where the taxpayer acquired the qualifying security on transfer—no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ.

159GS Balancing adjustments on transfer of qualifying security

- (1) Where there is a profit amount in relation to the transfer of a qualifying security by a taxpayer in a year of income:
- (a) if there is a net assessable amount in relation to the transfer and:
 - (i) the profit amount exceeds the net assessable amount—
an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income;
 - or

- (ii) the net assessable amount exceeds the profit amount—
an amount equal to the excess shall be allowable as a
deduction from the assessable income of the taxpayer of
the year of income; and
 - (b) if there is a net deductible amount in relation to the
transfer—an amount equal to the sum of that amount and the
profit amount shall be included in the assessable income of
the taxpayer of the year of income.
- (2) Where there is a loss amount in relation to the transfer of a
qualifying security by a taxpayer in a year of income and:
 - (a) there is a net assessable amount in relation to the transfer—
an amount equal to the net assessable amount shall be
allowable as a deduction from the assessable income of the
taxpayer of the year of income; or
 - (b) there is a net deductible amount in relation to the transfer that
exceeds the loss amount—an amount equal to the excess
shall be included in the assessable income of the taxpayer of
the year of income.
- (3) For the purposes of the application of this section in relation to the
transfer (in this subsection referred to as the *relevant transfer*) of a
qualifying security by a taxpayer:
 - (a) where the transfer price, as increased by the amount of any
payments (other than periodic interest payments) made to the
taxpayer under the security in respect of the period when the
security was held by the taxpayer exceeds:
 - (i) the issue price of the security; or
 - (ii) where the security was acquired by the taxpayer on
transfer—the transfer price in relation to that transfer;
there shall be taken to be a profit amount in relation to the
relevant transfer of an amount equal to the excess;
 - (b) where the issue price of the security or, where the security
was acquired by the taxpayer on transfer, the transfer price in
relation to that transfer exceeds the sum of the transfer price
in relation to the relevant transfer and any payments (other
than periodic interest payments) made to the taxpayer under
the security in respect of the period when the security was
held by the taxpayer, there shall be taken to be a loss amount
in relation to the relevant transfer of an amount equal to the
excess;

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- (c) where the sum of all amounts (if any) included under section 159GQ in the assessable income of the taxpayer in respect of the security in respect of the period when the security was held by the taxpayer exceeds the sum of all amounts (if any) allowable under those sections as deductions from the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net assessable amount in relation to the relevant transfer of an amount equal to the excess; and
- (d) where the sum of all amounts (if any) allowable under section 159GQ as deductions from the assessable income of the taxpayer in respect of the security in respect of the period when the taxpayer held the security exceeds the sum of all amounts (if any) included under those sections in the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net deductible amount in relation to the relevant transfer of an amount equal to the excess.

159GT Tax treatment of issuer of a qualifying security

- (1) Subsections (1A) and (1B) apply if a taxpayer is an issuer of a qualifying security to which this section applies during a period (the *issuer period*) comprising the whole or part of a year of income.
 - (1A) If, on the assumptions in subsection (1C), an amount would be included in the taxpayer's assessable income of the year of income in respect of the issuer period, then, subject to this section, the taxpayer is entitled to a deduction in his or her assessment for the year of income equal to that amount.
 - (1B) If, on the assumptions in subsection (1C), a deduction would be allowable in the taxpayer's assessment for the year of income, then an amount equal to the deduction is included in the taxpayer's assessable income of the year of income.
 - (1C) For the purposes of subsections (1A) and (1B), the assumptions are that:
 - (a) the security was issued to the taxpayer (rather than the taxpayer being the issuer of the security); and

- (b) the taxpayer held the security during the whole of the issuer period; and
 - (c) the taxpayer did not transfer the security at the end of the issuer period; and
 - (d) sections 159GW, 159GX and 159GY were not enacted.
- (2) A deduction is not allowable to a taxpayer under subsection (1A) in relation to a qualifying security to which this section applies unless the taxpayer would, but for this Division, be entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* in respect of payments (not being redemption payments, partial redemption payments or periodic interest payments) made or liable to be made under the security in respect of the relevant period referred to in that subsection.
- (3) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income by a taxpayer under a qualifying security to which this section applies, no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under this section.
- (5) Subject to subsection (6), this section applies to:
- (a) any qualifying security issued on or before 22 May 1986; and
 - (b) any qualifying security issued in Australia after 22 May 1986 other than a negotiable instrument issued payable to bearer.
- (6) This section does not apply to a qualifying security issued by a taxpayer after 5 o'clock in the evening, by standard time in the Australian Capital Territory, on 23 April 1987:
- (a) to, on behalf of or otherwise for the benefit of, a non-resident or a prescribed dual resident associate of the taxpayer; or
 - (b) subject to an agreement between the taxpayer and an associate of the taxpayer under which the security is or was to be transferred to a non-resident or a prescribed dual resident associate of the taxpayer.

159GU Effect of Division on certain transfer profits and losses

- (1) Where, apart from this Division, a profit that is made by a resident taxpayer in relation to a transfer of a qualifying security that does

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not form part of the trading stock of the taxpayer would be included in the assessable income of the taxpayer of a year of income, the profit shall not be so included in the assessable income of the taxpayer.

- (2) Where, apart from this Division, a loss that is incurred by a resident taxpayer in relation to a transfer of a qualifying security that does not form part of the trading stock of the taxpayer would be allowable as a deduction from the assessable income of the taxpayer of a year of income and there is a net deductible amount, within the meaning of section 159GS, in relation to the transfer, so much only of the amount of the loss as exceeds the net deductible amount shall be so allowable as a deduction.

159GV Consequence of variation of terms of security

- (1) Where, after 22 May 1986, a material variation is made in the terms of a security, for the purposes of the application of this Division in relation to the security in respect of the period after the variation and before any subsequent material variation:
- (a) the security shall be taken to have been issued on the terms on which it was originally issued as varied by the material variation and any prior variation;
 - (b) where consideration for the variation is paid or payable by the holder of the security—the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this subsection increased by the amount of that consideration;
 - (c) where consideration for the variation is paid or payable by the issuer of the security—the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this subsection reduced by the amount of that consideration; and
 - (d) paragraph (a) of the definition of *qualifying security* in subsection 159GP(1) shall be disregarded.
- (2) Where:
- (a) subsection (1) applies in relation to a security held by a taxpayer in relation to a material variation in the terms of the security; and

(b) if:

- (i) that subsection had effect not only in relation to the period after the variation but also in relation to the whole of the term of the security before the variation; and
- (ii) any previous material variations were taken into account but any subsequent material variations were disregarded;

the sum (in this subsection referred to as the ***total notional taxable income***) of the taxable incomes of the taxpayer in respect of the year of income in which the variation is made and all previous years of income would have differed from the sum (in this subsection referred to as the ***total actual taxable income***) of the actual taxable incomes of the taxpayer of those years of income;

the following provisions have effect:

- (c) where the total notional taxable income exceeds the total actual taxable income—an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income in which the variation is made;
 - (d) where the total actual taxable income exceeds the total notional taxable income—an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the variation is made.
- (3) In this section, a reference to a material variation of the terms of a security is a reference to a variation of the terms of the security:
- (a) that has the effect that a security that was not a qualifying security before the variation would, if the security had been originally issued with the terms as varied and if paragraph (a) of the definition of ***qualifying security*** in subsection 159GP(1) were disregarded, have been a qualifying security when the security was issued;
 - (b) that has the effect that a security that is a qualifying security would, if originally issued with the terms as varied, not have been a qualifying security at the time of issue; or
 - (c) that has the effect that the amount, or time of making, of a payment under the security, or that the holder or issuer of the security, is varied.

Part III Liability to taxation

Division 16E Accruals assessability etc. in respect of certain security payments

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- (4) Where any right or option under a security to extend the term of, or otherwise vary the effect of, the security is exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the security to provide for the extension or other effect.

159GW Effect of Division in relation to non-residents

- (1) Subject to subsection (2), where during the whole or a part of a year of income (which whole or part is in this subsection referred to as the *period of non-residence*) a taxpayer is not a resident:
- (a) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GQ in relation to the period of non-residence; and
 - (c) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GS in relation to any transfer of the security that occurred during the period of non-residence.
- (2) Where:
- (a) a payment is made or liable to be made under a qualifying security to a resident taxpayer; and
 - (b) the taxpayer was not a resident for the whole or a part (which whole or part is in this subsection referred to as the *period of non-residence*) of the period during which the taxpayer held the security;
- the following provisions have effect:
- (c) there shall be included in the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for subsection (1), would have been included in the assessable income of the taxpayer of any year or years of income under section 159GQ in respect of the payment in respect of the period of non-residence;
 - (d) there shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for subsection (1), would have been allowable as a deduction from the assessable income of the taxpayer of any year or years of income under section 159GQ

in respect of the payment in respect of the period of non-residence.

159GX Effect of Division where certain payments not assessable

Where, but for this section, an amount would be included in, or allowable as a deduction from, the assessable income of a taxpayer of a year of income under section 159GQ in respect of the whole or a part of a payment under a qualifying security, no amount shall be so included or allowable unless the payment or a part of the payment, when actually made or liable to be made, would, disregarding section 128D, be included in the assessable income of the taxpayer of a year of income.

159GY Effect of Division where qualifying security is trading stock

No amount shall be included in, or allowable as a deduction from, the assessable income of a taxpayer:

- (a) under section 159GQ in relation to a qualifying security in respect of any year or part of a year of income during which the qualifying security forms part of the trading stock of the taxpayer; or
- (c) under section 159GS in relation to the transfer of a qualifying security by the taxpayer where, immediately before the transfer, the qualifying security was or formed part of the trading stock of the taxpayer.

159GZ Stripped securities

(1) Where:

- (a) at any time a taxpayer acquires or acquired a security (in this subsection referred to as the *underlying security*) in relation to which there are or were 2 or more payment rights; and
- (b) the taxpayer transfers or transferred one or some but not all of those rights to a particular person or particular persons jointly;

for the purposes of the application of this Division (including any subsequent application of this subsection) in relation to any period after the transfer of the right or rights:

- (c) instead of the underlying security, there shall be taken to have been originally issued:

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- (i) a separate security under which the payment right or payment rights transferred to the person or persons referred to in paragraph (b) were created;
 - (ii) where at the time at which that right or those rights were transferred, another payment right or other payment rights in relation to the underlying security was or were transferred to another person or to other persons jointly—a separate security under which that other right or those other rights were created; and
 - (iii) where immediately after the transfer the taxpayer retains or retained any payment right or rights—a separate security under which that right or those rights were created;
- (d) where the underlying security was issued to the taxpayer—the issue price of each separate security referred to in paragraph (c) shall be taken to be so much of the issue price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of issue of the underlying security bears to the market value of the underlying security at that time; and
- (e) where the underlying security was acquired by the taxpayer on transfer—the transfer price, in relation to that transfer, of each separate security referred to in paragraph (c) shall be taken to be so much of the transfer price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of transfer bears to the market value of the underlying security at that time.
- (2) Where, by reason of the application of subsection (1) in relation to the transfer after 16 December 1984 of a payment right or payment rights in relation to a security to a particular person or particular persons jointly, the payment right or rights is or are taken to comprise a separate security, then, for the purposes of the application of this Division in relation to the separate security in relation to any period after the transfer, paragraph (a) of the definition of *qualifying security* in subsection 159GP(1) shall be disregarded.
- (3) In subsections (1) and (2), *payment right*, in relation to a security, means a right to receive a particular payment that is liable to be made under the security.

(4) Where:

- (a) at any time a taxpayer acquires or acquired a security (in this subsection referred to as the *underlying security*) on issue or transfer;
- (b) after 16 December 1984, the taxpayer issues a qualifying security (in this subsection referred to as the *stripped security*); and
- (c) but for this subsection, a deduction of an amount equal to the whole or a part of the issue price or, where the underlying security was acquired on transfer, the transfer price of the underlying security would be allowable from the assessable income of the taxpayer of the year of income in which the taxpayer issues the stripped security in respect of the issue of the stripped security;

the amount of the deduction allowable shall be an amount that bears to the issue price or transfer price, as the case may be, of the underlying security the same proportion as the market value of the stripped security at the time of issue or purchase, as the case may be, bears to the market value of the underlying security at that time.

**Division 16J—Effect of cancellation of subsidiary's shares
in holding company**

159GZZZC Interpretation—general

- (1) In this Division:

associate has the same meaning as in section 318.

cancellation includes redemption.

disposal includes cancellation.

entity means a company, a partnership or a trust estate.

pre-cancellation period, in relation to a cancellation of shares to which this Division applies, means the period beginning when the holding company concerned became a holding company of the subsidiary concerned and ending at the time of the cancellation.

security means stock, a bond or debenture, or any other document evidencing the indebtedness of a person, whether or not the debt is secured.

- (3) For the purposes of this Division, a company is:
- (a) a subsidiary of another company; or
 - (b) the holding company of another company;
- if the first-mentioned company is such for the purposes of the *Corporations Act 2001*.
- (4) For the purposes of this Division, a reference to an interest in an entity is a reference to a legal or equitable interest in:
- (a) if the entity is a company—shares in the company;
 - (b) if the entity is a partnership—capital or profits of the partnership;
 - (c) if the entity is a trust estate—corpus or income of the trust estate; or
 - (d) in any case—securities issued by the entity.

159GZZZD Meaning of *eligible entity*, *eligible interest* and *eligible proportion*

For the purposes of this Division, where a holding company holds interests in a subsidiary of the holding company either directly or indirectly through interposed entities:

- (a) a reference to an eligible entity in relation to the holding company and the subsidiary is a reference to the holding company or any of the interposed entities;
- (b) a reference to an eligible interest of an eligible entity is a reference to any interest held by the eligible entity directly in the subsidiary or directly in any other eligible entity in relation to the holding company and the subsidiary; and
- (c) a reference to the eligible proportion in relation to an eligible interest of an eligible entity is a reference to the proportion of the total interests held directly in the subsidiary by all persons and entities that is represented by:
 - (i) if the eligible entity holds the eligible interest directly in the subsidiary—the eligible interest; or
 - (ii) if, by virtue of holding the eligible interest, the eligible entity holds an interest in the subsidiary indirectly through another eligible entity or other eligible entities—that interest in the subsidiary.

159GZZZE Share cancellations to which this Division applies

Where a holding company cancels shares in itself that are held by a subsidiary of that company, this Division applies to the cancellation of the shares.

159GZZZF Effect on subsidiary of share cancellations to which this Division applies

- (1) Where:
 - (a) this Division applies to a cancellation of shares; and
 - (b) apart from this section, either:
 - (i) the subsidiary concerned would not receive or be entitled to receive any capital proceeds in respect of the cancellation; or
 - (ii) the capital proceeds that the subsidiary concerned would receive or be entitled to receive in respect of the

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cancellation would be less than the adjusted market value of the shares;

the following provisions have effect for the purposes of this Act:

- (c) where subparagraph (b)(i) applies—the subsidiary shall be taken to have received or to be entitled to receive, as capital proceeds in respect of the cancellation, an amount equal to the adjusted market value of the shares;
 - (d) where subparagraph (b)(ii) applies—the amount of the capital proceeds that the subsidiary receives or is entitled to receive in respect of the cancellation shall be taken to be increased by an amount so that it equals the adjusted market value of the shares.
- (2) For the purposes of subsection (1), the adjusted market value of the shares is the amount that would have been their market value at the time of the cancellation if the cancellation did not occur and was never proposed to occur.

159GZZZG Pre-cancellation disposals of eligible interests

(1) Where:

- (a) this Division applies to a cancellation of shares;
- (b) during the pre-cancellation period, there is a disposal of an eligible interest held by an eligible entity in relation to the holding company and the subsidiary concerned; and
- (c) apart from this section, either:
 - (i) the eligible entity would not have received or been entitled to receive any capital proceeds in respect of the disposal; or
 - (ii) the capital proceeds that the eligible entity would have received or been entitled to receive in respect of the disposal would have been less than the adjusted market value of the eligible interest;

the following provisions have effect for the purposes of this Act:

- (d) where subparagraph (c)(i) applies—the eligible entity shall be taken to have received or to have been entitled to receive, as capital proceeds in respect of the disposal, an amount equal to the adjusted market value of the eligible interest;
 - (e) where subparagraph (c)(ii) applies—the amount of the capital proceeds that the eligible entity received or was entitled to receive in respect of the disposal shall be taken to be
-

increased by an amount so that it equals the adjusted market value of the eligible interest.

- (2) For the purposes of subsection (1), the adjusted market value of the eligible interest is the amount that would have been its market value at the time of the disposal if the cancellation of the shares to which this Division applies did not occur and was never proposed to occur.

159GZZZH Post-cancellation disposals of eligible interests etc.

- (1) Where:
- (a) as a result of the application of section 159GZZZF in relation to a cancellation of shares, the subsidiary concerned is taken to have received or to be entitled to receive an amount of capital proceeds or an increase in an amount of capital proceeds (which amount or increase is in this section called the *cancellation adjustment amount*) in relation to the cancellation of the shares; and
 - (b) an eligible entity in relation to the holding company and the subsidiary concerned holds an eligible interest at the time of the share cancellation;

then this section applies in relation to the eligible interest.

- (2) For the purposes of this Act (other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*):
- (a) if the eligible interest is not trading stock—in determining:
 - (i) the amount of any deduction allowed or allowable to the eligible entity in respect of the acquisition of the eligible interest; or
 - (ii) the amount of any profit included in, or loss allowable as a deduction from, the assessable income of the eligible entity in respect of the acquisition and any subsequent disposal of the eligible interest;the capital proceeds in respect of the acquisition of the eligible interest shall be taken to have been reduced by the eligible interest's eligible proportion of the cancellation adjustment amount; and
 - (b) if the eligible interest is trading stock—the capital proceeds in respect of any subsequent disposal of the eligible interest

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shall be taken to be increased by the eligible interest's eligible proportion of the cancellation adjustment amount.

- (3) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, if a CGT event happens in relation to the eligible interest, the cost base and reduced cost base of the eligible interest is reduced by the eligible interest's eligible proportion of the cancellation adjustment amount.
- (5) This section applies in relation to the acquisition of the eligible interest held by the eligible entity, and to a CGT event happening in relation to the eligible interest, even if the entity was not an eligible entity, and the interest was not an eligible interest, at the time of the acquisition or CGT event.

159GZZZI Additional application of sections 159GZZZG and 159GZZZH to associates

- (1) Subject to this section, where a natural person is an associate of a holding company (otherwise than solely because of being the trustee of a trust estate), sections 159GZZZG and 159GZZZH apply (in addition to any application apart from this application of this section) as if references in those sections to:
 - (a) an eligible entity in relation to the holding company and the subsidiary concerned;
 - (b) an eligible interest of such an entity; or
 - (c) the eligible proportion in relation to such an interest;were references to what would, if the natural person were a holding company in relation to the subsidiary, be respectively:
 - (d) an eligible entity in relation to the natural person and the subsidiary;
 - (e) an eligible interest of such an entity; or
 - (f) the eligible proportion in relation to such an interest.
- (2) For the purposes of applying section 159GZZZG or 159GZZZH in accordance with subsection (1):
 - (a) any interest of an entity that is an eligible interest for the purposes of the application of that section apart from subsection (1) shall be taken not to be an eligible interest; and

- (b) any eligible interest of an eligible entity (including the natural person) held in the actual holding company referred to in subsection (1), or in any eligible entity interposed between the natural person and that holding company, shall be taken not to be an eligible interest.

Division 16K—Effect of buy-backs of shares

Subdivision AA—Application of Division to non-share equity interests

159GZZZIA Application of Division to non-share dividends

- (1) This Division:
 - (a) applies to a non-share equity interest in the same way as it applies to a share; and
 - (b) applies to an equity holder in the same way as it applies to a shareholder; and
 - (c) applies to a non-share dividend in the same way as it applies to a dividend.
- (2) Paragraph (1)(a) does not apply to subsection 159GZZZP(1).

Subdivision A—Interpretation

159GZZZJ Interpretation

In this Division:

buy-back has the meaning given by paragraph 159GZZZK(a).

off-market purchase has the meaning given by paragraph 159GZZZK(d).

on-market purchase has the meaning given by paragraph 159GZZZK(c).

purchase price has the meaning given by section 159GZZZM.

seller has the meaning given by paragraph 159GZZZK(b).

159GZZZK Explanation of terms

For the purposes of this Division, where a company buys a share in itself from a shareholder in the company:

- (a) the purchase is a buy-back; and
- (b) the shareholder is the seller; and

- (c) if:
- (i) the share is listed for quotation in the official list of a stock exchange in Australia or elsewhere; and
 - (ii) the buy-back is made in the ordinary course of trading on that stock exchange;
- the buy-back is an on-market purchase; and
- (d) if the buy-back is not covered by paragraph (c)—the buy-back is an off-market purchase.

159GZZZL Special buy-backs not made in ordinary course of trading on a stock exchange

For the purposes of this Division, a buy-back is not made in the ordinary course of trading on a stock exchange in Australia if, when reported to the stock exchange, the transaction under which the buy-back is made, is, under the stock exchange's rules, described as *special*.

159GZZZM Purchase price in respect of buy-back

For the purposes of this Division, the purchase price in respect of a buy-back of a share is:

- (a) if the seller has received or is entitled to receive an amount or amounts of money as a result of or in respect of the buy-back—that amount or the sum of those amounts; or
- (b) if the seller has received or is entitled to receive property other than money as a result of or in respect of the buy-back—the market value of that property at the time of the buy-back; or
- (c) if the seller has received or is entitled to receive both an amount or amounts of money and property other than money as a result of or in respect of the buy-back—the sum of that amount or those amounts and the market value of that property at the time of the buy-back.

Subdivision B—Company buying-back shares

159GZZZN Buy-back and cancellation disregarded for certain purposes

If a company buys-back a share then the buy-back, and any subsequent cancellation of the share, are disregarded for the purposes of:

- (a) determining for the purposes of this Act:
 - (i) whether an amount is included in the assessable income of the company under a provision of this Act (other than a provision of Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)); or
 - (ii) whether an amount is allowable as a deduction to the company; or
- (b) determining whether the company makes a capital gain or capital loss.

Subdivision C—Off-market purchases

159GZZZP Part of off-market purchase price is a dividend

- (1) For the purposes of this Act, but subject to subsection (1A), where a buy-back of a share or non-share equity interest by a company is an off-market purchase, the difference between:

- (a) the purchase price; and
- (b) the part (if any) of the purchase price in respect of the buy-back of the share or non-share equity interest which is debited against amounts standing to the credit of:
 - (i) the company's share capital account if it is a share that is bought back; or
 - (ii) the company's share capital account or non-share capital account if it is a non-share equity interest that is bought back;

is taken to be a dividend paid by the company:

- (c) to the seller as a shareholder in the company; and
- (d) out of profits derived by the company; and
- (e) on the day the buy-back occurs.

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- (1A) If the dividend is included to any extent in the seller's assessable income of any year of income, it is not taken into account to that extent under section 118-20 of the *Income Tax Assessment Act 1997*.
- (2) The remainder of the purchase price is taken not to be a dividend for the purposes of this Act.

159GZZZQ Consideration in respect of off-market purchase

- (1) Subject to this section, if a buy-back of a share is an off-market purchase, then:
 - (a) in determining, for the purposes of this Act:
 - (i) whether an amount is included in the assessable income of the seller under a provision of this Act other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or
 - (ii) whether an amount is allowable as a deduction to the seller; or
 - (b) whether the seller makes a capital gain or capital loss; in respect of the buy-back, the seller is taken to have received or to be entitled to receive, as consideration in respect of the sale of the share, an amount equal to the purchase price in respect of the buy-back.

Deemed consideration increased to market value

- (2) If apart from this section:
 - (a) the purchase price in respect of the buy-back; is less than:
 - (b) the amount that would have been the market value of the share at the time of the buy-back if the buy-back did not occur and was never proposed to occur;then, subject to subsection (3), in making the determinations mentioned in paragraphs (1)(a) and (b), the amount of consideration that the seller is taken to have received or to be entitled to receive in respect of the sale of the share is equal to the market value mentioned in paragraph (b) of this subsection.

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Deemed consideration reduced where dividend assessable etc.

- (3) Subject to subsection (8), if there is a reduction amount in respect of the buy-back (see subsection (4)), then, in making the determinations mentioned in paragraphs (1)(a) and (b), the amount of consideration that the seller is taken to have received or to be entitled to receive in respect of the sale of the share, after any application of subsection (2), is reduced by the reduction amount.

Reduction amount

- (4) The following steps are to be taken in working out whether there is a reduction amount in respect of the buy-back:
- (a) first, work out whether the whole or part of the purchase price in respect of the buy-back is taken to be a dividend by section 159GZZZP;
 - (b) second, for any amount satisfying paragraph (a), work out whether the whole or part of it is either:
 - (i) included in the seller's assessable income of any year of income (disregarding section 128D of this Act and section 802-15 of the *Income Tax Assessment Act 1997*); or
 - (ii) an eligible non-capital amount (see subsection (5)).

The amount worked out is the **reduction amount** in respect of the buy-back.

Eligible non-capital amount

- (5) An amount is an **eligible non-capital amount** if it is neither:
- (a) debited against a share capital account or a reserve to the extent that it consists of profits from the revaluation of assets of the company that have not been disposed of by the company; nor
 - (b) attributable, either directly or indirectly, to amounts that were transferred from such an account or reserve of the company.

Debit for deemed dividend

- (7) For the purposes of subsection (5), an amount of the purchase price that is taken to be a dividend by section 159GZZZP is taken to have been debited against the account or reserves against which the purchase price was debited, and to the same extent.

Offsettable amount excluded from reduction where loss

- (8) If:
- (aa) the seller is a corporate tax entity; and
 - (a) the amount of consideration that the seller is taken by subsection (1) or (2) to have received or to be entitled to receive in respect of the sale of the share is, apart from this subsection, reduced by a reduction amount under subsection (3); and
 - (b) the dividend mentioned in paragraph (4)(a), so far as it does not exceed the reduction amount, consists to any extent of an offsettable amount (see subsection (9)); and
 - (c) disregarding this subsection, as a result of the operation of this section:
 - (i) for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), the seller incurs a capital loss or an increased capital loss (which loss or increase is the **loss amount**) in respect of the buy-back; or
 - (ii) a loss, or an increased loss, (which loss or increase is also the **loss amount**) in respect of the buy-back is allowable as a deduction to the seller under a provision of a Part of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or
 - (iii) the amount of a deduction allowable from the seller's assessable income of any year of income in respect of the issue or acquisition of the share exceeds, or exceeds by a greater amount, (the excess or increased excess is also the **loss amount**) the amount included in the seller's assessable income of any year of income in respect of the buy-back of the share;
- then the reduction in the amount of the consideration under subsection (3) is instead a reduction equal to:
- (d) the reduction amount;
- less:
- (e) so much of the offsettable amount as does not exceed the loss amount.

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Meaning of offsettable amount

- (9) For the purposes of subsection (8), if the seller is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* in the seller's assessment for a year of income in respect of the dividend, the dividend consists of an **offsettable amount** worked out using the formula:

$$\frac{\text{Amount of offset}}{\text{Corporate tax rate}}$$

Subdivision D—On-market purchases

159GZZZR No part of on-market purchase price is a dividend

For the purposes of this Act, where a buy-back by a company of a share is an on-market purchase, no part of the purchase price in respect of the buy-back of the share is taken to be a dividend.

159GZZZS Consideration in respect of on-market purchase

Where a buy-back is an on-market purchase, then:

- (a) in determining, for the purposes of this Act:
- (i) whether an amount is included in the assessable income of the seller under a provision of this Act other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or
 - (ii) whether an amount is allowable as a deduction to the seller; or
- (b) whether the seller makes a capital gain or capital loss; in respect of the buy-back, the seller is taken to have received or to be entitled to receive, as consideration in respect of the sale of the share, the purchase price in respect of the buy-back of the share.

Division 16L—Tax-exempt infrastructure borrowings

Note: The issue of certificates that give rise to the tax concessions in this Division has been terminated for new cases by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*.

159GZZZZD Interpretation

In this Division:

certificate has the same meaning as in Chapter 3 of the DAA Act.

DAA means the Development Allowance Authority appointed under Chapter 4 of the DAA Act.

DAA Act means the *Development Allowance Authority Act 1992*.

direct infrastructure borrowing has the same meaning as in Chapter 3 of the DAA Act.

exemption period, in relation to an infrastructure borrowing, means:

- (a) in the case of a direct infrastructure borrowing or an indirect infrastructure borrowing—the period of 15 years beginning at the time of the borrowing; or
- (b) in the case of a refinancing infrastructure borrowing—so much of the period that under paragraph (a) is the exemption period in respect of the direct infrastructure borrowing, or the indirect infrastructure borrowing, to which the refinancing infrastructure borrowing relates as remains at the time of the refinancing infrastructure borrowing.

IB amount, in relation to a taxpayer, means:

- (a) a payment of interest, or in the nature of interest, made or liable to be made to the taxpayer under an infrastructure borrowing; or
- (b) an amount included in the assessable income of the taxpayer under section 159GQ in relation to an infrastructure borrowing.

indirect infrastructure borrowing has the same meaning as in Chapter 3 of the DAA Act.

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infrastructure borrowing has the same meaning as in Chapter 3 of the DAA Act.

infrastructure period, in relation to a certificate that is cancelled, means the period from the time of the borrowing to which the certificate applied until the conditions under section 93R of the DAA Act would, if the certificate had not been cancelled, have ceased to apply to the holder.

refinancing infrastructure borrowing has the same meaning as in Chapter 3 of the DAA Act.

tax benefit amount, in relation to a certificate that is cancelled, in relation to a year of income (being the year of income in which the cancellation occurs or any earlier or later year of income), means:

- (a) a payment of interest, or in the nature of interest, that, because of paragraph 159GZZZZE(1)(a), is not allowable as a deduction from the assessable income of the year of income of a taxpayer in respect of the borrowing to which the certificate applies; or
- (b) an amount that, because of paragraph 159GZZZZE(2)(d), is not allowable as a deduction under section 159GT from the assessable income of the year of income of a taxpayer in respect of the borrowing to which the certificate applies.

159GZZZZE Infrastructure borrowings to be non-assessable and non-deductible

Basic non-assessability/non-deductibility provision

- (1A) This section applies to an infrastructure borrowing if a certificate is issued in relation to the borrowing, regardless of whether the certificate is later cancelled.
- (1) Subject to section 159GG, no amount is included in, or allowable as a deduction from, the assessable income of a taxpayer of a year of income in respect of:
 - (a) payments of principal or interest, or in the nature of interest, made or liable to be made by or to the taxpayer under the infrastructure borrowing during the exemption period in relation to the borrowing; or
 - (b) amounts received or receivable, or paid or payable, by the taxpayer by way of consideration for the acquisition or

disposal, during the exemption period in relation to the infrastructure borrowing, of:

- (i) rights or liabilities in respect of the borrowing; or
- (ii) any bond, debenture, discounted security, or other document evidencing indebtedness, in respect of the borrowing; or
- (c) any profit or loss of the taxpayer in respect of a disposal mentioned in paragraph (b), or in respect of the repayment of the infrastructure borrowing by or to the taxpayer during the exemption period in relation to the borrowing; or
- (d) the writing off or extinguishing of the whole or part of any debt that consists of a payment or amount to which this subsection applies that is liable to be made to, or is receivable by, the taxpayer.

Special provision relating to Division 16E

- (2) Subject to section 159GZZZZG, no amount is included in, or allowable as a deduction from, the assessable income of a taxpayer of a year of income:
 - (a) under section 159GQ in relation to the exemption period in respect of the infrastructure borrowing; or
 - (c) under section 159GS in relation to any transfer, during the exemption period in respect of the infrastructure borrowing, of:
 - (i) rights or liabilities in respect of the borrowing; or
 - (ii) any bond, debenture, discounted security, or other document evidencing indebtedness, in respect of the borrowing; or
 - (d) under section 159GT in respect of the exemption period in relation to the infrastructure borrowing.

Deemed re-acquisition after exemption period

- (3) For the purposes of this Act:
 - (a) if a taxpayer holds a bond, debenture, discounted security, or other document evidencing indebtedness, in respect of the infrastructure borrowing—that bond, debenture, discounted security or other document; or
 - (b) in any other case—all rights of a taxpayer under the infrastructure borrowing;

is or are taken to have been disposed of by the taxpayer immediately before the end of the exemption period and to have been re-acquired by the taxpayer immediately after the end of the period for their market value at that time.

159GZZZZF Tax exemption to be disregarded for certain purposes

The exclusion under section 159GZZZZE of amounts from assessable income is to be disregarded for the purpose of applying any provision of this Act to determine allowable deductions in respect of infrastructure borrowings (other than deductions to which section 159GZZZZE applies).

159GZZZZG Rebate election

Basic case

- (1) If:
- (a) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts, the assessable income of a year of income of a taxpayer who is:
 - (i) a company or a natural person (other than a company or natural person in the capacity of a trustee); or
 - (ii) a corporate unit trust within the meaning of Division 6B in relation to the year of income; or
 - (iii) a public trading trust within the meaning of Division 6C in relation to the year of income; or
 - (iv) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the year of income;would include one or more IB amounts; and
 - (b) the taxpayer's return of income of the year of income includes all of the IB amounts;
- then:
- (c) all of the IB amounts are included in the taxpayer's assessable income of the year of income; and
 - (d) the taxpayer is entitled to a rebate in the taxpayer's assessment for that year of an amount equal to 30% of the IB amounts.

Beneficiary assessment

- (2) If:
- (a) apart from this subsection, a share of the net income of a trust estate of a year of income is included in a taxpayer's assessable income under section 97; and
 - (b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the trust estate, or of any other trust estate or partnership, that share of the net income would be increased by an amount (the **IB attributable amount**); and
 - (c) the taxpayer's return of income of the year of income is prepared on the basis that all of the IB amounts are included in the assessable income of the trust estate, or of the other trust estate or partnership;
- then:
- (d) for the purposes only of working out the share of the net income to be included in the taxpayer's assessable income, the assessable income of the trust estate, or of the other trust estate or partnership, includes all of the IB amounts; and
 - (e) the taxpayer is entitled to a rebate in the taxpayer's assessment for the year of income of an amount equal to 30% of the IB attributable amount.

Trustee assessment

- (3) If:
- (a) apart from this subsection, the trustee of a trust estate is assessed and liable to pay tax:
 - (i) in respect of a share of the net income of the trust estate of a year of income under section 98; or
 - (ii) in respect of the whole or part of the net income of the trust estate under section 99 or 99A; and
 - (b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the trust estate, or of any other trust estate or partnership, of the year of income, the amount of the share, or of the whole or the part, of the net income would be increased by an amount (the **IB attributable amount**); and
 - (c) the trustee's return of income in respect of the share, or the whole or the part of the net income, of the year of income is

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prepared on the basis that all of the IB amounts are included in the assessable income of the trust estate, or of the other trust estate or partnership;

then:

- (d) for the purposes only of working out the amount of:
 - (i) the share, or of the whole or the part, of the net income; and
 - (ii) the individual interest of a beneficiary in the net income of the trust estate that is to be included in the beneficiary's assessable income under section 100, where the share of the net income to which subparagraph (a)(i) of this subsection applies is that of the beneficiary;

the assessable income of the trust estate, or of the other trust estate or partnership, includes all of the IB amounts; and

- (e) the trustee is entitled to a rebate in the trustee's assessment in respect of the share, or of the whole or the part, of the net income of the year of income to an amount equal to 30% of the IB attributable amount.

Partner assessment

(4) If:

- (a) apart from this subsection, a share of the net income of a partnership of a year of income is included in a taxpayer's assessable income under section 92; and
- (b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the partnership, or of any other partnership or trust estate, that share of the net income would be increased by an amount (the ***IB attributable amount***); and
- (c) the taxpayer's return of income of the year of income is prepared on the basis that all of the IB amounts are included in the assessable income of the partnership, or of the other partnership or trust estate;

then:

- (d) for the purposes only of working out the share of the net income included in the taxpayer's assessable income, the assessable income of the partnership, or of the other partnership or trust estate, includes all of the IB amounts; and

- (e) the taxpayer is entitled to a rebate in the taxpayer's assessment for the year of income of an amount equal to 30% of the IB attributable amount.
- (5) The inclusion of an IB amount in the assessable income of a person under this section does not affect the denial of allowability of a deduction to another person in respect of the same amount under subsection 159GZZZZE(1) or (2).

159GZZZZH Tax payable where infrastructure borrowing certificate cancelled

Tax payable

- (1) If:
 - (a) the DAA cancels a certificate in relation to an infrastructure borrowing; and
 - (b) for any year of income (whether the one in which the cancellation takes place or an earlier or later one), there is a tax benefit amount in relation to the certificate;

the holder of the certificate at the time of the cancellation is liable to pay tax on an amount (an ***infrastructure certificate cancellation amount***) worked out using the formula:

$$15\% \times \text{Tax benefit amount} \times \text{Factor}$$

where

Factor means:

- (a) if the year of income to which the tax benefit amount relates is:
 - (i) the year of income in which the act or omission that was the ground, or the first act or omission that was a ground, relied on by the DAA for cancelling the certificate occurred; or
 - (ii) an earlier year of income;

the fraction worked out using the formula:

$$\frac{\text{Part of infrastructure period occurring after the act or omission}}{\text{Infrastructure period}}; \text{ or}$$

- (b) in any other case—the number 1.

Assessment of amount

- (2) The Commissioner may make an assessment of the tax payable by a taxpayer under this section. In making or amending the assessment, and in dealing with any objection, appeal or review in relation to the assessment or amended assessment, the Commissioner may rely in whole or in part on advice given by the DAA under section 93ZF of the DAA Act.

Incorporation in other notices

- (3) This Act does not prevent notice of the assessment being incorporated in a notice of any other assessment made in respect of the taxpayer under this Act.

References in other provisions

- (4) Unless the contrary intention appears, in sections 172, 174, 204, 254 and 255 and former sections 215 and 216, but not in any other section of this Act, **income tax** or **tax** includes tax payable under this section.

Division 17—Rebates

Subdivision A—Concessional rebates

159H Application

This Subdivision applies in relation to an assessment in respect of the income of a taxpayer if and only if:

- (a) the taxpayer is a resident and is not a company, and the assessment is not in respect of income derived by him in a representative capacity as an agent or trustee; or
- (b) the taxpayer is a trustee who is liable to be assessed under section 98 in respect of a share of the net income of a trust estate and the beneficiary who is presently entitled to the share of the income of the trust estate is a resident and is not a company.

159HA Indexation of rebate amounts in sections 159J, 159K and 159L

- (1) Sections 159J and 159L apply in relation to an indexing year of income as if each indexable amount were replaced by the amount calculated using the formula:

Previous indexable amount \times Indexation factor
where:

Previous indexable amount is the indexable amount concerned for the previous year of income.

Indexation factor is the indexation factor for the indexing year of income.

- (2) Where, apart from this subsection, an amount calculated under subsection (1) would be an amount of dollars and cents:
 - (a) if the number of cents is less than 50—the amount shall be rounded down to the nearest whole dollar; and
 - (b) in any other case—the amount shall be rounded up to the nearest whole dollar.

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- (3) The indexation factor for an indexing year of income is the number (calculated to 3 decimal places) ascertained by dividing the sum of the index numbers for the quarters of the 12 month period ending on 31 March immediately before the indexing year of income by the sum of the index numbers for the quarters of the preceding 12 month period ending on 31 March.
- (4) If the factor ascertained under subsection (3) in relation to an indexing year of income would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained under that subsection in relation to that indexing year of income shall be taken to be the factor calculated to 3 decimal places and increased by 0.001.
- (5) Subject to subsection (6), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.
- (6) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.
- (6A) If the indexation factor for an indexing year of income is less than 1.000, sections 159J and 159L apply in relation to the indexing year of income as if each indexable amount were the same as the previous indexable amount (as defined in subsection (1)). This subsection has effect despite subsection (1).
- (7) In this section:
indexable amount means:
 - (a) an amount specified in subsection 159J(1B) or (2) (other than the amounts specified in column 3 of the table in subsection 159J(2) in respect of a dependant included in class 3 or 4); or
 - (b) the amounts specified in subsection 159L(2); or
 - (c) the amount specified in:

- (i) sub-subparagraph 23AB(7)(a)(ii)(D); or
- (ii) paragraph (d) of the definition of *relevant rebate amount* in subsection 79A(4); or
- (iii) paragraph (d) of the definition of *concessional rebate amount* in subsection 79B(6);

or, if any such amount has been altered under this section in relation to the 2008-09 year of income or a later year of income, the altered amount.

indexation factor means the indexation factor ascertained under subsection (3).

indexing year of income means the year of income commencing on 1 July 2008 or a later year of income.

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

159J Rebates for dependants

- (1) Where, during the year of income, a taxpayer contributes to the maintenance of a person (in this section referred to as a *dependant*) specified in column 2 of the table set out in subsection (2) and that person is a resident, the taxpayer is entitled, in his assessment in respect of income of that year of income, to a rebate of tax ascertained in accordance with this section.
- (1A) A taxpayer is not entitled in his assessment in respect of income of a year of income after the year of income that ends on 30 June 1976 to a rebate under this section in respect of a person by reason that the person is included in class 3 or class 4 in the table set out in subsection (2).
- (1AA) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 in the table in subsection (2), if, during the whole of that year of income:
 - (a) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and

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(b) clause 31 of Schedule 1 to that Act did not apply to the Part B rate.

(1AB) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1, 2, 5 or 6 in the table in subsection (2) if the taxpayer's taxable income for the year is more than \$150,000.

(1B) Where, but for subsection (1A), a taxpayer would be entitled in his assessment in respect of income of a year of income to a rebate under this section in respect of a dependant included in class 3 or 4 in the table in subsection (2), the entitlement of the taxpayer to a rebate under this section in that assessment in respect of any dependant included in class 2 of that table shall be calculated as if the the reference in that table to \$1,711 were a reference to \$2,051.

(2) Subject to this section, the amount of the rebate allowable in the assessment of the taxpayer in respect of a dependant under this section is the relevant amount specified in column 3 of the following table:

Column 1 Class	Column 2 Dependant	Column 3 Amounts of Rebate
1	Spouse of the taxpayer	\$2,100
2	Child-housekeeper	\$1,711
3	Child less than 21 years of age (not being a student)	In respect of 1 such child—\$376 In respect of each other such child—\$282
4	Student	\$376
5	Invalid relative	\$770
6	Parent of the taxpayer or of the taxpayer's spouse	\$1,540

(3) Where:

(a) the taxpayer contributes to the maintenance of a dependant during part only of the year of income;

(aa) a dependant is a resident during part only of the year of income;

- (b) during the whole or part of the year of income, 2 or more persons contribute to the maintenance of a person who is a dependant in relation to 1 or more of the persons so contributing;
- (c) a dependant, being the spouse of the taxpayer, is the spouse of the taxpayer during part only of the year of income;
- (d) a dependant, being a child-housekeeper, is wholly engaged in keeping house for the taxpayer during part only of the year of income; or
- (e) a dependant, being a child included in class 3 in the table in subsection (2), a student or an invalid relative, is such a dependant during part only of the year of income;

the rebate allowable to the taxpayer in respect of that dependant shall be such part of the relevant amount specified in column 3 of that table as, in the opinion of the Commissioner, is reasonable in the circumstances.

(3AA) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 in the table in subsection (2); and
- (b) during part only of that year of income:
 - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
 - (ii) clause 31 of Schedule 1 to that Act did not apply in respect of the Part B rate;

then:

- (c) the taxpayer has no entitlement to a rebate under this section in respect of that dependant for that part of the year of income; and
- (d) the rebate allowable to the taxpayer in respect of that dependant for the remainder of that year of income is, subject to the operation of subsection (3AB), such part of the relevant rebate amount specified in column 3 of the table in subsection (2) as, in the opinion of the Commissioner, is reasonable in the circumstances.

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(3AB) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 of the table in subsection (2); and
- (b) during the whole or a part of the year of income concerned:
 - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
 - (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because the taxpayer, or the taxpayer's spouse, had a shared care percentage for an FTB child (within the meaning of that Act);

the rebate allowable to the taxpayer for the year of income, or that part of the year of income, (the *shared care period*) is to be worked out using the formula:

$$\left[1 - \frac{A}{B} \right] \times \text{Applicable rebate amount}$$

where:

A is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

applicable rebate amount is the amount of rebate that would have been allowable under this section in respect of the shared care period but for the application of this subsection.

B is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to that Act had clause 31 of that Schedule not applied and had the FTB child in respect of whom the standard rate was determined under clause 31 been the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

- (3A) In the application of the definition of *resident* in subsection 6(1) for the purposes of this section, a dependant included in class 1, 2, 3 or 4, and a child of the taxpayer being a dependant included in class 5, in the table in subsection (2) shall be deemed to have a

domicile in Australia at all times when the taxpayer has a domicile in Australia.

- (4) The amount of the rebate otherwise allowable under this section in respect of a dependant shall be reduced by \$1 for every \$4 by which the separate net income derived by the dependant in the year of income exceeds \$282.
- (5) Where, during the whole or a part of the year of income, the taxpayer and a person of a kind specified in column 2 of the table in subsection (2) resided together and that person has a separate net income in that year, then, for the purposes of this section, the taxpayer shall be regarded, unless the contrary is established to the satisfaction of the Commissioner, as having contributed to the maintenance of that person during the whole or that part of the year of income, as the case may be.
- (5A) Subject to subsection (5B), where, but for this subsection, a taxpayer would, by reason that he or she contributed to the maintenance of 2 or more dependants included in class 1 in the table in subsection (2) during the whole or a part of the year of income, be entitled in his or her assessment in respect of income of the year of income to more than one rebate under this section, the taxpayer shall be regarded as having contributed to the maintenance of only one of those dependants during the whole or that part of the year of income, as the case may be, being the dependant in respect of whom the lesser, or least, of the rebates would, but for this subsection, be allowable to the taxpayer under this section in respect of those dependants.
- (5B) Where subsection (5A) applies but the Commissioner is of the opinion that, because of special circumstances, it would be reasonable to regard the taxpayer as having contributed during the whole or a part of the year of income to the maintenance of a dependant included in class 1 in the table in subsection (2), other than the dependant in respect of whom a rebate is allowable under this section by virtue of the operation of subsection (5A), the taxpayer shall be regarded as having contributed to the maintenance of that other dependant only and the rebate allowable to the taxpayer under this section in respect of that other dependant shall be such amount, not exceeding the relevant amount specified in column 3 of the table in subsection (2), as is, in the opinion of the Commissioner, reasonable in the circumstances.

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(5C) Where:

- (a) during the whole or a part of the year of income, a taxpayer contributed to the maintenance of 2 or more dependants included in class 1 in the table in subsection (2); and
- (b) by virtue of the operation of subsection (4), a rebate is not allowable to the taxpayer under this section in respect of one of those dependants;

the taxpayer shall be regarded as not having contributed to the maintenance of any of those dependants during the whole or that part of the year of income, unless the Commissioner is of the opinion that, because of special circumstances, it would be unreasonable to do so, in which case the rebate (if any) allowable under this section in the assessment of the taxpayer in respect of income of the year of income in respect of a dependant included in class 1 in that table shall be such amount, not exceeding the relevant amount specified in column 3 of that table, as is, in the opinion of the Commissioner, reasonable in the circumstances.

(5D) Where, by reason that, during the whole or a part of the year of income, a taxpayer contributes to the maintenance of a dependant included in class 1 in the table in subsection (2), the taxpayer is entitled, or would, but for subsection (4) be entitled, in his or her assessment in respect of income of the year of income, to a rebate under this section, a child of the taxpayer shall be deemed not to have been engaged in keeping house for the taxpayer during the whole or that part of the year of income, as the case may be.

(6) In this section:

child-housekeeper means the child of a taxpayer who is wholly engaged in keeping house for the taxpayer.

invalid relative means a person who is not less than 16 years of age and is a child, brother or sister of the taxpayer, being a person:

- (a) to whom a disability support pension or a special needs disability support pension is being paid under the *Social Security Act 1991*;
- (b) to whom a rehabilitation allowance is being paid under that Act and who, immediately before becoming eligible to receive that allowance, was eligible to receive an invalid pension under that Act; or

- (c) in respect of whom the taxpayer obtains a certificate issued by a medical officer of the Department of Health, or by a medical practitioner appointed by the Secretary to the Department of Social Security for the purpose of examining claimants for disability support pensions under that Act, certifying that the person has a continuing inability to work within the meaning of Part 2.3 of that Act.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining relationships for the purposes of the definition of *invalid relative*.

separate net income, in relation to a dependant:

- (aa) includes any amount that is included in the assessable income of the dependant by Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT); and
- (ab) does not include family tax payment paid under the *Social Security Act 1991* as in force immediately before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; and
- (ac) does not include child care benefit, child care tax rebate, family tax benefit, baby bonus, maternity immunisation allowance, one-off payment to families or economic security strategy payment to families paid under the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
- (aca) does not include payments to families under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*; and
- (ad) does not include any of the following paid under the *Social Security Act 1991*:
- (i) carer allowance;
 - (ia) child disability assistance;
 - (ii) one-off payment to carers (carer payment related);
 - (iii) one-off payment to carers (carer allowance related);
 - (iv) 2005 one-off payment to carers (carer payment related);
 - (v) 2005 one-off payment to carers (carer service pension related);
 - (vi) 2005 one-off payment to carers (carer allowance related);

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- (vii) 2006 one-off payment to carers (carer payment related);
 - (viii) 2006 one-off payment to carers (wife pension related);
 - (ix) 2006 one-off payment to carers (partner service pension related);
 - (x) 2006 one-off payment to carers (carer service pension related);
 - (xi) 2006 one-off payment to carers (carer allowance related);
 - (xii) 2007 one-off payment to carers (carer payment related);
 - (xiii) 2007 one-off payment to carers (wife pension related);
 - (xiv) 2007 one-off payment to carers (partner service pension related);
 - (xv) 2007 one-off payment to carers (carer service pension related);
 - (xvi) 2007 one-off payment to carers (carer allowance related);
 - (xvii) 2008 one-off payment to carers (carer payment related);
 - (xviii) 2008 one-off payment to carers (wife pension related);
 - (xix) 2008 one-off payment to carers (partner service pension related);
 - (xx) 2008 one-off payment to carers (carer service pension related);
 - (xxi) 2008 one-off payment to carers (carer allowance related); and
- (adaa) does not include 2006 one-off payment to older Australians under the *Social Security Act 1991*; and
 - (adac) does not include 2007 one-off payment to older Australians under the *Social Security Act 1991*; and
 - (adae) does not include 2008 one-off payment to older Australians under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; and
 - (adaf) does not include payments to older Australians under a scheme determined under Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*; and
 - (adag) does not include economic security strategy payment under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; and
-

- (adah) does not include payments under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*; and
- (ada) does not include payments to carers under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*; and
- (adb) does not include payments to carers under the scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*; and
- (adc) does not include payments to carers under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*; and
- (add) does not include payments to carers under the scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*; and
- (ade) does not include payments to carers under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*; and
- (ae) does not include maternity immunisation allowance, family allowance, family allowance supplement or non-benefit PP (partnered) within the meaning of the *Social Security Act 1991* as in force immediately before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; and
- (a) subject to paragraph (c), does not include home child care allowance within the meaning of the *Social Security Act 1991* as in force immediately before the commencement of Schedule 1 to the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*, non-benefit parenting allowance within the meaning of the *Social Security Act 1991* as in force immediately before the commencement of Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act*

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1997 or amounts paid under a scheme for the provision by the Commonwealth of assistance in connexion with the education of isolated children; and

- (aaa) does not include any part of benefit parenting allowance paid under the *Social Security Act 1991* as in force immediately before the commencement of Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*, that is exempt because of paragraph (e) of the item dealing with “Parenting allowance (benefit parenting allowance)” in section 52-15 of the *Income Tax Assessment Act 1997* as in force immediately before the commencement of Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*; and
- (aab) does not include child care assistance or child care rebate paid under the *Child Care Payments Act 1997*; and
- (aac) does not include any amount paid under the Division 26 of the *Private Health Insurance Act 2007*; and
- (aad) does not include any part of benefit PP (partnered) paid under the *Social Security Act 1991*, as in force immediately before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, that is exempt under section 52-10 because of paragraph (e) of the item dealing with parenting payment (benefit PP (partnered)) in the table in section 52-15 of the *Income Tax Assessment Act 1997*; and
- (aae) does not include an amount of earnings or other return credited to an FHSA; and
- (aaf) does not include a Government FHSA contribution (within the meaning of the *First Home Saver Accounts Act 2008*); and
- (b) in the case of a dependant included in class 3 or class 4 in the table in subsection (2):
 - (i) includes the value or amount of any assistance (other than family allowance or family allowance supplement within the meaning of the *Social Security Act 1991* as in force immediately before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, a carer allowance or an amount paid under a scheme for the provision by the Commonwealth of

assistance in connexion with the education of isolated children) provided to the dependant or any other person by the Commonwealth or a State by way of, or for the purpose of, maintenance or accommodation of the dependant in connexion with the education of the dependant; and

- (ii) does not include the value or amount of any scholarship, bursary, exhibition or prize, except to the extent that it consists of assistance referred to in subparagraph (i); and
- (c) includes amounts paid:
 - (i) under the scheme known as the Assistance for Isolated Children Scheme in respect of a period commencing at or after the time the dependant attained the age of 16 years; and
 - (ii) for the purpose of maintenance or accommodation of the dependant in connection with the education of the dependant.

student means a person who is less than 25 years of age and is receiving full-time education at a school, college or university.

159K Sole parent rebate

- (1) Where, during the whole of the year of income, a taxpayer has the sole care of a dependant or dependants included in class 3 or class 4 in the table in subsection 159J(2), being a dependant or dependants in respect of whom he would be entitled to a rebate of tax under section 159J in his assessment in respect of income of the year of income but for subsection 159J(1A), he is entitled, subject to subsection (3), to a rebate of tax, in his assessment in respect of income of that year of income, of:
 - (a) if he is not entitled, in respect of the year of income, to a rebate of tax under section 159J in respect of a spouse or child-housekeeper or under section 159L in respect of a housekeeper—an amount of \$1,607; and
 - (b) if he is entitled to a rebate of tax under section 159J in respect of a child-housekeeper, or under section 159L in respect of a housekeeper, in respect of a period that is part of the year of income, or the taxpayer contributed during a period that is part of the year of income, to the maintenance

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of his spouse—an amount of \$1,607 less an amount that bears to \$1,607 the same proportion as the number of days in that period (or, if there is more than one such period, in those periods) bears to 365.

- (1A) A taxpayer is not entitled to a rebate under this section in his or her assessment in respect of the 2000-2001 year of income or a later year of income.
- (2) Where, during part only of the year of income, a taxpayer has the sole care of a dependant or dependants included in class 3 or class 4 in the table in subsection 159J(2), being a dependant or dependants in respect of whom he would be entitled to a rebate of tax under section 159J in his assessment in respect of income of the year of income but for subsection 159J(1A), and the taxpayer would, if he had had the sole care of that dependant or those dependants during the whole of the year of income, have been entitled to a rebate under subsection (1), the taxpayer is entitled, subject to subsection (3), to a rebate of tax, in his assessment in respect of income of the year of income, of an amount not exceeding \$1,607 that, in the opinion of the Commissioner, is reasonable in the circumstances.
- (3) Where the taxpayer is the spouse of another person during the whole or part of the year of income:
 - (a) the taxpayer is not entitled to a rebate under this section in respect of that year of income unless the Commissioner is of the opinion that, because of special circumstances, it is just to allow a rebate; and
 - (b) the rebate (if any) shall be such amount not exceeding \$1,607 as, in the opinion of the Commissioner, is reasonable in the circumstances.

159L Housekeeper

- (1) Where, during the year of income, a person (in this section referred to as a *housekeeper*) is wholly engaged in keeping house in Australia for a taxpayer and in caring for:
 - (a) a child of the taxpayer less than 21 years of age;
 - (b) a dependant included in class 3, or a dependant less than 21 years of age included in class 4, in the table in subsection 159J(2) in respect of whom the taxpayer would be entitled to

- a rebate under section 159J in his assessment in respect of income of the year of income but for subsection 159J(1A);
- (ba) a dependant included in class 5 in the table in subsection 159J(2) in respect of whom the taxpayer is entitled to a rebate under section 159J in his assessment in respect of income of the year of income; or
- (c) the spouse of the taxpayer, being a spouse in receipt of a disability support pension under the *Social Security Act 1991*; the taxpayer is entitled, in his assessment in respect of income of that year of income, to a rebate of tax ascertained in accordance with this section.
- (2) Subject to this section, the amount of the rebate allowable under this section in the assessment of the taxpayer in respect of income of a year of income shall be:
- (a) in the case of a taxpayer who would, but for subsection 159J(1A), be entitled to a rebate in that assessment under section 159J in respect of a dependant included in class 3 or class 4 in the table in subsection 159J(2)—\$2,051; and
- (b) in any other case—\$1,711.
- (3) Where, by reason of the fact that, during a part of the year of income, the taxpayer contributes to the maintenance of a dependant included in class 1 or class 2 in the table in subsection 159J(2), not being a dependant specified in paragraph (1)(c) of this section, the taxpayer is entitled to a rebate of tax under section 159J in his assessment in respect of income of the year of income, a housekeeper shall be deemed not to have been wholly engaged in keeping house for the taxpayer during that part of the year of income.
- (3A) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer if, during the whole of that year of income:
- (a) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
- (b) clause 31 of Schedule 1 to that Act did not apply to the Part B rate; and

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- (c) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c).
- (3B) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section if the taxpayer's taxable income for the year is more than \$150,000.
- (4) Where a taxpayer has a spouse and the housekeeper is not, during the year of income, engaged in caring for the spouse of the taxpayer, being a spouse in receipt of a disability support pension under the *Social Security Act 1991*:
 - (a) he is not entitled to a rebate under this section in his assessment in respect of income of the year of income unless the Commissioner is of the opinion that, because of special circumstances, it is just to allow a rebate; and
 - (b) the rebate (if any) shall be of such amount, not exceeding the amount specified in subsection (2) in relation to the taxpayer as, in the opinion of the Commissioner, is reasonable in the circumstances.
- (5) Where a housekeeper is wholly engaged in keeping house for the taxpayer and in caring for the child, dependant or spouse during part only of the year of income, the rebate allowable in respect of that housekeeper under this section in the assessment of the taxpayer in respect of income of that year of income shall be such part of the amount specified in subsection (2) in relation to the taxpayer as, in the opinion of the Commissioner, is reasonable in the circumstances.
- (5A) If:
 - (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer; and
 - (b) during part only of that year of income:
 - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
 - (ii) clause 31 of Schedule 1 to that Act did not apply in respect of the Part B rate; and

- (iii) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c);

then:

- (c) the taxpayer has no entitlement to a rebate under this section for that part of the year of income; and
- (d) the rebate allowable to the taxpayer for the remainder of that year of income is, subject to the operation of subsection (5B), such part of the rebate specified in subsection (2) in relation to the taxpayer as, in the opinion of the Commissioner, is reasonable in the circumstances.

(5B) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer; and
- (b) during the whole or a part of the year of income concerned:
- (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
- (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because the taxpayer, or the taxpayer's spouse, had a shared care percentage for an FTB child (within the meaning of that Act); and
- (iii) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c);

the rebate allowable to the taxpayer for the year of income, or that part of the year of income, (the *shared care period*) is to be worked out using the formula:

$$\left[1 - \frac{A}{B} \right] \times \text{Applicable rebate amount}$$

where:

A is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

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applicable rebate amount is the amount of rebate that would have been allowable under this section in respect of the shared care period but for the application of this subsection.

B is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to that Act had clause 31 of that Schedule not applied and had the FTB child in respect of whom the standard rate was determined under clause 31 been the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

- (6) For the purposes of subsections (1) and (4), a person who is receiving a rehabilitation allowance under the *Social Security Act 1991* and who, immediately before he became eligible to receive that allowance, was eligible to receive an invalid pension under that Act, shall be taken to be in receipt of a disability support pension under that Act.

159M Double concessional rebates

Where, but for this section, a taxpayer would be entitled, under the provisions of sections 159J and 159L, to more than one rebate of tax in his assessment in respect of income of a year of income in respect of the same person, the rebate or rebates shall be of such amount as is or such amounts as are, in the opinion of the Commissioner, reasonable in the circumstances.

159N Rebate for certain low-income taxpayers

- (1) If a taxpayer's taxable income of a year of income is less than \$60,000, the taxpayer is entitled to a rebate of tax in the taxpayer's assessment for the year of income.
- (2) The amount of the rebate is \$1,200, reduced by 4 cents for every \$1 of the amount (if any) by which the taxpayer's taxable income of the year of income exceeds \$30,000.

159P Rebate for medical expenses

- (1) An amount paid by the taxpayer in the year of income as medical expenses in respect of himself or herself, or in respect of a dependant who is a resident, less any amount paid to the taxpayer or any other person, and any amount which the taxpayer or any

other person is entitled to be paid, in respect of those medical expenses by a government or public authority or by a society, association or fund (whether incorporated or not) shall, for the purposes of this section, be treated as a rebatable amount in respect of that year of income.

- (3) Where an amount is paid in the year of income by the trustee of a trust estate out of income of the trust estate as medical expenses in respect of a beneficiary who is a resident, that amount, less the sum of any amounts that have been paid to the trustee or any other person or that the trustee or any other person is entitled to be paid, in respect of those medical expenses by a government or public authority, or by a society, association or fund (whether incorporated or not) shall, for the purposes of this section, be treated as a rebatable amount:
- (a) where the trustee is liable to be assessed under section 98 in respect of income of the year of income to which that beneficiary is presently entitled—in the assessment of the trustee in respect of that income; and
 - (b) where that beneficiary is liable to be assessed in respect of any income of the year of income—in the assessment of that beneficiary in respect of that income.

(3A) Where:

- (a) a rebatable amount is, or rebatable amounts are, applicable to a taxpayer in respect of a year of income; and
- (b) that rebatable amount, or the aggregate of those rebatable amounts, exceeds \$1,500;

the taxpayer is entitled to a rebate of tax in the taxpayer's assessment in respect of income of that year of income of an amount equal to 20% of the excess.

- (3B) Where the trustee of the estate of a deceased person pays an amount as medical expenses in respect of a liability incurred by the deceased person in the deceased person's lifetime, being an amount that would have been treated, for the purposes of this section, as a rebatable amount if it had been paid by the deceased person during the deceased person's lifetime, there shall be allowed, in the assessment of the trustee upon the assessable income derived by the deceased person during the year of income in which the deceased person died, a rebate of tax equal to the rebate that would have been allowable to the deceased person under this section in

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respect of that amount if it had been paid by the deceased person during the year of income in which the deceased person died.

(4) In this section:

dependant means:

- (a) the spouse of the taxpayer; or
- (b) a child of the taxpayer less than 21 years of age; or
- (c) a person in respect of whom the taxpayer is entitled to a rebate under section 159J; or
- (ca) a person included in class 1, class 2, class 5 or class 6 in the table in subsection 159J(2) in respect of whom the taxpayer would be entitled to a rebate under section 159J but for subsection 159J(1AB); or
- (d) a person included in class 3 or class 4 in the table in subsection 159J(2) in respect of whom the taxpayer would be entitled to a rebate under section 159J but for subsection 159J(1A).

ineligible medical expenses means payments:

- (a) to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of a cosmetic operation that is not a professional service for which a medicare benefit is payable under Part II of the *Health Insurance Act 1973*; or
- (b) to a legally qualified dentist for:
 - (i) dental services; or
 - (ii) treatment;that is solely cosmetic.

medical expenses means payments:

- (a) to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation; or
- (b) to a legally qualified dentist for dental services or treatment or the supply, alteration or repair of artificial teeth; or
- (c) to a person registered under a law of a State or Territory as a dental mechanic in respect of charges lawfully made by that person for the supply, alteration or repair of artificial teeth; or
- (d) for therapeutic treatment administered by direction of a legally qualified medical practitioner; or

- (e) in respect of an artificial limb (or part of a limb), artificial eye or hearing aid; or
- (f) in respect of a medical or surgical appliance (not otherwise specified in this definition) prescribed by a legally qualified medical practitioner; or
- (g) for:
 - (i) the testing of eyes or the prescribing of spectacles by a person legally qualified to perform those services; or
 - (ii) the supply of spectacles in accordance with any such prescription; or
- (h) as remuneration of a person for services rendered by him as an attendant of a person who is blind or permanently confined to a bed or an invalid chair; or
- (i) for the maintenance of a dog used for the guidance or assistance of, but not social therapy for, a person with a disability, being a dog that the Commissioner is satisfied is properly trained in the guidance or assistance of persons with disabilities;

but does not include ineligible medical expenses.

professional service has the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

- (5) For the purposes of the definitions of *ineligible medical expenses* and *medical expenses* in subsection (4), a payment made to an employer (not being a public or private hospital) of a person (in this subsection referred to as the *relevant person*) who is a legally qualified medical practitioner, nurse or chemist in respect of the provision of services or treatment, or the supply of goods, by the relevant person shall be taken to be a payment made to the relevant person in respect of the provision of those services or that treatment or in respect of the supply of those goods.
- (6) For the purposes of the definitions of *ineligible medical expenses* and *medical expenses* in subsection (4), a payment made to an employer of a legally qualified dentist in respect of the provision of dental services or treatment, or the supply, alteration or repair of artificial teeth, by the dentist shall be taken to be a payment made to the dentist in respect of the provision of those services or that treatment or in respect of the supply, alteration or repair of those artificial teeth.

- (7) For the purposes of paragraph (c) of the definition of *medical expenses* in subsection (4), a payment made to an employer of a person registered under a law of a State or Territory as a dental mechanic in respect of charges lawfully made by the employer in respect of the supply, alteration or repair of artificial teeth by the dental mechanic shall be taken to be a payment made to the dental mechanic in respect of charges lawfully made by the dental mechanic for the supply, alteration or repair of those artificial teeth.
- (8) A reference in subsection (5), (6) or (7) to an employer of a legally qualified medical practitioner, nurse or chemist, a legally qualified dentist or a person registered under a law of a State or Territory as a dental mechanic shall be read as including a reference to a person with whom the medical practitioner, nurse, chemist, dentist or dental mechanic has entered into a contract for services.

Subdivision AB—Lump sum payments in arrears

159ZR Interpretation

- (1) In this Subdivision, unless the contrary intention appears:

accrual year, in relation to the total arrears amount, means a year of income in which any part of the total arrears amount accrued.

annual arrears amount, in relation to an accrual year, means so much of the total arrears amount as accrued in that year.

associate has the same meaning as in section 318.

current year means the year of income for which the rebate is being calculated.

distant accrual year means an accrual year that is not a recent accrual year.

eligible income means:

- (a) salary or wages to the extent to which they accrued during a period ending more than 12 months before the date on which they are paid;
- (b) salary or wages paid to a person after re-instatement to duty following a period of suspension of the person from duty, to

the extent to which the salary or wages accrued during the period of suspension;

- (c) a payment covered by section 12-80 or 12-120 in Schedule 1 to the *Taxation Administration Act 1953*;
- (d) a Commonwealth education or training payment (see subsection 6(1));
- (e) a payment that is covered by Division 52, 53 or 55 of the *Income Tax Assessment Act 1997*, but that is not exempt from income tax under that Division;
- (f) a payment under a law of a foreign country that is similar to a payment covered by paragraph (e);

but does not include so much of any such amount as was taken into account in calculating the amount of a tax reimbursement payment by the Commonwealth that was authorised under section 33 of the *Financial Management and Accountability Act 1997*.

eligible lump sum, in relation to a year of income, means a lump sum payment of eligible income received on or after 1 July 1986 that is included in the assessable income of the year of income and accrued, in whole or in part, in an earlier year or years of income.

gross tax means the tax payable before the allowance of any rebates or credits.

law of a foreign country includes a law of any part of, or place in, a foreign country.

normal taxable income is the amount that would be the taxable income if:

- (a) no amount were included in assessable income under Division 82, section 83-10 or 83-80 or Division 301 or 302 of the *Income Tax Assessment Act 1997* or Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; and
- (b) the taxable income were reduced by any above-average special professional income included in the taxable income under section 405-15 of the *Income Tax Assessment Act 1997*; and
- (c) no amount were included in assessable income under section 102-5 of the *Income Tax Assessment Act 1997* (about including net capital gains in assessable income).

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notional tax amount has the meaning given by sections 159ZRC and 159ZRD.

rebated tax means the tax payable after the allowance of any tax offset under Division 82, 83, 301 or 302 of the *Income Tax Assessment Act 1997*, subsection 392-35(2) of that Act (which allows some primary producers tax offsets) or Division 82 of the *Income Tax (Transitional Provisions) Act 1997*, but before the allowance of any other tax offsets or any credits.

rebate year means a year of income for which the conditions in paragraphs 159ZRA(1)(a) and (b) are satisfied.

recent accrual year, in relation to the total arrears amount, means:

- (a) if there are 3 or more accrual years for the total arrears amount—the most recent 2 of those years; or
- (b) in any other case—the accrual year, or each of the accrual years, for the total arrears amount.

salary or wages means payments covered by sections 12-35, 12-40 (except payments of remuneration to a director of the company who is also an associate of the company), 12-45, 12-80, 12-110, 12-115 and 12-120 in Schedule 1 to the *Taxation Administration Act 1953*.

total arrears amount, in relation to a year of income, means the aggregate of the eligible lump sums included in the assessable income of the year of income to the extent to which those eligible lump sums accrued in an earlier year or years of income.

159ZRA Eligibility for rebate

(1) Where:

- (a) the assessable income of the taxpayer of a year of income (in this Subdivision called the **current year**) includes one or more eligible lump sums; and
- (b) the total arrears amount is not less than 10% of the amount (if any) remaining after deducting that total arrears amount from the normal taxable income of the current year;

the taxpayer is entitled to a rebate of tax, in the taxpayer's assessment for the current year, of the amount (if any) calculated in accordance with this Subdivision.

- (2) The rebate is only available to a natural person (otherwise than in the capacity of a trustee).

159ZRB Calculation of rebate

The rebate is calculated in accordance with the formula:

Tax on arrears – Notional tax on arrears

where:

Tax on arrears is the amount by which the rebated tax on the taxable income of the current year exceeds the rebated tax on the taxable income of the current year, being that taxable income reduced by the total arrears amount.

Notional tax on arrears is the total of the notional tax amounts for the accrual years.

159ZRC Notional tax amount for recent accrual years

The notional tax amount for a recent accrual year is calculated in accordance with the formula:

Tax on increased income – Tax on actual income

where:

Tax on increased income is the rebated tax on the taxable income of the accrual year, being that taxable income adjusted as follows:

- (a) the annual arrears amount for the accrual year is to be added;
- (b) if the accrual year is also a rebate year—the total arrears amount for the accrual year is to be deducted; and
- (c) if, during the accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the accrual year is to be added.

Tax on actual income is the rebated tax on the taxable income of the accrual year, being that taxable income adjusted as follows (if applicable):

- (d) if the accrual year is also a rebate year—the total arrears amount for the accrual year is to be deducted; and
- (e) if, during the accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the

current year—the amount that so accrued during the accrual year is to be added.

159ZRD Notional tax amount for distant accrual years

- (1) The notional tax amount for a distant accrual year is calculated in accordance with the formula:

Arrears amount \times Average tax rate on recent arrears

where:

Arrears amount is the annual arrears amount in relation to the accrual year.

Average tax rate on recent arrears is the average of the rates calculated in accordance with the following formula in respect of each of the recent accrual years:

$$\frac{\text{Increased normal tax} - \text{Normal tax}}{\text{Arrears amount}}$$

where:

Increased normal tax is the gross tax on the normal taxable income of the recent accrual year, being that normal taxable income adjusted as follows:

- (a) the annual arrears amount for the recent accrual year is to be added;
- (b) if the recent accrual year is also a rebate year—the total arrears amount for the recent accrual year is to be deducted; and
- (c) if, during the recent accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the recent accrual year is to be added.

Normal tax is the gross tax on the normal taxable income of the recent accrual year, being that normal taxable income adjusted as follows (if applicable):

- (d) if the recent accrual year is also a rebate year—the total arrears amount for the recent accrual year is to be deducted; and
- (e) if, during the recent accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year

before the current year—the amount that so accrued during the recent accrual year is to be added.

Arrears amount is the annual arrears amount for the recent accrual year.

- (2) A rate calculated for the purposes of subsection (1) in respect of a recent accrual year shall be calculated as a decimal fraction to 3 decimal places.
- (3) If a rate so calculated would end with a number greater than 4 if it were calculated to 4 decimal places, the rate shall be increased by 0.001.

Subdivision B—Miscellaneous

160AAAA Tax rebate for low income aged persons

- (1) A taxpayer who is an individual (other than in the capacity as trustee) is entitled to a rebate of tax in the taxpayer's assessment in respect of income of a year of income of an amount (if any), ascertained in accordance with the regulations, if the taxpayer satisfies the conditions in subsections (2) and (3).
- (2) The first condition is that, on at least one day during the year of income, either:
 - (a) the taxpayer:
 - (i) is eligible for a pension, allowance or benefit under the *Veterans' Entitlements Act 1986* (other than Part VII); and
 - (ii) has reached pension age, within the meaning of that Act; and
 - (iii) is not in gaol; or
 - (b) the taxpayer:
 - (i) is qualified for an age pension under the *Social Security Act 1991*; and
 - (ii) is not in gaol.
- (3) The second condition is that the taxpayer has a taxable income for the year of income less than an amount ascertained in accordance with the regulations.

- (4) For the purposes of subsection (3), if the taxpayer is the spouse of another person, the taxable income of the taxpayer is taken to be half of the sum of:
 - (a) the taxable income of the taxpayer; and
 - (b) any share of the net income of a trust estate to which the spouse is presently entitled and that is assessed under section 98; and
 - (c) the actual taxable income of the spouse (reduced by any amount included in the spouse's assessable income under section 100).
- (5) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAAB Tax rebate for low income aged persons—trustees assessed under section 98

- (1) A taxpayer who is a trustee who is liable to be assessed under section 98 in respect of a beneficiary's share of the net income of the trust estate is entitled to a rebate of tax in the trustee's assessment in respect of income of a year of income of an amount (if any), ascertained in accordance with the regulations, if the conditions in subsections (2) and (3) are satisfied.
- (2) The first condition is that, on at least one day during the year of income, either:
 - (a) the beneficiary:
 - (i) is eligible for a pension, allowance or benefit under the *Veterans' Entitlements Act 1986* (other than Part VII); and
 - (ii) has reached pension age, within the meaning of that Act; and
 - (iii) is not in gaol; or
 - (b) the beneficiary:
 - (i) is qualified for an age pension under the *Social Security Act 1991*; and
 - (ii) is not in gaol.

- (3) The second condition is that the beneficiary has a taxable income for the year of income less than an amount ascertained in accordance with the regulations.
- (4) For the purposes of subsection (3), if the beneficiary is not the spouse of another person, the taxable income of the beneficiary is taken to be the beneficiary's share of the net income of the trust estate.
- (5) For the purposes of subsection (3), if the beneficiary is the spouse of another person, the taxable income of the beneficiary is taken to be half of the sum of:
 - (a) the beneficiary's share of the net income of the trust estate; and
 - (b) any share of the net income of a trust estate to which the spouse is presently entitled and that is assessed under section 98; and
 - (c) the actual taxable income of the spouse (reduced by any amount included in the spouse's assessable income under section 100).
- (6) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAA Rebate in respect of certain pensions, benefits etc.

- (1) In this section:

rebutable benefit means an amount:

- (a) paid by way of a benefit under Part 2.8A, 2.11, 2.11A, 2.12, 2.12B, 2.14, 2.15, 2.15A or 3.15A of the *Social Security Act 1991*; or
- (aa) paid by way of parenting payment that is PP (partnered) under the *Social Security Act 1991*, to the extent that the amount is not exempt under Division 52 of the *Income Tax Assessment Act 1997*; or
- (b) consisting of a Commonwealth education or training payment (see subsection 6(1)), except where the recipient, or the individual on whose behalf the recipient receives the payment, is an employee of any person who is entitled to a Commonwealth subsidy in respect of the employment; or

- (c) paid as a wage to a participant in a project under the Community Development Employment Projects program from the wages component of a grant made under the program; or
- (d) paid by way of Northern Territory CDEP transition payment under Part 2.27 of the *Social Security Act 1991*; or
- (da) paid by way of exceptional circumstances relief payment or farm help income support under the *Farm Household Support Act 1992*; or
- (e) paid by way of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica; or
- (f) known as an interim income support payment and paid under section 33 of the *Financial Management and Accountability Act 1997*; or
- (g) known as the Equine Workers Hardship Wage Supplement Payment.

rebatable pension means a pension, allowance or benefit under:

- (a) the *Veterans' Entitlements Act 1986* (other than Part VII); or
 - (b) the *Social Security Act 1991* (other than Part 2.8A, 2.10 to the extent it provides for parenting payment that is a PP (partnered), 2.11, 2.11A, 2.12, 2.12B, 2.14, 2.15, 2.15A, 2.18 or 3.15A).
- (2) Subject to subsections (4) and (4A), where the assessable income of a taxpayer of a year of income includes an amount of rebatable pension, the taxpayer is entitled in the taxpayer's assessment in respect of income of the year of income to a rebate of tax of an amount (if any) ascertained in accordance with the regulations.
- (3) Subject to subsections (4) and (4A), where the assessable income of a taxpayer of a year of income includes an amount of rebatable benefit, the taxpayer is entitled in the taxpayer's assessment in respect of income of the year of income to a rebate of tax of an amount (if any) ascertained in accordance with the regulations.
- (4) Where, apart from this subsection, the taxpayer would be entitled in his or her assessment in respect of income of a year of income to a rebate of tax under both subsections (2) and (3):
- (a) if the amounts of the rebates are the same—the taxpayer is entitled to only one of the rebates; and

- (b) if the amounts of the rebates are not the same—the taxpayer is not entitled to the lesser of the rebates.
- (4A) A taxpayer is not entitled to a rebate under this section for a year of income if:
 - (a) the taxpayer is entitled to a rebate of tax for the year of income under section 160AAAA; or
 - (b) the taxpayer is the beneficiary of a trust where the trustee of the trust is entitled to a rebate of tax for the year of income under section 160AAAB in respect of the taxpayer.
- (5) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAB Rebate in respect of amounts assessable under section 26AH

- (1) In this section:

eligible 26AH amount, in relation to a year of income, means an amount included in assessable income under section 26AH in relation to an eligible policy within the meaning of that section issued by:

- (a) a life assurance company, not being a life assurance company the whole of the income of which of the year of income is exempt from tax;
- (c) the Government Insurance Office of New South Wales;
- (d) Suncorp Insurance and Finance, being a body corporate established by a law of Queensland;
- (e) the State Government Insurance Commission established by a law of South Australia;
- (f) the State Insurance Office established by a law of Victoria; or
- (g) the State Government Insurance Corporation established by a law of Western Australia.

statutory percentage means:

- (a) if the policy concerned was issued by a friendly society:
 - (i) if the year of income is earlier than the 2002-03 year of income—33%; or

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- (ii) if the year of income is the 2002-03 year of income or a later year of income—30%; or
- (b) otherwise:
 - (i) if the year of income is earlier than the 2001-02 year of income—39%; or
 - (ii) if the year of income is the 2001-02 year of income—34%; or
 - (iii) if the year of income is the 2002-03 year of income or a later year of income—30%.
- (2) A taxpayer, not being a taxpayer in the capacity of trustee of a trust estate, is entitled in his assessment in respect of income of a year of income to a rebate of tax equal to the statutory percentage of an eligible 26AH amount included in his assessable income of the year of income.
- (3) Where:
 - (a) an amount is included under section 97, 98A or 100 in the assessable income of a year of income of a taxpayer being a beneficiary of a trust estate otherwise than in the capacity of trustee of another trust estate; and
 - (b) the whole or a part of the amount so included (which whole or part is in this subsection referred to as the ***rebatable amount***) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;the taxpayer is entitled in his assessment in respect of income of the year of income to a rebate of tax equal to the statutory percentage of the rebatable amount.
- (4) Where:
 - (a) a taxpayer being the trustee of a trust estate is liable to be assessed and to pay tax in pursuance of section 98 in respect of a share of the net income of the trust estate of a year of income; and
 - (b) the whole or part of that share (which whole or part is in this subsection referred to as the ***rebatable amount***) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;

the taxpayer is entitled in that assessment to a rebate of tax equal to the statutory percentage of the rebatable amount.

(5) Where:

- (a) a taxpayer being the trustee of a trust estate is liable to be assessed and to pay tax in pursuance of section 99 or 99A in respect of the whole or a part (which whole or part is in this subsection referred to as the *relevant trust income*) of the net income of the trust estate of a year of income; and
- (b) the whole or a part of the relevant trust income (which whole or part is in this subsection referred to as the *rebatable amount*) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;

the taxpayer is entitled in that assessment to a rebate of tax equal to the statutory percentage of the rebatable amount.

- (5A) A taxpayer being the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust is entitled in the taxpayer's assessment in respect of income of a year of income to a rebate of tax equal to the statutory percentage of any eligible section 26AH amount included in the taxpayer's assessable income of the year of income.
- (6) Where an eligible 26AH amount is included in the assessable income of a partnership of a year of income in the calculation of the net income or partnership loss of the partnership of the year of income, a partner in the partnership is entitled in his assessment in respect of income of the year of income to a rebate of tax equal to the statutory percentage of the amount by which the taxable income of the partner of the year of income exceeds the amount that could reasonably be expected to be that taxable income if the eligible 26AH amount had not been included in the assessable income of the partnership of the year of income.

160AD Maximum amount of rebates

Notwithstanding anything contained in this or any other Act, the sum of the rebates allowable under this Act shall not exceed the amount of tax which would otherwise be payable by the taxpayer.

160ADA Most tax offsets under the 1997 Assessment Act are treated as rebates

A tax offset under a provision of the *Income Tax Assessment Act 1997* is taken to be a rebate for the purposes of this Act, unless that provision corresponds to a provision of this Act that provides for a credit.

Note: If the tax offset provision does correspond to a credit provision, the tax offset is treated as a credit: see section 6D.

Part IIIB—Australian branches of foreign banks

Division 1—Preliminary

160ZZVA Object

- (1) The object of this Part is:
 - (a) to assist in calculating that part of a foreign bank's taxable income that is referable to certain activities of its Australian branch; and
 - (b) to make it clear that withholding tax will apply to amounts that are taken by this Part to be interest paid by the branch to the bank.

Note: This Part also:

- (a) applies to foreign entities that are financial entities in the same way as it applies to foreign banks; and
- (b) applies to permanent establishments in Australia of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks.

See Division 4.

- (2) For the purpose of achieving the object mentioned in subsection (1), this Part requires, in the circumstances stated in this Part and not otherwise, that the Australian branch is to be treated as if it were a separate legal entity from the bank.

160ZZVB Application

- (1) It is the intention that, in so far as this Part is to be applied to identify amounts of income and expenditure that are taken into account in calculating that part of a foreign bank's taxable income of a year of income that is referable to certain activities of its Australian branch, the provisions of this Part are to be applied in their entirety.
- (2) If, as a result of the application of this Part:
 - (a) the taxable income of a year of income of a foreign bank that is attributable to activities carried on by the bank through its Australian branch is greater than the amount that would be that taxable income if this Part did not apply; or

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- (b) a foreign bank would be taken not to incur a loss in a year of income in respect of activities carried on by the bank through its Australian branch that it would be taken to have incurred if this Part did not apply; or
 - (c) the amount of a loss that a foreign bank would be taken to incur in a year of income in respect of activities carried on by the bank through its Australian branch is less than the amount of the loss that it would be taken to have incurred if this Part did not apply;
- and an agreement within the meaning of the *Income Tax (International Agreements) Act 1953* that has the force of law applies in relation to the bank, the bank may elect that this Part is not to apply in the calculation of its taxable income of that year of income.
- (3) If a foreign bank makes an election as mentioned in subsection (2):
- (a) this Part does not apply in the calculation of the bank's taxable income of the year of income to which the election relates and the bank may furnish returns, and is liable to pay tax, accordingly; but
 - (b) the election does not affect the operation of this Part in respect of the application of withholding tax to amounts that are taken by this Part to be interest paid by the branch to the bank.

160ZZV Definitions

In this Part, unless the contrary intention appears:

accounting records includes:

- (a) invoices, receipts, vouchers and other documents of prime entry; and
- (b) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

Australian branch, in relation to a foreign bank, means a permanent establishment in Australia through which the bank carries on banking business.

derivative transaction means a transaction entered into for the purpose of eliminating, reducing or altering the risk of adverse

financial consequences that might result from changes in rates of interest or changes in rates of exchange between currencies, or for the purpose of making a profit from such changes, but does not include a transaction for the provision of finance or a foreign exchange transaction.

interest has the same meaning as in Division 11A of Part III.

foreign bank means a body corporate that is a foreign ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

foreign exchange transaction means a transaction by which different currencies are exchanged.

offshore banking unit has the same meaning as in Division 11A of Part III.

time of establishment, in relation to an Australian branch of a foreign bank, means the time when the bank began to carry on business through the permanent establishment in Australia that constitutes the branch.

160ZZW Certain provisions to apply as if Australian branch of foreign bank were a separate legal entity

- (1) Subsections (2), (3), (4) and (5) apply only:
 - (a) for the purposes of sections 160ZZZ, 160ZZZA, 160ZZZC, 160ZZZE and 160ZZZF as they have effect in the determination under this Act of the liability of a foreign bank to tax (other than withholding tax) in respect of income derived from an Australian branch of the bank; and
 - (b) for the purposes of the provisions of this Act other than this Part as those provisions apply in relation to amounts that are taken by this Part to have been received from a foreign bank by its Australian branch or to have been paid to a foreign bank by its Australian branch; and
 - (c) for the purposes of section 160ZZZJ as it has effect in determining the liability of a foreign bank to withholding tax in respect of amounts paid to the bank by an Australian branch of the bank.

Part IIIB Australian branches of foreign banks

Division 1 Preliminary

Section 160ZZW

- (2) The branch and the bank are taken to be, and to have been since the time of establishment of the branch, separate legal entities.
- (3) The branch is taken to be, and to have been since the time of its establishment, a company having a share capital all the shares in which are or were beneficially owned by the bank.
- (4) The branch is taken to be a non-resident and to have been a non-resident since the time of its establishment.
- (5) For the purposes of Division 13 of Part III, the branch is taken not to be, and not to have been at any time since its establishment, a permanent establishment in Australia of the bank.

Division 2—Provisions relating to income tax

160ZZX Income of branch to have Australian source

All income derived by a foreign bank through its Australian branch is taken, for the purposes of this Act, to be income derived from a source in Australia.

160ZZZ Notional borrowing by branch from bank

- (1) If an amount has been made available by a foreign bank for use by an Australian branch of the bank and is recorded in the branch's accounting records as having been provided by the bank to the branch, that amount is taken, for the purposes of this Act, to have been borrowed by the branch from the bank when the amount became so available and to have been so borrowed in the currency in which the amount became so available.
- (2) If an amount has been made available by the branch to the bank in purported repayment of an amount that is taken, under subsection (1), to have been borrowed by the branch from the bank and the amount so made available is recorded in the branch's accounting records as having been repaid by the branch to the bank, the amount that was so taken to have been borrowed is taken, for the purposes of this Act, to have been repaid by the branch to the bank when the amount became so available and to have been so repaid in the currency in which the amount became so available.

160ZZZA Notional payment of interest by branch to bank

- (1) If, under section 160ZZZ, an amount is taken, for the purposes of this Act, to have been borrowed (the *notional borrowing*) in a particular currency from a foreign bank by an Australian branch of the bank, the following provisions have effect:
 - (a) at any time (the *relevant time*) when, in respect of the notional borrowing, an amount (the *notional amount of interest*) is entered in the branch's accounting records as interest for a period fixed by the bank, interest is taken, for the purposes of this Act, to be incurred by the branch, paid by the branch to the bank, and derived by the bank, in respect of the notional borrowing;

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- (b) subject to the application of paragraph (c), the notional amount of interest is taken, for the purposes of this Act, to be the amount of interest so taken to be paid;
 - (c) if the interest on the notional borrowing at the relevant time was at a rate of interest that exceeded the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing, there is taken to have been entered in the branch's accounting records at the relevant time, in lieu of the notional amount of interest, the amount that would have been so entered if interest on the notional borrowing for the relevant interest calculation period had been calculated at the LIBOR that was applicable at the beginning of that period.
- (2) For the purposes of this section, a reference to the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing is a reference to:
- (a) the LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for a term the number of days in which was equal to the number of days in that period; or
 - (b) if there was no LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for such a term:
 - (i) the LIBOR applicable at the beginning of that period in respect of advances in that currency for a term the number of days in which most nearly approximated the number of days in that period; or
 - (ii) if there were different LIBORs so applicable for different terms the number of days in each of which could be described as having most nearly approximated the number of days in that period—the LIBOR so applicable for the shorter of those terms.
- (3) For the purposes of this section:
- (a) a reference to LIBOR, in relation to a particular time, is a reference to the rate of interest applicable at that time in relation to banks in the London inter bank market as determined by reference to the Reuter Monitor Money Rates Service or any other published source; and

- (b) a reference to the relevant interest calculation period in relation to a notional borrowing from a foreign bank by an Australian branch of the bank is a reference to the period fixed by the bank for the calculation of the notional amount of interest in respect of the notional borrowing.

160ZZZC Offshore banking units

If:

- (a) apart from this section, a foreign bank would be an offshore banking unit under a declaration published under subsection 128AE(2); and
 - (b) the foreign bank has an Australian branch;
- this Act has effect as if the Australian branch were the offshore banking unit under the declaration.

160ZZZE Notional derivative transactions between branch and bank

If the accounting records of an Australian branch of a foreign bank reflect a derivative transaction notionally entered into by the branch with the bank:

- (a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and
- (b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or received by the branch, as the case may be, in respect of the derivative transaction when the amount was so entered.

160ZZZF Notional foreign exchange transactions between branch and bank

If the accounting records of an Australian branch of a foreign bank reflect a foreign exchange transaction notionally entered into by the branch with the bank:

- (a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and
- (b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or

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received by the branch, as the case may be, in respect of the foreign exchange transaction when the amount was so entered.

160ZZZG Losses

Subdivision 170-A of the *Income Tax Assessment Act 1997* has effect as if an Australian branch of a foreign bank were a subsidiary of the bank and a resident of Australia.

160ZZZH Net capital losses

Subdivision 170-B of the *Income Tax Assessment Act 1997* (about transfer of net capital losses within wholly-owned groups of companies) has effect as if an Australian branch of a foreign bank were a 100% subsidiary (within the meaning of that Act) of the bank and an Australian resident (within the meaning of that Act).

160ZZZI Certain transactions to be disregarded

Any transaction entered into by a foreign bank otherwise than through its Australian branch:

- (a) under which finance is provided to the bank; or
- (b) that is a derivative transaction or a foreign exchange transaction;

is to be disregarded for the purpose of determining whether a deduction is allowable to the bank under this Act.

Division 3—Provisions relating to withholding tax

160ZZZJ Withholding tax on interest paid by branch to bank

- (1) If:
- (a) an amount of interest is taken under section 160ZZZA to be paid to, and derived by, a foreign bank by an Australian branch of the bank; and
 - (b) apart from this section, section 128B of this Act, and Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953*, would apply to an amount (the **taxable amount**) that comprises the whole or a part of the amount so taken to be paid;
- the following subsections have effect.
- (2) Section 128B of this Act, and Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953*, apply only to the amount worked out using the formula:
- $$\frac{\text{Taxable amount}}{2}$$
- (3) An amount to which section 128B applies because of subsection (2) of this section is taken, for the purposes of section 128C, to be income that was derived by the bank when the amount of interest referred to in paragraph (1)(a) is taken to have been paid to the bank.

Division 4—Extension of Part to Australian branches of foreign financial entities

160ZZZK Treatment like Australian branches of foreign banks

Objects

- (1) The main objects of this section are:
 - (a) to treat foreign entities that are financial entities like foreign banks for the purposes of this Part; and
 - (b) to treat Australian permanent establishments of foreign entities that are financial entities like Australian branches of foreign banks for the purposes of this Part.

Foreign financial entities treated like foreign banks

- (2) This Part (except this Division) applies to a foreign entity that is a financial entity in the same way as this Part applies to a foreign bank.

Australian permanent establishments treated like Australian branches

- (3) This Part (except this Division) applies to a permanent establishment in Australia of a foreign entity that is a financial entity in the same way as this Part applies to an Australian branch of a foreign bank.

Definitions

- (4) In this section:

financial entity has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

foreign entity has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

Part IV—Returns and assessments

161 Annual returns

Requirement to lodge a return

- (1) Every person must, if required by the Commissioner by notice published in the *Gazette*, give to the Commissioner a return for a year of income within the period specified in the notice.

Note: The Commissioner may defer the time for giving the return: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

- (1A) The Commissioner may, in the notice, exempt from liability to furnish returns such classes of persons not liable to pay income tax as the Commissioner thinks fit, and a person so exempted need not furnish a return unless the person is required by the Commissioner to do so.
- (2) If the taxpayer is absent from Australia, or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person duly authorized.
- (3) Nothing in this section prevents an approval by the Commissioner of a form of return under section 35D of the *Superannuation Industry (Supervision) Act 1993* from requiring or permitting a return under that section to be attached to, or to form part of, a return under this section.

Note: However, the rules applicable to a return under section 35D of the *Superannuation Industry (Supervision) Act 1993* are those specified in that Act.

161A Form and content of returns

- (1) The return must be in the approved form.

Electronic returns

- (2) An approval given by the Commissioner of a form of return may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

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161AA Contents of returns of full self-assessment taxpayers

A full self-assessment taxpayer must, in a return for a year of income, specify:

- (a) its taxable income or its net income for that year of income (or that it has no taxable income or net income for that year); and
- (b) the amount of the tax payable on that taxable income or net income (or that no tax is payable); and
- (c) the amount of interest (if any) payable by the taxpayer under section 102AAM for that year of income; and
- (d) for a company that is an RSA provider, or a trustee of a fund that is an eligible superannuation fund (as defined in section 267) in relation to the year of income:
 - (i) its no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that it has no no-TFN contributions income); and
 - (ii) the amount of the income tax payable on that income (or that no income tax is payable).

161G Tax agent to give taxpayer copy of notice of assessment

Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

162 Further returns and information

A person must, if required by the Commissioner, whether before or after the end of the year of income, give the Commissioner, within the time required and in the approved form:

- (a) a return or a further or fuller return for a year of income or a specified period, whether or not the person has given the Commissioner a return for the same period; or
- (b) any information, statement or document about the person's financial affairs.

163 Special returns

Every person, whether a taxpayer or not, if required by the Commissioner, shall, in the approved form and within the time required by him, furnish any return required by the Commissioner for the purposes of this Act.

163A Late lodgement penalty—relevant entities, instalment taxpayers and full self-assessment taxpayers

- (1) Subject to subsection (2), if:
- (a) a person who is a relevant entity, an instalment taxpayer or a full self-assessment taxpayer is required to furnish a return under section 161, 162 or 163 in relation to a year of income; and
 - (b) the return is not furnished within:
 - (i) in the case of section 161—the period specified in the notice under that section or any further period allowed by the Commissioner under that section; or
 - (ii) in the case of section 162 or 163—the time required by the Commissioner under that section;

the person is liable to pay, by way of penalty, \$10 for each week or part of a week that occurs after the end of the period, the further period or the time mentioned in paragraph (b) and before the return is furnished.

Note: The penalty is payable even if the return is never furnished.

Maximum penalty

- (2) The maximum penalty payable under subsection (1) in respect of the return is \$200.

Notification requirements

- (3) The Commissioner must give the person a notice in writing stating that the person is liable to penalty under this section in relation to the year of income and specifying:
- (a) the amount of the penalty; and
 - (b) the day on which the penalty is due and payable.

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The day specified must be at least 30 days after the day on which the notice is given, and the amount is due and payable on the day specified.

Note: A person who fails to pay on time some or all of the penalty is liable to pay the general interest charge on the unpaid amount: see section 163AA.

Notice in assessment notice

- (4) The notice may be included in any other notice of assessment in respect of the person.

Remission of penalty

- (5) The Commissioner may, in his or her discretion, remit the whole or any part of the penalty.

Notice in writing of decision

- (6) If the Commissioner makes a decision to remit part only of the penalty, or not to remit any part of the penalty, the Commissioner must:
- (a) if the decision is made before the Commissioner gives the notice under subsection (3)—advise the person of the decision in the notice under subsection (3); or
 - (b) in any other case—give notice in writing of the decision to the person.

Objections

- (7) If the person is dissatisfied with:
- (a) the notice given to the person under subsection (3); or
 - (b) a decision of the Commissioner under subsection (5) in relation to the person;
- the person may object against the notice, or against the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Income tax or tax includes penalty

- (8) Unless the contrary intention appears, in sections 254 and 255 and former sections 215 and 216, but not in any other section of this

Act, a reference to *income tax* or *tax* includes a reference to the penalty.

Definitions

(9) In this section:

instalment taxpayer has the same meaning as in former Division 1C of Part VI.

relevant entity has the same meaning as in former Division 1B of Part VI.

(10) This section does not apply to a return for the 2000-01 year of income or a later year of income.

Note: See instead Division 286 in Schedule 1 to the *Taxation Administration Act 1953*.

163AA General interest charge on unpaid penalty

A person who fails to pay some or all of a penalty under section 163A by the time by which the penalty is due to be paid is liable to pay the general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the day by which the penalty was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the penalty;
 - (ii) general interest charge on any of the penalty.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

163B Late lodgment of returns by persons other than relevant entities, instalment taxpayers and full self-assessment taxpayers

(1) If:

- (a) a person (other than a relevant entity, an instalment taxpayer or a full self-assessment taxpayer) is required to furnish a return under section 161, 162 or 163 in relation to a year of income; and

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- (b) the return is not furnished within:
 - (i) in the case of section 161—the period specified in the notice under that section or any further period allowed by the Commissioner under that section; or
 - (ii) in the case of section 162 or 163—the time required by the Commissioner under that section; and
- (c) an assessment (other than an amended assessment) is made of the income tax payable by the person for the year of income (whether or not on the basis of a return that is later furnished by the person);

the person is liable to pay the general interest charge on the amount in subsection (2) and the amount of the charge is taken to be **additional tax** payable under this section.

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

- (1A) The person is liable to pay the general interest charge for each day in the period that:
 - (a) started at the beginning of the day by which the return was required to be furnished; and
 - (b) finishes at the end of the day before the return is furnished, or the day before the Commissioner made the assessment, whichever is earlier.

Amount on which additional tax payable

- (2) The additional tax is payable on the lesser of:
 - (a) the amount of income tax payable under the assessment (after allowing any rebate or deduction under subsection 100(2) and before any crediting, applying or other payment); and
 - (b) the person's net tax payable (see subsection (3)).

Meaning of net tax payable

- (3) The person's **net tax payable** is the amount worked out using the formula:

Tax liabilities – Crediting amounts and payments on account

where:

Tax liabilities means the sum of the following amounts (worked out disregarding any payment on account of the amounts):

- (a) income tax payable under the assessment (after allowing any rebate or deduction under subsection 100(2) and before allowing any crediting, applying or refunding, notified in the notice of assessment, of an income tax crediting amount);
- (b) additional tax for the year of income payable by the person under Part VII immediately before any such crediting, applying or refunding;
- (c) interest for the year of income payable by the person under section 102AAM immediately before any such crediting, applying or refunding;
- (d) an HEC assessment debt or compulsory repayment amount notified in the notice of assessment;
- (e) an FS assessment debt notified in the notice of assessment.

Crediting amounts and payments on account means the sum of:

- (a) any income tax crediting amounts notified in the notice of assessment; and
- (b) any payments made on account of the amounts in paragraphs (a) to (e) of the definition of ***Tax liabilities***.

Income tax or tax includes additional tax

- (8) Unless the contrary intention appears, in sections 204, 205, 206, 215, 216, 254, 255, 258 and 259, but not in any other section of this Act, a reference to ***income tax*** or ***tax*** includes a reference to the additional tax.

Minimum amount

- (9) If less than \$20 of additional tax is payable under this section, the additional tax is taken to be \$20.

Definitions

- (10) In this section:

compulsory repayment amount has the same meaning as in the *Higher Education Support Act 2003*.

FS assessment debt means an FS assessment debt under:

- (a) subsection 19AB(2) of the *Social Security Act 1991*; or
- (b) the *Student Assistance Act 1973* as in force at a time on or after 1 July 1998.

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HEC assessment debt has the same meaning as in Chapter 5A of the *Higher Education Funding Act 1988*.

income tax crediting amount, in relation to the income tax payable by a person for a year of income, means an amount of a credit applied under Division 3 of Part IIB of the *Taxation Administration Act 1953* against the income tax.

instalment taxpayer has the same meaning as in Division 1C of Part VI.

relevant entity has the same meaning as in Division 1B of Part VI.

- (11) This section does not apply to a return for the 2000-01 year of income or a later year of income.

Note: See instead Division 286 in Schedule 1 to the *Taxation Administration Act 1953*.

164 Returns deemed to be duly made

Every return purporting to be made or signed by or on behalf of any person shall be deemed to have been duly made by him or with his authority until the contrary is proved.

166 Assessment

From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the taxable income (or that there is no taxable income) of any taxpayer, and of the tax payable thereon (or that no tax is payable).

166A Deemed assessment

- (1) Where a taxpayer that is a relevant entity within the meaning of former Division 1B of Part VI furnishes a return in respect of income of a year of income to which that Division applied:
- (a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the relevant taxable income or net income, as the case may be, and of the tax payable on that taxable income or net income, being those respective amounts as specified in the return; and

- (b) on and after the day on which the Commissioner is deemed to have made the assessment, the return is deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner; and
 - (c) the notice referred to in paragraph (b) is deemed to have been served on the entity on the day on which the Commissioner is deemed to have made the assessment.
- (2) Where:
- (aa) at a particular time, a taxpayer to which former Division 1C of Part VI applied gives a return in respect of income of a year of income to which that Division applied; and
 - (ab) before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income:
- the following provisions apply:
- (a) the Commissioner is deemed to have made an assessment of the taxable income or net income, and the tax payable on that income, equal to those respective amounts specified in the return;
 - (b) the assessment is deemed to have been made on the day on which the return is lodged;
 - (c) on and after the day on which the Commissioner is deemed to have made the assessment, the return is deemed to be a notice of the deemed assessment:
 - (i) under the hand of the Commissioner; and
 - (ii) served on the taxpayer on the day on which the Commissioner is deemed to have made the assessment.
- (3) If:
- (a) at a particular time, a full self-assessment taxpayer gives a return in respect of a year of income for which the taxpayer is a full self-assessment taxpayer; and
 - (b) before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income;
- the following provisions apply:
- (c) the Commissioner is taken to have made an assessment of the taxable income or net income (or an assessment that there is no taxable income or net income), and the tax payable on that
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income (or that no tax is payable), in accordance with what the taxpayer specified in the return;

- (d) the assessment is taken to have been made on the day on which the return is lodged;
- (e) on and after the day on which the Commissioner is taken to have made the assessment, the return is taken to be a notice of the assessment:
 - (i) under the hand of the Commissioner; and
 - (ii) served on the taxpayer on the day on which the Commissioner is taken to have made the assessment.

167 Default assessment

If:

- (a) any person makes default in furnishing a return; or
- (b) the Commissioner is not satisfied with the return furnished by any person; or
- (c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income;

the Commissioner may make an assessment of the amount upon which in his judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of section 166.

168 Special assessment

- (1) The Commissioner may at any time during any year, or after its expiration, make an assessment of the taxable income derived (or that there is no taxable income) in that year or any part of it by any taxpayer, and of the tax payable thereon (or that no tax is payable).
- (2) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

169 Assessments on all persons liable to tax

Where under this Act any person is liable to pay tax (including a nil liability), the Commissioner may make an assessment of the amount of such tax (or an assessment that no tax is payable).

169A Reliance by Commissioner on returns and statements

- (1) Where a return of income of a taxpayer of a year of income is furnished to the Commissioner (whether or not by the taxpayer), the Commissioner may, for the purposes of making an assessment in relation to the taxpayer under this Act, accept, either in whole or in part, a statement in the return of the assessable income derived by the taxpayer and of any allowable deductions or rebates to which it is claimed that the taxpayer is entitled and any other statement in the return or otherwise made by or on behalf of the taxpayer.
- (2) Despite subsection (1), if, in a document given with a return of income of a taxpayer of a year of income and signed by or on behalf of the taxpayer, a question is raised:
 - (a) that is relevant to the liability of the taxpayer in respect of the year of income; and
 - (b) on which the taxpayer is not entitled to apply for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953*;the Commissioner must give attention to that question.
- (3) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.

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170 Amendment of assessments

(1) The Commissioner may amend an assessment as follows:

Amendment of assessments	
Time of amendment	Qualification
1 The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.	<p>This item does not apply:</p> <ul style="list-style-type: none"> (a) if the individual carries on a business at any time in that year unless the individual is a small business entity for that year; or (b) if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity for that year; or (c) to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (d) if the individual is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (e) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the individual obtaining a scheme benefit in relation to income tax from the scheme for that year; or (f) in any other circumstance prescribed by the regulations. <p>This item is subject to items 5 and 6.</p>

Amendment of assessments

Time of amendment	Qualification
2 The Commissioner may amend an assessment of a company that is a small business entity for the year of income to which the assessment relates within 2 years after the day on which the Commissioner gives notice of the assessment to the company.	<p>This item does not apply:</p> <ul style="list-style-type: none"> (a) if the company is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity for that year; or (b) to a company in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (c) if the company is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (d) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the company obtaining a scheme benefit in relation to income tax from the scheme for that year; or (e) in any other circumstance prescribed by the regulations. <p>This item is subject to items 5 and 6.</p>

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Amendment of assessments	
Time of amendment	Qualification
<p>3 The Commissioner may amend an assessment of a person (in the capacity of a trustee of a trust estate) for a year of income if the trust is a small business entity for that year.</p> <p>The Commissioner may amend the assessment within 2 years after the day on which he or she gives notice of the assessment to the person.</p>	<p>This item does not apply:</p> <p>(a) if the person (in that capacity) is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity for that year; or</p> <p>(b) if the person (in that capacity) is a beneficiary of another trust estate at any time in that year unless the other trust is a small business entity for that year or the trustee of the other trust (in that capacity) is a full self-assessment taxpayer for that year; or</p> <p>(c) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the person (in that capacity) obtaining a scheme benefit in relation to income tax from the scheme for that year; or</p> <p>(d) in any other circumstance prescribed by the regulations.</p> <p>This item is subject to items 5 and 6.</p>
<p>4 If item 1, 2 or 3 does not apply, the Commissioner may amend an assessment within 4 years after the day on which he or she gives notice of the assessment to the taxpayer.</p>	<p>This item is subject to items 5 and 6.</p>
<p>5 The Commissioner may amend an assessment at any time if he or she is of the opinion there has been fraud or evasion.</p>	<p>None.</p>

Amendment of assessments

Time of amendment	Qualification
6 The Commissioner may amend an assessment at any time:	None.
(a) to give effect to a decision on a review or appeal; or	
(b) as a result of an objection made by the taxpayer or pending a review or appeal.	

Note 1: This section applies to assessments where no tax is payable: see the definition of *assessment* in subsection 6(1).

Note 2: This section also applies to amended assessments: see section 173. However, there are limits on how amended assessments can be amended: see subsections (2) and (3) of this section.

Note 3: The amendment period mentioned in item 1, 2, 3 or 4 may be extended: see subsections (5) to (7).

Limit on amending amended assessments under subsection (1)

- (2) The Commissioner cannot amend an amended assessment under item 1, 2, 3 or 4 of the table in subsection (1) if the limited amendment period for the original assessment concerned has ended.

Note: The Commissioner can amend amended assessments at any time under item 5 or 6 of the table in subsection (1).

Refreshed amendment period for amending amended assessments

- (3) If the Commissioner amends an assessment (the *earlier assessment*) as set out in column 2 of the following table, he or she may, under this subsection, amend the assessment (the *later assessment*) that results from that amendment in the way set out in column 3 within:
- (a) if item 1, 2 or 3 of the table in subsection (1) applies to the original assessment concerned (which may or may not be the earlier assessment)—2 years after the day on which he or she gives notice of the later assessment to the taxpayer; or
 - (b) otherwise—4 years after that day.

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Amendment of later assessment

Column 1 Item	Column 2 In this case:	Column 3 the position is:
1	The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment	The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability.
2	The Commissioner amends the earlier assessment about a particular in a way that: (a) increases a taxpayer's liability; or (b) reduces a taxpayer's liability (other than in a case covered by item 1)	The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's liability.

Note 1: The earlier assessment may be the original assessment or an amended assessment.

Note 2: The Commissioner can amend the later assessment at any time under item 5 or 6 of the table in subsection (1).

Note 3: The amendment period mentioned in paragraph (3)(a) or (b) may be extended: see subsections (5) to (7).

- (4) The Commissioner cannot amend an assessment under item 2 of the table in subsection (3) about a particular if he or she has previously amended an assessment under item 1 of that table about that particular.

Extensions—applications by taxpayer

- (5) The Commissioner may amend an assessment even though the limited amendment period has ended if, before the end of that period, the taxpayer applies for an amendment in the approved form. The Commissioner may amend the assessment to give effect to the decision on the application.

Extensions—giving effect to private rulings

- (6) The Commissioner may amend an assessment even though the limited amendment period has ended if:
- (a) the taxpayer applies for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953* before the end of that period; and
 - (b) the Commissioner makes a private ruling under that Division because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

Extensions—Federal Court orders or taxpayer consent

- (7) If:
- (a) the Commissioner has started to examine the affairs of a taxpayer in relation to an assessment; and
 - (b) the Commissioner has not completed the examination before the end of the limited amendment period or that period as extended;
- the limited amendment period may be extended as follows:

Extensions of limited amendment period

In this case:	the position is:
1 The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period	The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of: <ol style="list-style-type: none"> (a) any action taken by the taxpayer; or (b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.

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Extensions of limited amendment period

In this case:	the position is:
2 The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period	The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period.

- (8) The limited amendment period for an assessment may be extended more than once under subsection (7).

Other amendment periods

- (9) Notwithstanding anything contained in this section, when the assessment of the taxable income of any year includes an estimated amount of income, or of profits or gains of a capital nature, derived by the taxpayer in that year from an operation or series of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than one or parts of more than one year, the Commissioner may at any time within 4 years after ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.
- (9B) Subject to subsection (9C), nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to a prescribed provision or a relevant provision.
- (9C) Subsection (9B) does not authorize the Commissioner, for the purpose of giving effect to a prescribed provision or a relevant provision, to amend an assessment made in relation to a taxpayer in relation to a year of income where:
 - (a) in a case where the purpose of the amendment is to give effect to the prescribed provision in relation to the supply or acquisition of property—the prescribed provision has been previously applied, in relation to that supply or acquisition, in making or amending an assessment in relation to the taxpayer in relation to the year of income; or
 - (b) in any other case—the prescribed provision or the relevant provision, as the case may be, has been previously applied, in

relation to the same subject matter, in making or amending an assessment in relation to the taxpayer in relation to the year of income.

- (9D) This section does not prevent the amendment of an assessment at any time if the amendment is made, in relation to a contract that after the making of the assessment is found to be void *ab initio*, to ensure that Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT) is taken always to have applied to the contract as if the contract had never been made.
- (10) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of this Act set out in this table.

Amendment of assessments		
Item	Provision	Brief description
1	Section 23AB	Income of certain persons serving with an armed force under the control of the United Nations
3	Section 26AG	Certain film proceeds included in assessable income
4	Subsection 47(2B)	Distributions by liquidator
5	Section 51AD	Deductions not allowable in respect of property used under certain leveraged arrangements
6	Section 51AH	Deductions not allowable where expenses incurred by employee are reimbursed
10	Section 78A	Certain gifts not to be allowable deductions
12	Section 82KJ	Deduction not allowable in respect of certain pre-paid outgoings
13	Section 82KK	Schemes designed to postpone tax liability
14	Section 82KL	Tax benefit not allowable in respect of certain recouped expenditure
16	Subsection 82SA(2)	Interest on certain convertible notes to be an allowable deduction—where loan made on or after 1 January 1976
17	Section 100A	Present entitlement arising from reimbursement agreement

Part IV Returns and assessments

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Amendment of assessments		
Item	Provision	Brief description
18	Subdivision C of Division 6D of Part III	Trustee beneficiary non-disclosure tax on share of net income
20	Section 105AB	Additional period for distribution by liquidator
21	Section 121AT	Other tax consequences of demutualisation
22	Division 9C of Part III	Assessable income diverted under certain tax avoidance schemes
23	Division 10BA of Part III	Australian films
24	Section 136AF	Consequential adjustments to assessable income and allowable deductions
25	Division 16D of Part III	Certain arrangements relating to the use of property
26	Subsection 159GZZZH(2)	Post-cancellation disposals of eligible interests etc.
27	Section 160ABB	Rebate in respect of certain payments by the Commonwealth Savings Bank of Australia
28	Section 271-105 in Schedule 2F	Amounts subject to family trust distribution tax not assessable
29	Schedule 2G	Farm management deposits

(10AA) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of the *Income Tax Assessment Act 1997* set out in this table.

Amendment of assessments		
Item	Provision	Brief description
1A	Subsection 15-65(2)	Sugar industry exit grant becomes assessable because of breach of undertaking
1	Subdivision 20-B	Disposal of a car for which lease payments have been deducted
5	Subsection 26-25(3)	Deduction for interest or royalty if withholding tax paid
20	The former section 42-290	Balancing adjustment relief for plant
22	Section 59-30	Repayment of amounts

Amendment of assessments

Item	Provision	Brief description
25	Subdivision 61-G	Private health insurance offset complementary to Part 2-2 of the <i>Private Health Insurance Act 2007</i>
24	Subdivision 61-I	Tax offset for first child
30	Subsection 104-10(3) or (6) Subsection 104-25(2) Subsection 104-45(2) Subsection 104-90(2) Subsection 104-110(2) Subsection 104-205(2) Subsection 104-225(5) Subsection 104-230(5)	The time of a CGT event is decided by there being a contract entered into
40	Paragraph 104-15(4)(a)	CGT event B1: agreement ends without title passing
50	Subsection 104-40(5)	Exception to CGT event D2 where option is exercised
60	Section 108-15	Disposal of collectable that is part of a set
70	Section 108-25	Disposal of personal use asset that is part of a set
80	Section 116-45	Modification to capital proceeds for non-receipt
90	Section 116-50	Modification to capital proceeds for amounts you repay
100	Subsection 122-25(4)	Right or option etc. exercised after roll-over to acquire trading stock
110	Subsection 122-135(4)	Right or option etc. exercised after roll-over to acquire trading stock
120	Subdivision 124-B	Roll-over for assets compulsorily acquired, lost or destroyed
130	Subsection 126-5(3)	CGT event B1: agreement ends without title passing
140	Subsection 126-45(3)	CGT event B1: agreement ends without title passing
150	Subsection 126-50(3)	Right or option etc. exercised after roll-over to acquire trading stock
160	Section 126-70	Capital loss disregarded despite choice for no roll-over

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Amendment of assessments		
Item	Provision	Brief description
165	Subsection 138-15(5)	CGT event B1: agreement ends without title passing
170	Subsection 165-115ZA(2)	Reduction in respect of reduced cost base etc. of debt disregarded if commercial debt forgiveness provisions apply
173	Division 250	Asset is put to a tax preferred use by a tax preferred end user
174	Section 295-25	Commissioner makes an assessment as if an entity were a complying superannuation entity or a pooled superannuation trust for the income year and: (a) the entity does not become one; or (b) the Australian Prudential Regulation Authority (APRA) does not receive certain documents about the entity within a specified period
175	Section 295-30	Notice under section 342 of the <i>Superannuation Industry (Supervision) Act 1993</i> or under regulations made for the purposes of that section is revoked, or the decision to give the notice is set aside
176	Subsection 295-195(3)	An amount is excluded from the assessable income of a complying superannuation fund or an RSA provider because of the exercise of an option by the trustee or provider
177	Section 295-270	Commissioner makes an assessment on the basis of an amount of pre-1 July 88 funding credits being anticipated for an income year and: (a) it becomes clear that those credits will not be available; or (b) APRA does not receive certain documents within a specified period
178	295-490(2)	Deduction is denied because financial assistance funding levy is remitted or there is a refund of an overpayment of the levy

Amendment of assessments		
Item	Provision	Brief description
180	The former section 330-175 The former section 330-245	An amount in an agreement to transfer deduction entitlements exceeds the maximum amount capable of being transferred
185	Subdivision 375-H	Deductions for shares in a film licensed investment company
190	Subdivision 385-E	Primary producer elects to spread or defer tax on profit from forced disposal or death of live stock
200	Section 385-160	Disentitling event happens in relation to your primary production business

(10A) Nothing in this section prevents the amendment, at any time, of an assessment to increase the liability of a taxpayer for the purpose of giving effect to section 73B, 73BH, 73BA, 73BF, 73BM, 73C, 73CB, 73I, 73QA or 73QB.

(11) Nothing in this section prevents the amendment, at any time, of an assessment to decrease the liability of a taxpayer for the purpose of giving effect to section 24 of the *International Tax Agreements Act 1953*.

Definitions

(14) In this section, unless the contrary intention appears:

double taxation agreement means an agreement within the meaning of the *International Tax Agreements Act 1953*.

limited amendment period, for an assessment, means the period within which the Commissioner may amend the assessment:

- (a) under item 1, 2, 3 or 4 of the table in subsection (1); or
- (b) under paragraph (3)(a) or (b).

prescribed provision means section 136AD or 136AE.

relevant provision means:

- (a) a provision of a double taxation agreement that attributes to a permanent establishment or to an enterprise the profits it

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might be expected to derive if it were independent and dealing at arm's length; or

- (b) paragraph 7, 8 or 9 of Article 5, or Article 7, of the Taxation Code in Annex G to the Timor Sea Treaty or a provision of any other international tax sharing treaty that corresponds with any of those paragraphs or that Article.

scheme has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

scheme benefit has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

170C Power of Commissioner to reduce amount of tax payable in certain cases

For the purposes of the making of an assessment on or after 1 July 1966, the Commissioner may reduce by One cent the amount of tax that would, but for this section, be payable by a taxpayer being a person other than a company or being a company in the capacity of a trustee, before deducting any rebate or credit to which the taxpayer is entitled.

171 Where no notice of assessment served

- (1) Where a taxpayer has duly furnished to the Commissioner a return of income, or of profits or gains of a capital nature, and no notice of assessment in respect thereof has been served within 12 months thereafter, he may in writing by registered post request the Commissioner to make an assessment.
- (2) If within 3 months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income, or of those profits or gains, shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the 3 months with a notice of assessment in respect of which income tax was payable on that day.

171A Limited period to make assessments for nil liability returns for the 2003-04 year of income or earlier

- (1) If the circumstances set out in column 2 of the following table apply to a taxpayer in relation to the 2003-04 year of income (a *nil year*) or an earlier year of income (also a *nil year*), the Commissioner cannot make an original assessment for that taxpayer for that year in the circumstances set out in column 3:

Making assessments		
Column 1 Item	Column 2 In this case:	Column 3 the position is:
1	<p>The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following:</p> <p>(a) the taxpayer had an amount of taxable income, and that no tax was payable;</p> <p>(b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income;</p> <p>and the taxpayer did not deduct a tax loss in the nil year</p>	<p>The Commissioner cannot make an original assessment for the taxpayer for the nil year after the later of the following:</p> <p>(a) 31 October 2008;</p> <p>(b) the period of 4 years beginning on the day on which the taxpayer lodged the taxpayer's return of income for the nil year.</p>

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Making assessments

Column 1 Item	Column 2 In this case:	Column 3 the position is:
2	<p>The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following:</p> <p>(a) the taxpayer had an amount of taxable income, and that no tax was payable;</p> <p>(b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income; and the taxpayer did deduct a tax loss in the nil year</p>	<p>The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following:</p> <p>(a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged;</p> <p>(b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.</p>
3	<p>The taxpayer had a tax loss in a nil year, none of which has been carried forward to the 2004-05 year of income</p>	<p>The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following:</p> <p>(a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged;</p> <p>(b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.</p>

Making assessments

Column 1 Item	Column 2 In this case:	Column 3 the position is:
4	(a) the taxpayer had a tax loss in a nil year, some or all of which has been carried forward to the 2004-05 year of income; and (b) the taxpayer or, if the taxpayer is a member of a consolidated group at the end of the 2004-05 year of income, the head company notifies the Commissioner, in the approved form, that the taxpayer or the head company had a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: <ol style="list-style-type: none"> (a) the day on which the Commissioner received the notification; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.

- (2) Subsection (1) does not apply in relation to a nil year if:
- (a) the Commissioner is of the opinion there has been fraud or evasion; or
 - (b) had the Commissioner made an assessment, in accordance with the taxpayer's return of income, that the taxpayer had no taxable income or that no tax was payable by the taxpayer (assuming that such an assessment could have been made)—this Act would not have prevented the Commissioner amending the assessment at any time.

172 Refunds of amounts overpaid

- (1) Where, by reason of an amendment of an assessment, a person's liability to tax (the *earlier liability*) is reduced:
 - (a) the amount by which the tax is so reduced is taken never to have been payable for the purposes of:
 - (i) provisions of this Act that apply the general interest charge; and
 - (ii) Division 280 in Schedule 1 to the *Taxation Administration Act 1953* (which applies the shortfall interest charge); and
 - (b) the Commissioner must apply the amount of any tax overpaid in accordance with Divisions 3 and 3A of Part IIB of the *Taxation Administration Act 1953*.

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(1A) However, if a later amendment of an assessment is made and all or some of the person's earlier liability in relation to a particular is reinstated, paragraph (1)(a) is taken not to have applied, or not to have applied to the extent that the earlier liability is reinstated.

(2) In subsection (1), unless the contrary intention appears, *tax* includes the general interest charge under a provision of this Act, additional tax under Part VII and shortfall interest charge.

Note 1: The general interest charge is worked out under of Part IIA of the *Taxation Administration Act 1953*.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the charge.

173 Amended assessment to be an assessment

Except as otherwise provided every amended assessment shall be an assessment for all the purposes of this Act.

174 Notice of assessment

(1) As soon as conveniently may be after any assessment is made, the Commissioner shall serve notice thereof in writing by post or otherwise upon the person liable to pay the tax.

(3) In subsection (1), *tax* includes additional tax under Part VII.

175 Validity of assessment

The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

175A Objections against assessments

(1) A taxpayer who is dissatisfied with an assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(2) A taxpayer cannot object under subsection (1) against an assessment ascertaining that:

(a) the taxpayer has no taxable income; or

(b) the taxpayer has an amount of taxable income and no tax is payable;

unless the taxpayer is seeking an increase in the taxpayer's liability.

176 Judicial notice of signature

All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence, shall take judicial notice of the signature of every person who is or has been the Commissioner, a Second Commissioner or a Deputy Commissioner, provided such signature is attached or appended to any official document.

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- (1) The production of a notice of assessment, or of a document under the hand of the Commissioner, a Second Commissioner, or a Deputy Commissioner, purporting to be a copy of a notice of assessment, shall be conclusive evidence of the due making of the assessment and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment, that the amount and all the particulars of the assessment are correct.
- (2) The production of a *Gazette* containing a notice purporting to be issued by the Commissioner shall be conclusive evidence that the notice was so issued.
- (3) The production of a document under the hand of the Commissioner, a Second Commissioner, or a Deputy Commissioner, purporting to be a copy of a document issued by either the Commissioner, a Second Commissioner, or a Deputy Commissioner, shall be conclusive evidence that the document was so issued.
- (4) The production of a document under the hand of the Commissioner, a Second Commissioner, or a Deputy Commissioner, purporting to be a copy of or extract from any return or notice of assessment shall be evidence of the matter therein set forth to the same extent as the original would be if it were produced.

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- (5) To avoid doubt, subsection (4) applies to a copy or an extract of a document that was given to the Commissioner on a data processing device or by way of electronic transmission unless the taxpayer can show that the taxpayer did not authorise the document.

Part IVA—Schemes to reduce income tax**177A Interpretation**

- (1) In this Part, unless the contrary intention appears:

capital loss has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

foreign income tax offset means a tax offset allowed under Division 770 of the *Income Tax Assessment Act 1997*.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct.

taxpayer includes a taxpayer in the capacity of a trustee.

- (2) The definition of *taxpayer* in subsection (1) shall not be taken to affect in any way the interpretation of that expression where it is used in this Act other than this Part.
- (3) The reference in the definition of *scheme* in subsection (1) to a scheme, plan, proposal, action, course of action or course of conduct shall be read as including a reference to a unilateral scheme, plan, proposal, action, course of action or course of conduct, as the case may be.
- (4) A reference in this Part to the carrying out of a scheme by a person shall be read as including a reference to the carrying out of a scheme by a person together with another person or other persons.
- (5) A reference in this Part to a scheme or a part of a scheme being entered into or carried out by a person for a particular purpose shall be read as including a reference to the scheme or the part of the scheme being entered into or carried out by the person for 2 or

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more purposes of which that particular purpose is the dominant purpose.

177B Operation of Part

- (1) Subject to subsection (2), nothing in the provisions of this Act other than this Part or in the *International Tax Agreements Act 1953* or in the *Petroleum (Timor Sea Treaty) Act 2003* shall be taken to limit the operation of this Part.
- (2) This Part shall not be taken to affect the operation of Schedule 2G.
- (3) Where a provision of this Act other than this Part is expressed to have effect where a deduction would be allowable to a taxpayer but for or apart from a provision or provisions of this Act, the reference to that provision or to those provisions, as the case may be, shall be read as including a reference to subsection 177F(1).
- (4) Where a provision of this Act other than this Part is expressed to have effect where a deduction would otherwise be allowable to a taxpayer, that provision shall be deemed to be expressed to have effect where a deduction would, but for subsection 177F(1), be otherwise allowable to the taxpayer.

177C Tax benefits

- (1) Subject to this section, a reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as a reference to:
 - (a) an amount not being included in the assessable income of the taxpayer of a year of income where that amount would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out; or
 - (b) a deduction being allowable to the taxpayer in relation to a year of income where the whole or a part of that deduction would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out; or
 - (ba) a capital loss being incurred by the taxpayer during a year of income where the whole or a part of that capital loss would

not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out; or

- (bb) a foreign income tax offset being allowable to the taxpayer where the whole or a part of that foreign income tax offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out;

and, for the purposes of this Part, the amount of the tax benefit shall be taken to be:

- (c) in a case to which paragraph (a) applies—the amount referred to in that paragraph; and
 - (d) in a case to which paragraph (b) applies—the amount of the whole of the deduction or of the part of the deduction, as the case may be, referred to in that paragraph; and
 - (e) in a case to which paragraph (ba) applies—the amount of the whole of the capital loss or of the part of the capital loss, as the case may be, referred to in that paragraph; and
 - (f) in a case where paragraph (bb) applies—the amount of the whole of the foreign income tax offset or of the part of the foreign income tax offset, as the case may be, referred to in that paragraph.
- (2) A reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as not including a reference to:
- (a) the assessable income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out where:
 - (i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of an agreement, choice, declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B, 170-B or 960-D of the *Income Tax Assessment Act 1997*; and
 - (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or

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state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

- (b) a deduction being allowable to the taxpayer in relation to a year of income the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out where:
 - (i) the allowance of the deduction to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act or the *Income Tax Assessment Act 1997*, except one under Subdivision 960-D of the *Income Tax Assessment Act 1997*; and
 - (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or
- (c) a capital loss being incurred by the taxpayer during a year of income the whole or part of which would not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out where:
 - (i) the incurring of the capital loss by the taxpayer is attributable to the making of a declaration, agreement, choice, election or selection, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B, 170-B or 960-D of the *Income Tax Assessment Act 1997*; and
 - (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection,

notice or option to be made, given or exercised, as the case may be; or

- (d) a foreign income tax offset being allowable to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where:
 - (i) the allowance of the foreign income tax offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and
 - (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.
- (2A) A reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme is to be read as not including a reference to:
- (a) the assessable income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out where:
 - (i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act; and
 - (ii) the scheme consisted solely of the making of the agreement or election; or
 - (b) a capital loss being incurred by the taxpayer during a year of income the whole or part of which would not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out where:
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- (i) the incurring of the capital loss by the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act; and
 - (ii) the scheme consisted solely of the making of the agreement or election.
- (3) For the purposes of subparagraph (2)(a)(i), (b)(i), (c)(i) or (d)(i) or (2A)(a)(i) or (b)(i):
 - (a) the non-inclusion of an amount in the assessable income of a taxpayer; or
 - (b) the allowance of a deduction to a taxpayer; or
 - (c) the incurring of a capital loss by a taxpayer; oris taken to be attributable to the making of a declaration, election, agreement or selection, the giving of a notice or the exercise of an option where, if the declaration, election, agreement, selection, notice or option had not been made, given or exercised, as the case may be:
 - (ca) the allowance of a foreign income tax offset to a taxpayer;
 - (d) the amount would have been included in that assessable income; or
 - (e) the deduction would not have been allowable; or
 - (f) the capital loss would not have been incurred; or
 - (g) the foreign income tax offset would not have been allowable.
- (4) To avoid doubt, paragraph (1)(a) applies to a scheme if:
 - (a) an amount of income is not included in the assessable income of the taxpayer of a year of income; and
 - (b) an amount would have been included, or might reasonably be expected to have been included, in the assessable income if the scheme had not been entered into or carried out; and
 - (c) instead, the taxpayer or any other taxpayer makes a discount capital gain (within the meaning of the *Income Tax Assessment Act 1997*) for that or any other year of income.
- (5) Subsection (4) does not limit the generality of any other provision of this Part.

177CA Withholding tax avoidance

- (1) This section applies in relation to a particular amount if a taxpayer is not liable to pay withholding tax on an amount where that taxpayer would have, or could reasonably be expected to have, been liable to pay withholding tax on the amount if a scheme had not been entered into or carried out.
- (2) For the purposes of this Part, if this section applies in relation to an amount, the taxpayer is taken to have obtained a tax benefit in connection with the scheme of an amount equal to the amount mentioned in subsection (1).

177D Schemes to which Part applies

This Part applies to any scheme that has been or is entered into after 27 May 1981, and to any scheme that has been or is carried out or commenced to be carried out after that date (other than a scheme that was entered into on or before that date), whether the scheme has been or is entered into or carried out in Australia or outside Australia or partly in Australia and partly outside Australia, where:

- (a) a taxpayer (in this section referred to as the *relevant taxpayer*) has obtained, or would but for section 177F obtain, a tax benefit in connection with the scheme; and
- (b) having regard to:
 - (i) the manner in which the scheme was entered into or carried out;
 - (ii) the form and substance of the scheme;
 - (iii) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;
 - (iv) the result in relation to the operation of this Act that, but for this Part, would be achieved by the scheme;
 - (v) any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the scheme;
 - (vi) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant taxpayer, being

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a change that has resulted, will result or may reasonably be expected to result, from the scheme;

- (vii) any other consequence for the relevant taxpayer, or for any person referred to in subparagraph (vi), of the scheme having been entered into or carried out; and
- (viii) the nature of any connection (whether of a business, family or other nature) between the relevant taxpayer and any person referred to in subparagraph (vi);

it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for the purpose of enabling the relevant taxpayer to obtain a tax benefit in connection with the scheme or of enabling the relevant taxpayer and another taxpayer or other taxpayers each to obtain a tax benefit in connection with the scheme (whether or not that person who entered into or carried out the scheme or any part of the scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers).

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of subparagraphs (b)(vi) and (viii).

177E Stripping of company profits

- (1) Where:
 - (a) as a result of a scheme that is, in relation to a company:
 - (i) a scheme by way of or in the nature of dividend stripping; or
 - (ii) a scheme having substantially the effect of a scheme by way of or in the nature of a dividend stripping;
any property of the company is disposed of;
 - (b) in the opinion of the Commissioner, the disposal of that property represents, in whole or in part, a distribution (whether to a shareholder or another person) of profits of the company (whether of the accounting period in which the disposal occurred or of any earlier or later accounting period);
 - (c) if, immediately before the scheme was entered into, the company had paid a dividend out of profits of an amount equal to the amount determined by the Commissioner to be the amount of profits the distribution of which is, in his

opinion, represented by the disposal of the property referred to in paragraph (a), an amount (in this subsection referred to as the *notional amount*) would have been included, or might reasonably be expected to have been included, by reason of the payment of that dividend, in the assessable income of a taxpayer of a year of income; and

- (d) the scheme has been or is entered into after 27 May 1981, whether in Australia or outside Australia;

the following provisions have effect:

- (e) the scheme shall be taken to be a scheme to which this Part applies;
- (f) for the purposes of section 177F, the taxpayer shall be taken to have obtained a tax benefit in connection with the scheme that is referable to the notional amount not being included in the assessable income of the taxpayer of the year of income; and
- (g) the amount of that tax benefit shall be taken to be the notional amount.
- (2) Without limiting the generality of subsection (1), a reference in that subsection to the disposal of property of a company shall be read as including a reference to:
- (a) the payment of a dividend by the company;
- (b) the making of a loan by the company (whether or not it is intended or likely that the loan will be repaid);
- (c) a bailment of property by the company; and
- (d) any transaction having the effect, directly or indirectly, of diminishing the value of any property of the company.
- (2A) This section:
- (a) applies to a non-share equity interest in the same way as it applies to a share; and
- (b) applies to an equity holder in the same way as it applies to a shareholder; and
- (c) applies to a non-share dividend in the same way as it applies to a dividend.
- (3) In this section, *property* includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

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177EA Creation of franking debit or cancellation of franking credits

- (1) In this section, unless the contrary intention appears:

relevant circumstances has a meaning affected by subsection (17).

relevant taxpayer has the meaning given by subsection (3).

scheme for a disposition, in relation to membership interests or an interest in membership interests, has a meaning affected by subsection (14).

- (2) An expression used in this section that is defined in the *Income Tax Assessment Act 1997* has the same meaning as in that Act, except to the extent that its meaning is extended by subsection (16), (18) or (19), or affected by subsection (15).

Application of section

- (3) This section applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
 - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
 - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for this section, the person (the *relevant taxpayer*) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

Bare acquisition of membership interests or interest in membership interests

- (4) It is not to be concluded for the purposes of paragraph (3)(e) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired membership interests, or an interest in membership interests, in the entity.

Commissioner to determine franking debit or deny franking credit

- (5) The Commissioner may make, in writing, either of the following determinations:
- (a) if the corporate tax entity is a party to the scheme, a determination that a franking debit or exempting debit of the entity arises in respect of each distribution made to the relevant taxpayer or that flows indirectly to the relevant taxpayer;
 - (b) a determination that no imputation benefit is to arise in respect of a distribution or a specified part of a distribution that is made, or that flows indirectly, to the relevant taxpayer.

A determination does not form part of an assessment.

Notice of determination

- (6) If the Commissioner makes a determination under subsection (5), the Commissioner must:
- (a) in respect of a determination made under paragraph (5)(a)—serve notice in writing of the determination on the corporate tax entity; or
 - (b) in respect of a determination made under paragraph (5)(b)—serve notice in writing of the determination on the relevant taxpayer.

The notice may be included in a notice of assessment.

Publication in national newspaper of determination in relation to listed public company denying imputation benefit

- (7) If the Commissioner makes a determination under paragraph (5)(b), in respect of a distribution made by a listed public company, the Commissioner is taken to have served notice in writing of the determination on the relevant taxpayer if the

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Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

Evidence of determination

- (8) The production of:
- (a) a notice of a determination; or
 - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;
- is conclusive evidence:
- (c) of the due making of the determination; and
 - (d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

- (9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Effect of determination of franking debit or exempting debit

- (10) If the Commissioner makes a determination under paragraph (5)(a):
- (a) on the day on which notice in writing of the determination is served on the entity, a franking debit or exempting debit of the corporate tax entity arises in respect of the distribution; and
 - (b) the amount of the franking debit or exempting debit is such amount as is stated in the Commissioner's determination, being an amount that:
 - (i) the Commissioner considers reasonable in the circumstances; and
 - (ii) does not exceed the amount of the franking debit or exempting debit of the entity arising under item 1 of the table in section 205-30 of the *Income Tax Assessment 1997* or item 2 of the table in section 208-120 of that Act in respect of the distribution.

Effect of determination that no imputation benefit is to arise

- (11) If the Commissioner makes a determination under paragraph (5)(b), the determination has effect according to its terms.

Application of section to non-share dividends

- (12) This section:
- (a) applies to a non-share equity interest in the same way as it applies to a membership interest; and
 - (b) applies to an equity holder in the same way as it applies to a member; and
 - (c) applies to a non-share dividend in the same way as it applies to a distribution.

Meaning of interest in membership interests

- (13) A person has an interest in membership interests if:
- (a) the person has any legal or equitable interest in the membership interests; or
 - (b) the person is a partner in a partnership and:
 - (i) the assets of the partnership include, or will include, the membership interests; or
 - (ii) the partnership derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests; or
 - (c) the person is a beneficiary of a trust (including a potential beneficiary of a discretionary trust) and:
 - (i) the membership interests form, or will form, part of the trust estate; or
 - (ii) the trust derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests.

Meaning of scheme for a disposition

- (14) A scheme for a disposition of membership interests or an interest in membership interests includes, but is not limited to, a scheme that involves any of the following:
- (a) issuing the membership interests or creating the interest in membership interests;

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- (b) entering into any contract, arrangement, transaction or dealing that changes or otherwise affects the legal or equitable ownership of the membership interests or interest in membership interests;
 - (c) creating, varying or revoking a trust in relation to the membership interests or interest in membership interests;
 - (d) creating, altering or extinguishing a right, power or liability attaching to, or otherwise relating to, the membership interests or interest in membership interests;
 - (e) substantially altering any of the risks of loss, or opportunities for profit or gain, involved in holding or owning the membership interests or having the interest in membership interests;
 - (f) the membership interests or interest in membership interests beginning to be included, or ceasing to be included, in any of the insurance funds of a life assurance company.
- (15) In determining whether a distribution flows indirectly to a person, assume that the following provisions of the *Income Tax Assessment Act 1997* had not been enacted:
- (a) section 295-385 (about income from assets set aside to meet current pension liabilities), section 295-390 (about income from other assets used to meet current pension liabilities) and 295-400 (about income of a PST attributable to current pension liabilities); or
 - (b) paragraph 320-37(1)(a) (about segregated exempt assets) or paragraph 320-37(1)(d) (about income bonds, funeral policies and scholarship plans).

When imputation benefit is received

- (16) A taxpayer to whom a distribution flows indirectly receives an **imputation benefit** as a result of the distribution if:
- (a) the taxpayer is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* as a result of the distribution; or
 - (b) where the taxpayer is a corporate tax entity—a franking credit would arise in the franking account of the taxpayer as a result of the distribution.

Note: Where the distribution is made directly to the taxpayer, see subsection 204-30(6) of the *Income Tax Assessment Act 1997* for a definition of *imputation benefit*.

Meaning of relevant circumstances of scheme

- (17) The *relevant circumstances* of a scheme include the following:
- (a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests, or having interests in membership interests, in the corporate tax entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the relevant taxpayer or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests, or interests in membership interests, in the corporate tax entity);
 - (b) whether the relevant taxpayer would, in the year of income in which the distribution is made, or if the distribution flows indirectly to the relevant taxpayer, in the year in which the distribution flows indirectly to the relevant taxpayer, derive a greater benefit from franking credits than other entities who hold membership interests, or have interests in membership interests, in the corporate tax entity;
 - (c) whether, apart from the scheme, the corporate tax entity would have retained the franking credits or exempting credits or would have used the franking credits or exempting credits to pay a franked distribution to another entity referred to in paragraph (b);
 - (d) whether, apart from the scheme, a franked distribution would have flowed indirectly to another entity referred to in paragraph (b);
 - (e) if the scheme involves the issue of a non-share equity interest to which section 215-10 of the *Income Tax Assessment Act 1997* applies—whether the corporate tax entity has issued, or is likely to issue, equity interests in the corporate tax entity:
 - (i) that are similar, from a commercial point of view, to the non-share equity interest; and
 - (ii) distributions in respect of which are frankable;
 - (f) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the relevant taxpayer in

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- connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the imputation benefits to be received by the relevant taxpayer;
- (g) whether a deduction is allowable or a capital loss is incurred in connection with a distribution that is made or that flows indirectly under the scheme;
 - (ga) whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is sourced, directly or indirectly, from unrealised or untaxed profits;
 - (h) whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is equivalent to the receipt by the relevant taxpayer of interest or of an amount in the nature of, or similar to, interest;
 - (i) the period for which the relevant taxpayer held membership interests, or had an interest in membership interests, in the corporate tax entity;
 - (j) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

Meaning of greater benefit from franking credits

- (18) The following subsection lists some of the cases in which a taxpayer to whom a distribution flows indirectly receives a **greater benefit from franking credits** than an entity referred to in paragraph (17)(b). It is not an exhaustive list.
- (19) A taxpayer to whom a distribution flows indirectly receives a **greater benefit from franking credits** than an entity referred to in paragraph (17)(b) if any of the following circumstances exist in relation to that entity in the year of income in which the distribution giving rise to the benefit is made, and not in relation to the taxpayer if:
 - (a) the entity is not an Australian resident; or
 - (b) the entity would not be entitled to any tax offset under Division 207 of the *Income Tax Assessment Act 1997* because of the distribution; or
 - (c) the amount of income tax that would be payable by the entity because of the distribution is less than the tax offset to which the entity would be entitled; or

- (d) the entity is a corporate tax entity at the time the distribution is made, but no franking credit arises for the entity as a result of the distribution; or
- (e) the entity is a corporate tax entity at the time the distribution is made, but cannot use franking credits received on the distribution to frank distributions to its own members because:
 - (i) it is not a franking entity; or
 - (ii) it is unable to make frankable distributions.

Note: Where the distribution is made directly to the taxpayer, see subsections 204-30(7), (8), (9) and (10) of the *Income Tax Assessment Act 1997* for a list of circumstances in which the taxpayer will be treated as deriving a greater benefit from franking credits than another entity.

177EB Cancellation of franking credits—consolidated groups

Expressions to have same meanings as in section 177EA and Income Tax Assessment Act 1997

- (1) Unless the contrary intention appears, expressions used in this section:
 - (a) if those expressions are defined in section 177EA—have the same meanings as in that section (subject to subsection (10) of this section); and
 - (b) otherwise—have the same meanings as in the *Income Tax Assessment Act 1997*.

This section and section 177EA do not limit each other

- (2) This section does not limit the operation of section 177EA, and section 177EA does not limit the operation of this section.

Application of section

- (3) This section applies if:
 - (a) there is a scheme for a disposition of membership interests in an entity (the **joining entity**); and
 - (b) as a result of the disposition, the joining entity becomes a subsidiary member of a consolidated group; and

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- (c) a credit arises in the franking account of the head company of the group because of the joining entity becoming a subsidiary member of the group; and
- (d) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the credit referred to in paragraph (c) to arise in the head company's franking account.

Bare acquisition of membership interests

- (4) It is not to be concluded for the purposes of paragraph (3)(d) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired membership interests in the joining entity.

Commissioner to determine no franking credit

- (5) The Commissioner may make, in writing, a determination that no credit is to arise in the head company's franking account because of the joining entity becoming a subsidiary member of the consolidated group. A determination does not form part of an assessment.

Effect of determination

- (6) A determination under subsection (5) has effect according to its terms.

Notice of determination

- (7) If the Commissioner makes a determination under subsection (5), the Commissioner must serve notice in writing of the determination on the head company. The notice may be included in a notice of assessment.

Evidence of determination

- (8) The production of:
 - (a) a notice of a determination; or

- (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;
- is conclusive evidence:
- (c) of the due making of the determination; and
 - (d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

- (9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Relevant circumstances

- (10) The **relevant circumstances** of a scheme include the following:
 - (a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests in the joining entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the head company or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests in the joining entity);
 - (b) whether the head company, or a person holding membership interests in the head company, would, in the year of income in which the joining entity became a subsidiary member of the group or any later year of income, derive a greater benefit from franking credits than other persons who held membership interests in the joining entity immediately before it became a subsidiary member of the group;
 - (c) the extent (if any) to which the joining entity was able to pay a franked dividend or distribution immediately before it became a subsidiary member of the group;
 - (d) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the head company in connection with the scheme (for example, the amount of any

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- interest on a loan) was calculated by reference to the franking credit benefits to be received by the head company;
- (e) the period for which the head company held membership interests in the joining entity;
- (f) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

Section to apply to exempting credits

- (11) This section applies to exempting credits arising in the exempting account of the head company of a consolidated group in the same way that it applies to credits arising in the head company's franking account.

177F Cancellation of tax benefits etc.

- (1) Where a tax benefit has been obtained, or would but for this section be obtained, by a taxpayer in connection with a scheme to which this Part applies, the Commissioner may:
 - (a) in the case of a tax benefit that is referable to an amount not being included in the assessable income of the taxpayer of a year of income—determine that the whole or a part of that amount shall be included in the assessable income of the taxpayer of that year of income; or
 - (b) in the case of a tax benefit that is referable to a deduction or a part of a deduction being allowable to the taxpayer in relation to a year of income—determine that the whole or a part of the deduction or of the part of the deduction, as the case may be, shall not be allowable to the taxpayer in relation to that year of income; or
 - (c) in the case of a tax benefit that is referable to a capital loss or a part of a capital loss being incurred by the taxpayer during a year of income—determine that the whole or a part of the capital loss or of the part of the capital loss, as the case may be, was not incurred by the taxpayer during that year of income;
 - (d) in the case of a tax benefit that is referable to a foreign income tax offset, or a part of a foreign income tax offset, being allowable to the taxpayer—determine that the whole or a part of the foreign income tax offset, or the part of the

foreign income tax offset, as the case may be, is not to be allowable to the taxpayer;

and, where the Commissioner makes such a determination, he shall take such action as he considers necessary to give effect to that determination.

- (2) Where the Commissioner determines under paragraph (1)(a) that an amount is to be included in the assessable income of a taxpayer of a year of income, that amount shall be deemed to be included in that assessable income by virtue of such provision of this Act as the Commissioner determines.
- (2A) Where a tax benefit that is covered by section 177CA has been obtained, or would but for this section be obtained, by a taxpayer in connection with a scheme to which this Part applies:
- (a) the Commissioner may determine that the taxpayer is subject to withholding tax under section 128B on the whole or a part of that amount; and
 - (b) if the Commissioner makes such a determination, he or she must take such action as he or she considers necessary to give effect to that determination.
- (2B) A determination under paragraph (1)(c) or subsection (2A) must be in writing.
- (2C) Notice of the determination must be given to the taxpayer and, in the case of a determination under subsection (2A), to the person who paid the amount.
- (2D) More than one determination may be included in the same notice.
- (2E) A failure to comply with subsection (2C) does not affect the validity of a determination.
- (2F) If the Commissioner makes a determination under subsection (2A), the amount that the Commissioner determines is taken to be subject to withholding tax is taken to have been subject to withholding tax at all times by virtue of such provision of section 128B as the Commissioner determines.
- (2G) If the taxpayer is dissatisfied with a determination under paragraph (1)(c) or subsection (2A), the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
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- (3) Where the Commissioner has made a determination under subsection (1) or (2A) in respect of a taxpayer in relation to a scheme to which this Part applies, the Commissioner may, in relation to any taxpayer (in this subsection referred to as the *relevant taxpayer*):
- (a) if, in the opinion of the Commissioner:
 - (i) there has been included, or would but for this subsection be included, in the assessable income of the relevant taxpayer of a year of income an amount that would not have been included or would not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income if the scheme had not been entered into or carried out; and
 - (ii) it is fair and reasonable that that amount or a part of that amount should not be included in the assessable income of the relevant taxpayer of that year of income;determine that that amount or that part of that amount, as the case may be, should not have been included or shall not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income; or
 - (b) if, in the opinion of the Commissioner:
 - (i) an amount would have been allowed or would be allowable to the relevant taxpayer as a deduction in relation to a year of income if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, but for this subsection, be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; and
 - (ii) it is fair and reasonable that that amount or a part of that amount should be allowable as a deduction to the relevant taxpayer in relation to that year of income;determine that that amount or that part, as the case may be, should have been allowed or shall be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; or
 - (c) if, in the opinion of the Commissioner:
 - (i) a capital loss would have been incurred by the relevant taxpayer during a year of income if the scheme had not been entered into or carried out, being a capital loss that was not incurred or would not, but for this subsection,

be incurred, as the case may be, by the relevant taxpayer during that year of income; and

- (ii) it is fair and reasonable that the capital loss or a part of that capital loss should be incurred by the relevant taxpayer during that year of income;

determine that the capital loss or the part, as the case may be, should be incurred by the relevant taxpayer during that year of income; or

- (d) if, in the opinion of the Commissioner:

- (i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a foreign income tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a foreign income tax offset to the relevant taxpayer; and

- (ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a foreign income tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a foreign income tax offset to the relevant taxpayer;

and the Commissioner shall take such action as he considers necessary to give effect to any such determination.

- (4) Where the Commissioner makes a determination under subsection (3) by virtue of which an amount is allowed as a deduction to a taxpayer in relation to a year of income, that amount shall be deemed to be so allowed as a deduction by virtue of such provision of this Act as the Commissioner determines.
 - (5) Where, at any time, a taxpayer considers that the Commissioner ought to make a determination under subsection (3) in relation to the taxpayer in relation to a year of income, the taxpayer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that subsection.
 - (6) The Commissioner shall consider the request and serve on the taxpayer, by post or otherwise, a written notice of his decision on the request.
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- (7) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

177G Amendment of assessments

Nothing in section 170 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection 177F(3).

Part VA—Tax file numbers

Division 1—Preliminary

202 Objects of this Part

The objects of this Part are, by means of the establishment of a system of tax file numbers:

- (a) to increase the effectiveness and efficiency of the matching of information contained in reports given to the Commissioner under this Act or the regulations with information disclosed in income tax returns by taxpayers; and
- (b) to prevent evasion of liability to taxation under the laws of the Commonwealth relating to income tax; and
- (c) to facilitate the administration of any legislation enacted by the Parliament under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respect of the costs of courses of study provided by institutions of higher education; and
- (d) to facilitate the administration of any legislation enacted by the Parliament to impose charge equal to any shortfall in the amount spent by employers on training employees; and
- (e) to facilitate the administration of a provision of an Act, being a provision which authorises the collection of a tax file number as a condition to the giving of personal assistance within the meaning of the *Data-matching Program (Assistance and Tax) Act 1990*; and
- (f) to facilitate the administration of the *Data-matching Program (Assistance and Tax) Act 1990*; and
- (g) to facilitate the administration of any legislation enacted by the Parliament in relation to the imposition of charge on an employer's superannuation guarantee shortfall; and
- (ga) to facilitate the administration of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*; and
- (h) to facilitate the administration of Division 6 of Part 4A of the *Student Assistance Act 1973*; and

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- (ha) to facilitate the administration of:
 - (i) Part 2B.3 of the *Social Security Act 1991*; or
 - (ii) a provision of an instrument under Chapter 2B of the *Social Security Act 1991* (as in force before the commencement of Schedule 2 to the *Youth Allowance Consolidation Act 2000*) establishing a Student Financial Supplement Scheme, being a provision relating to the recovery through the taxation system of a student's outstanding indebtedness in respect of financial supplement paid to the student in accordance with the Scheme; and
- (hb) to facilitate the administration of Part 3.18 of the *Social Security Act 1991*; and
- (hc) to facilitate the administration of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986*; and
 - (i) to facilitate:
 - (i) the administration of Part 25A of the *Superannuation Industry (Supervision) Act 1993* in relation to individuals; and
 - (ii) the administration of that Act in relation to superannuation entities (within the meaning of that Act) or regulated exempt public sector superannuation schemes (within the meaning of Part 25A of that Act); and
 - (ia) to facilitate the administration of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (including the administration of registers by State or Territory authorities (within the meaning of that Act) in accordance with section 18 of that Act); and
 - (j) to facilitate the administration of the *Small Superannuation Accounts Act 1995*; and
- (ka) to facilitate:
 - (i) the administration of Part 11 of the *Retirement Savings Accounts Act 1997* in relation to individuals; and
 - (ii) the administration of that Act in relation to RSA providers; and
- (kb) to facilitate:
 - (i) the administration of Division 2 of Part 5 of the *First Home Saver Accounts Act 2008* in relation to individuals; and

- (ii) the administration of that Act in relation to FHSA providers (within the meaning of that Act); and
- (l) to facilitate the administration of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*; and
- (m) to facilitate the administration of the *A New Tax System (Family Assistance) (Administration) Act 1999* and section 5 of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*; and
- (n) to facilitate the administration of the *A New Tax System (Bonuses for Older Australians) Act 1999*; and
- (o) to facilitate the administration of section 204A of the *Social Security (Administration) Act 1999*; and
- (p) to facilitate the administration of the fuel tax law (within the meaning of section 110-5 of the *Fuel Tax Act 2006*); and
- (q) to facilitate the administration of Division 2AA of Part II of the *Banking Act 1959*.

202A Interpretation

In this Part, unless the contrary intention appears:

alienated personal services payment has the meaning given by section 13-10 in Schedule 1 to the *Taxation Administration Act 1953*.

applicant, in relation to an application for the issue of a tax file number, means the person specified in the application as the person by whom or on whose behalf the issue of a tax file number is sought.

approved form has the same meaning as in the *Income Tax Assessment Act 1997*.

bank means:

- (a) the Reserve Bank of Australia;
- (b) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or

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(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

child means a person who is less than 16 years of age.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

eligible PAYG payment means:

- (a) a payment from which an amount must be withheld under Subdivision 12-B (other than section 12-55), Subdivision 12-C or Subdivision 12-D in Schedule 1 to the *Taxation Administration Act 1953*; or
- (aa) an alienated personal services payment in respect of which Division 13 in Schedule 1 to the *Taxation Administration Act 1953* requires an amount to be paid to the Commissioner; or
- (b) a non-cash benefit in respect of which an amount is payable to the Commissioner under section 14-5 in Schedule 1 to the *Taxation Administration Act 1953* because of the application of that section in relation to Subdivision 12-B, 12-C or 12-D of that Schedule;

and has a meaning affected by section 202AA.

entity means a body corporate or unincorporated association, but does not include a natural person or a partnership.

financial institution means:

- (a) a bank; or
- (b) a co-operative housing society.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

interest-bearing account means any facility, other than an RSA or FHSA, by which a financial institution:

- (a) does any one or more of the following:
 - (i) accepts deposits of money to the credit of a person;
 - (ii) allows withdrawals from the money deposited;

- (iii) pays cheques or payment orders drawn on the institution by, or collects cheques or payment orders on behalf of, the person; and
- (b) pays or credits interest, or amounts in the nature of interest, on the balance standing to the credit of the person from time to time.

interest-bearing deposit means a deposit of money, other than into an RSA or FHSA, with a financial institution, in consideration of which the financial institution pays or credits interest, or amounts in the nature of interest, to a person.

investment body means a person who is an investment body within the meaning of section 202D.

investment to which this Part applies means an investment of a kind mentioned in section 202D.

investor means a person who is an investor within the meaning of section 202D.

passport, in relation to a person who does not hold a passport, means another official travel document held by the person.

payer means:

- (a) a person who makes an eligible PAYG payment (other than an alienated personal services payment), or is likely to make such a payment; or
- (b) a person who receives an alienated personal services payment, or is likely to receive such a payment.

person includes a partnership, a company and a person in the capacity of trustee of a trust estate.

public company means a public company within the meaning of the *Corporations Act 2001*.

recipient means:

- (a) a person who receives an eligible PAYG payment (other than an alienated personal services payment), or is likely to receive such a payment; or
- (b) a person in relation to whose personal services income (within the meaning of the *Income Tax Assessment Act 1997*)

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a payer receives an alienated personal services payment, or is likely to receive such a payment.

securities dealer means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act.

solicitor means a solicitor, barrister and solicitor or legal practitioner of the High Court or of the Supreme Court of a State or Territory.

tax file number, in relation to a person, means a number issued to the person by the Commissioner, being a number that is either:

- (a) a number issued to the person under Division 2; or
- (aa) a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*; or
- (b) a number notified, before the commencement of this section, to the person as the person's income tax file number.

TFN declaration means a declaration made for the purposes of section 202C.

unit trust means a trust to which a unit trust scheme relates, and includes:

- (a) a cash management trust;
- (b) a property trust;
- (c) an arrangement declared by the Minister, by notice published in the *Gazette*, to be a unit trust for the purposes of this definition;

but does not include an FHSA trust or any arrangement declared by the Minister, by notice published in the *Gazette*, not to be a unit trust for the purposes of this definition.

unit trust scheme means an arrangement made for the purpose, or having the effect, of providing, for a person who has funds available for investment, facilities for participation by the person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust.

202AA Definition of *eligible PAYG payment*

In applying the definition of *eligible PAYG payment* in section 202A:

- (a) a requirement to withhold a nil amount is treated as a requirement to withhold an amount; and
- (b) a requirement to pay a nil amount to the Commissioner is treated as a requirement to pay an amount to the Commissioner; and
- (c) the following provisions in Schedule 1 to the *Taxation Administration Act 1953* are to be disregarded, namely: section 12-1, subsection 12-45(2), subsection 12-110(2) and subsection 12-115(2).

Division 2—Issuing of tax file numbers

202B Application for tax file number

- (1) A person may apply to the Commissioner for the issue of a tax file number.
- (2) An application shall be in a form approved by the Commissioner and shall be accompanied by documentary evidence of the applicant's identity.
- (3) An application may be handed in at, or posted to, the office of a Deputy Commissioner.
- (4) An application may be handed in at an office or facility designated by the Commissioner as a receiving centre for applications of that kind.

202BA Issuing of tax file numbers

- (1) Subject to subsection (3), if, on an application for a tax file number, the Commissioner is satisfied that the applicant's identity has been established, the Commissioner shall issue a tax file number to the applicant.
- (2) If, on such an application, the Commissioner is not satisfied as to the applicant's true identity, the Commissioner may refuse the application.
- (3) If, on such an application, the Commissioner is satisfied that:
 - (a) the applicant already has a tax file number; or
 - (b) a notice under section 202BD in relation to the applicant is in force;the Commissioner shall refuse the application.
- (4) The Commissioner may, without an application being made, issue a tax file number to a person whenever it is necessary to do so in connection with the performance of a function of the Commissioner under a law of the Commonwealth relating to taxation.

- (5) The Commissioner shall issue a tax file number to a person by giving the person a written notice of the number.
- (6) The Commissioner shall refuse an application for a tax file number by giving the applicant a written notice of the refusal and of the reasons for the refusal.

202BB Current tax file number

On the issue of a tax file number to a person, any tax file number previously issued to the person and not already cancelled or withdrawn ceases to have effect.

202BC Deemed refusal by Commissioner

- (1) If the Commissioner has not decided an application for a tax file number within 28 days after the application is made, the applicant may, at any time, give to the Commissioner written notice that the applicant wishes to treat the application as having been refused.
- (2) If in the application the applicant has stated the name and address of one or more payers of the applicant, subsection (1) does not apply at a particular time if at that time a notice has been issued to each such payer under section 202BD in relation to the applicant and each such notice is in force.
- (3) For the purposes of Division 6, where an applicant gives notice under subsection (1), the Commissioner shall be taken to have refused the application for a tax file number on the day on which the notice was given.

202BD Interim notices

- (1) Where an application for a tax file number states the name and address of a payer of the applicant, the Commissioner may give to the payer a notice under this section in relation to the applicant.
- (2) The notice remains in force for the period of 28 days commencing on the day specified in the notice.
- (3) The notice shall specify:
 - (a) the applicant's name as shown in the application; and

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- (b) the last day of the period for which the notice remains in force.
- (4) On giving the notice, the Commissioner shall inform the applicant that the notice has been given.
- (5) The notice may be given to take effect on the expiration of a notice previously given to the payer under this section in relation to the applicant.
- (6) Where, while an application for a tax file number is pending, the applicant notifies the Commissioner, in writing, of the name and address of a payer of the applicant (being a payer whose name and address is not stated on the application), the payer's name and address shall, at the end of the period of 7 days after the notification, be taken to have been stated on the application.

202BE Cancellation of tax file numbers

- (1) Where the Commissioner concludes that a tax file number was issued to a person under an identity that is not the person's true identity, the Commissioner may, by written notice given to the person, cancel the tax file number.
- (2) The Commissioner shall set out in the notice the reasons for the Commissioner's conclusion.

202BF Alteration of tax file numbers

The Commissioner may, at any time, by written notice given to a person who has a tax file number:

- (a) withdraw that number; and
- (b) issue to the person a new tax file number in place of the withdrawn number.

Division 3—Quotation of tax file numbers by recipients of eligible PAYG payments

202C TFN declarations by recipients of eligible PAYG payments

- (1) A person who is a recipient of a payer, or expects to become a recipient of a payer, may make a TFN declaration in relation to the payer.
- (2) To be effective, the declaration must be made in the approved form.

202CA Operation of TFN declaration

- (1) Subject to this Division, a TFN declaration commences to have effect when it is made.

Note: Under section 202CB, a TFN declaration is not effective unless the tax file number of the recipient is stated in the declaration.

- (1A) A TFN declaration ceases to have effect when the recipient makes another TFN declaration in relation to the payer.
- (1B) A TFN declaration ceases to have effect 12 months after it is made if no eligible PAYG payment is made by the payer to the recipient during that 12 month period.
- (1C) If:
 - (a) the payer makes an eligible PAYG payment to the recipient after the TFN declaration is made; and
 - (b) a period of 12 months then elapses without any further eligible PAYG payment being made by the payer to the recipient;then the TFN declaration ceases to have effect at the end of that period of 12 months.
- (2) A TFN declaration to which a determination under subsection (3) applies ceases to have effect at the end of the day fixed by the determination.
- (3) The Commissioner may determine that:
 - (a) all TFN declarations; or

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(b) a specified class of TFN declarations;
shall cease to have effect at the end of the day specified in the determination.

(4) A determination shall be made by notice published in the *Gazette*.

202CB Quotation of tax file number in TFN declaration

(1) Subject to subsections (2) and (4) and subsection 202CE(2), a TFN declaration is not effective for the purposes of this Part unless the tax file number of the recipient is stated in the declaration.

(2) For the purposes of this Part, a recipient is taken to have stated his or her tax file number in a TFN declaration if the declaration includes a statement:

- (a) that an application by the recipient for a tax file number is pending; or
- (b) that the recipient has a tax file number but does not know what it is and has asked the Commissioner to inform him or her of the number.

(3) Where:

- (a) a TFN declaration includes such a statement; and
- (b) the recipient who made the declaration fails to inform the payer of the recipient's tax file number within 28 days after making the declaration;

subsection (2) does not apply to the declaration in respect of any time after the end of the period of 28 days.

(4) For the purposes of this Part, a recipient is taken to have stated his or her tax file number in a TFN declaration in relation to a payer while a notice under section 202BD given to the payer in relation to the recipient is in force.

(5) If:

- (a) the tax file number of a recipient is withdrawn under section 202BF; and
- (b) at the time of the withdrawal, the number is stated in a TFN declaration;

the declaration is taken to state the tax file number of the recipient in spite of the withdrawal of the number.

- (6) Subsections (2) to (4) do not apply to a TFN declaration given to the Secretary to the Department of Social Security or to the Chief Executive Officer of the Commonwealth Services Delivery Agency, established by the *Commonwealth Services Delivery Agency Act 1997*:
- (a) by a person who is an applicant for an austudy payment, a CDEP Scheme Participant Supplement, a newstart allowance, a sickness allowance or a youth allowance under the *Social Security Act 1991*; or
 - (aaa) by a person who is not a member of a couple and is an applicant for a parenting payment under the *Social Security Act 1991*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a payment referred to in paragraph (a).

Persons receiving benefits under Veterans' Entitlements Act

- (7) Subsections (2) to (4) do not apply to a TFN declaration given to the Secretary to the Department of Veterans' Affairs:
- (a) by a person who is an applicant for a pension or allowance under the *Veterans' Entitlements Act 1986*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such a pension or allowance.

Persons receiving benefits under Military Rehabilitation and Compensation Act

- (8) Subsections (2) to (4) do not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:
- (a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

202CC Making a replacement TFN declaration in place of an ineffective declaration

Nothing in this Division prevents a recipient making a new TFN declaration in place of a TFN declaration that is ineffective under subsection 202CB(1).

202CD Sending of TFN declaration to Commissioner

- (1) Where a recipient gives a payer a TFN declaration, the payer shall:
- (a) countersign the original of the declaration;
 - (b) within 14 days after the declaration is made, send the original to the office of a Deputy Commissioner; and
 - (c) retain the copy of the declaration in accordance with subsection (6).

Penalty: 10 penalty units.

- (4) If:
- (a) a TFN declaration, when given to a payer, does not quote the recipient's tax file number; and
 - (b) before the payer sends the declaration to the Deputy Commissioner, the recipient informs the payer of the recipient's tax file number;
- the payer shall write the number on the declaration and on the copy.

Penalty: 10 penalty units.

- (5) Where a tax file number has been written on a declaration under subsection (4), the declaration shall be regarded as stating that number as the tax file number of the recipient who made the declaration.

- (5A) A payer who fails to comply with subsection (1) or (4) is liable to pay to the Commissioner a penalty of 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to civil penalties.

- (6) The payer shall retain the copy of a TFN declaration until the second 1 July after the day on which the declaration ceases to have effect.

202CE Effect of incorrect quotation of tax file number

- (1) If the Commissioner is satisfied:
- (a) that the tax file number stated in a TFN declaration:
 - (i) has been cancelled or withdrawn since the declaration was given; or
 - (ii) is otherwise wrong; and
 - (b) that the recipient has a tax file number;
- the Commissioner may give to the payer concerned written notice of the incorrect statement and the recipient's tax file number.
- (2) If a notice is given under subsection (1), the TFN declaration shall be regarded, for the purposes of this Part, as having always stated the recipient's tax file number.
- (3) If:
- (a) the Commissioner is satisfied that the tax file number stated in a TFN declaration:
 - (i) has been cancelled since the declaration was given; or
 - (ii) is for any other reason not the recipient's tax file number; and
 - (b) the Commissioner is not satisfied that the recipient has a tax file number;
- the Commissioner may, by written notice given to the payer, inform the payer accordingly.
- (4) A notice under subsection (3) takes effect on the day specified in the notice, being a day not earlier than the day on which a copy of the notice is given to the recipient under subsection (5).
- (5) The Commissioner shall give a copy of any notice under subsection (3) to the recipient concerned, together with a written statement of the reasons for the decision to give the notice.
- (6) On and from the day on which a notice under subsection (3) takes effect, the TFN declaration concerned shall be taken not to state the tax file number of the recipient concerned.

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Division 3 Quotation of tax file numbers by recipients of eligible PAYG payments

Section 202CF

- (7) Subsection (6) does not apply to a TFN declaration given to the Secretary to the Department of Social Security or to the Chief Executive Officer of the Commonwealth Services Delivery Agency, established by the *Commonwealth Services Delivery Agency Act 1997*:
- (a) by a person who is an applicant for an austudy payment, a CDEP Scheme Participant Supplement, a newstart allowance, a sickness allowance or a youth allowance under the *Social Security Act 1991*; or
 - (aaa) by a person who is not a member of a couple and is an applicant for a parenting payment under the *Social Security Act 1991*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a payment referred to in paragraph (a).

Persons receiving benefits under Veterans' Entitlements Act

- (8) Subsection (6) does not apply to a TFN declaration given to the Secretary to the Department of Veterans' Affairs:
- (a) by a person who is an applicant for a pension or allowance under the *Veterans' Entitlements Act 1986*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such a pension or allowance.
- (9) Subsection (6) does not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:
- (a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or
 - (b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

202CF Payer must notify Commissioner if no TFN declaration by recipient

- (1) If, after the commencement of this section, a person (the *payer*) commences a relationship with another person under which, or as a result of which, the payer will make (or will be likely to make)

eligible PAYG payments to a person (the *recipient*), whether or not the recipient is a party to the relationship, the payer must give notice to the Commissioner in the approved form, within 14 days after the commencement of the relationship, unless a TFN declaration made by the recipient to the payer is in effect at the end of that 14 day period.

- (2) If, at the commencement of this section, a person (the *payer*) has a relationship with another person under which, or as a result of which, the payer will make (or will be likely to make) eligible PAYG payments to a person (the *recipient*), whether or not the recipient is a party to the relationship, the payer must give notice to the Commissioner in the approved form, not later than 31 October 2000, unless a TFN declaration made by the recipient to the payer is in effect on 31 October 2000.
- (3) A payer who fails to comply with subsection (1) or (2) is liable to pay to the Commissioner a penalty of 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to civil penalties.

Division 4—Quotation of tax file numbers in connection with certain investments

202D Explanation of terms: investment, investor, investment body

(1A) This section:

- (a) applies to a non-share equity interest in the same way as it applies to a share; and
- (b) applies to an equity holder in the same way as it applies to a shareholder.

(1) Investments of the kinds mentioned in column 1 of the following table are investments to which this Part applies, whether or not the investments come into existence before the commencement of this section.

Table

Item No.	Column 1 Investment	Column 2 Investor	Column 3 Investment body
1	Interest-bearing account with a financial institution	The person in whose name the account is held	The financial institution
2	Interest-bearing deposit (other than a deposit to the credit of an account) with a financial institution	The person in whose name the deposit is made	The financial institution

Section 202D

Item No.	Column 1 Investment	Column 2 Investor	Column 3 Investment body
3	Loan of money to a government body or to a body corporate (other than a deposit to the credit of an account referred to in item 1, a deposit to which item 2 applies or a loan made in the ordinary course of the business of providing business or consumer finance by a person who carries on that business)	The person in whose name the money is lent	The government body or body corporate
4	Deposit of money with a solicitor for the purpose of: (a) being invested by the solicitor; or (b) being lent under an agreement to be arranged by or on behalf of the solicitor	The person for whose benefit the money is to be invested or lent	The solicitor
5	Units in a unit trust	The person in whose name the units are held	The manager of the unit trust
6	Shares in a public company	The shareholder	The company
7	An investment-related betting chance	The betting investor	The betting investment body

- (2) In relation to an investment of a kind mentioned in column 1 of an item in the table in subsection (1):
- (a) the investor is the person specified in column 2 of the item; and

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- (b) the investment body is the person specified in column 3 of the item.
- (3) Where:
 - (a) by virtue of subsection (2), a body corporate other than an entrepot nominee company is the investor in relation to an investment; and
 - (b) another person is entitled to receive from the body corporate all or part of the income from the investment;
the person's right to receive the income or part of the income is an investment to which this Part applies.
- (3A) In the case of an investment that is a relevant Part VA investment for the purposes of section 221YHZLA, subsection (3) does not apply to a person's right to receive income if:
 - (a) the body corporate concerned has received a payment of the kind referred to in paragraph 221YHZLA(2)(a); and
 - (b) the circumstances referred to in subparagraph 221YHZLA(2)(c)(i) or (ii) in relation to an applicant exist in relation to the body corporate.
- (4) In relation to an investment referred to in subsection (3):
 - (a) the person entitled to receive income is the investor; and
 - (b) the body corporate is the investment body.
- (5) Subsection (4) does not affect a person's status or obligations as an investor by virtue of subsection (2).
- (6) In determining whether a person in the capacity of trustee of a trust estate is an investor in relation to an investment, it is irrelevant that the name of the trust estate, the name of any actual or potential beneficiary or any other indication of trust is shown on any documentation in connection with the investment.
- (7) Subsection (6) is enacted for the guidance and information of investors and investment bodies and does not, by implication, affect the meaning of other provisions of this Act dealing with trustees and trust estates.
- (8) If subparagraph 26AJ(1)(a)(ii) and paragraphs 26AJ(1)(b), (c), (d), (e), (f) and (g) apply in relation to the payment or crediting of an amount to a person, being the taxpayer referred to in subsection 26AJ(1), then:

- (a) for the purposes of this section:
 - (i) the betting chance referred to in paragraph 26AJ(1)(c) is an investment-related betting chance; and
 - (ii) the person is the betting investor in relation to the investment-related betting chance; and
 - (iii) the investment body referred to in paragraph 26AJ(1)(c) is the betting investment body in relation to the investment-related betting chance; and
 - (b) for the purposes of this Part, and for the purposes of Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*:
 - (i) the betting chance referred to in paragraph 26AJ(1)(c) is taken to be an investment; and
 - (ii) the amount paid or credited is taken to be income in respect of the investment.
- (9) For the purposes of subsection (3), an entrepot nominee company is a body corporate that is:
- (a) controlled solely by a securities dealer or by 2 or more persons each of whom is a securities dealer; and
 - (b) operated for the sole purpose of facilitating settlement of security transactions.

202DA Phasing-in period for Division

The phasing-in period for this Division is the period of 12 months commencing on 1 July 1990.

202DB Quotation of tax file numbers in connection with investments

- (1) A person who, at any time after the beginning of the phasing-in period for this Division, is an investor in relation to an investment to which this Part applies may quote the person's tax file number to the investment body in connection with the investment.
- (2) Where:
 - (a) a person, at any time after the beginning of the phasing-in period for this Division, holds an investment on behalf of another person; and

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Section 202DC

- (b) the first-mentioned person does not have a tax file number in his or her capacity of trustee of a trust estate in relation to the investment;

the first-mentioned person may quote his or her tax file number to the investment body in connection with the investment and, for the purposes of this Part, that person is to be taken to have quoted the investor's tax file number in connection with the investment.

202DC Method of quoting tax file number

- (1) A person quotes a tax file number to an investment body by informing the body of the number in a manner approved by the Commissioner.
- (2) The investment body may be so informed by the person or by another person acting for that person.
- (3) If, after the beginning of the phasing-in period for this Division, a person becomes an investor as a result of a transaction carried out through a securities dealer, the person shall be taken to have quoted the person's tax file number to the investment body concerned if the dealer is informed of the number.

202DD Investor excused from quoting tax file number in certain circumstances

Where:

- (a) at a particular time a person becomes an investor in relation to an investment to which this Part applies by virtue of acquiring shares in a public company; and
 - (b) at that time, the person has quoted, or is taken to have quoted, a tax file number in connection with an existing investment consisting of a shareholding in that company; and
 - (c) the company has not, since the quotation of the number in connection with the existing investment, informed the person that the company has lost the person's tax file number;
- the person is to be taken to have quoted a tax file number in connection with the first-mentioned investment.

202DDB Quotation of tax file number in connection with indirectly held investment

- (1) If, apart from this section:
- (a) either of the following subparagraphs applies:
 - (i) both of the following conditions are satisfied:
 - (A) a body corporate (in this section called the *interposed entity*) is the investor in relation to an investment (in this section called the *secondary investment*) with an investment body (in this section called the *secondary investment body*);
 - (B) another person (in this section called the *primary investor*) is entitled to receive from the interposed entity all or part of the income from the secondary investment (which right to receive the income or part of the income is in this section called *primary investment*);
 - (ii) both of the following conditions are satisfied:
 - (A) a person (in this section also called the *primary investor*) is the investor in relation to an investment (in this section also called the *primary investment*) covered by item 4 in the table in subsection 202D(1), being a deposit of money with a solicitor (in this section also called the *interposed entity*);
 - (B) as a result of carrying out the purpose for which that investment was made, the interposed entity is the investor in relation to another investment (in this section also called the *secondary investment*) with an investment body (in this section also called the *secondary investment body*); and
 - (b) the conditions set out in the regulations are satisfied;
the following provisions have effect for the purposes of this Part and Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*:
 - (c) the primary investor may quote his or her tax file number under section 202DB to the secondary investment body in

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Section 202DDB

- connection with the secondary investment as if he or she were the investor in relation to the secondary investment;
- (d) if the primary investor quotes his or her tax file number as mentioned in paragraph (c)—the interposed entity is taken to have quoted his or her tax file number to the secondary investment body in connection with the secondary investment;
 - (e) the interposed entity is not entitled to actually quote his or her tax file number to the secondary investment body in connection with the secondary investment;
 - (f) the interposed entity is taken not to be an investment body in relation to the primary investment.
- (2) If there are 2 or more primary investors in relation to a primary investment, all the primary investors are taken to have quoted their tax file numbers as mentioned in paragraph (1)(c) if, and only if:
- (a) all of those primary investors are persons who, for the purposes of this Part, are taken, by section 202EE or 202EF, or both, to have quoted their tax file numbers under this Division in connection with the primary investment; or
 - (b) if:
 - (i) paragraph (a) does not apply; and
 - (ii) all of those primary investors are covered by any or all of the following categories:
 - (A) persons who, for the purpose of this Part, are taken, under section 202EE or 202EF, or both, to have quoted their tax file numbers under this Division in connection with the primary investment;
 - (B) persons to whom section 202EB applies;
 - (C) entities mentioned in paragraph 202EC(1)(a); and
 - (iii) all of the following conditions are satisfied in relation to at least one of those primary investors:
 - (A) the primary investor is covered by sub-paragraph (ii)(B) or (C);
 - (B) the primary investor gives to the secondary investment body the information mentioned in subsection 202EB(1) or 202EC(1) as if the

- primary investor were the investor in relation to the secondary investment;
- (C) as a result of the giving of that information, the primary investor would be taken, under section 202EB or 202EC, to have quoted his or her tax file number under this Division in connection with the secondary investment; or
- (c) at least one of those primary investors:
- (i) has a tax file number; and
 - (ii) has quoted that number under section 202DB to the secondary investment body in connection with the secondary investment as if he or she were the investor in relation to the secondary investment.

202DE Securities dealer to inform the investment body of tax file number

Where:

- (a) after the beginning of the phasing-in period for this Division, a person becomes an investor as a result of a transaction carried out through a securities dealer; and
- (b) the person informs the dealer of the person's tax file number; the dealer shall inform the investment body concerned of the person's tax file number.

202DF Effect of incorrect quotation of tax file number

- (1) If the Commissioner is satisfied:
 - (a) that the tax file number quoted to an investment body in relation to an investment:
 - (i) has been cancelled or withdrawn since it was quoted; or
 - (ii) is otherwise wrong; and
 - (b) that the investor has a tax file number;the Commissioner may give to the investment body concerned notice of the incorrect statement and the investor's tax file number.
- (2) If a notice is given under subsection (1), the investor shall be regarded, for the purposes of this Part, as having always stated the investor's tax file number in connection with the investment.

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- (3) If:
- (a) the Commissioner is satisfied that the tax file number quoted to an investment body in relation to an investment:
 - (i) has been cancelled since it was quoted; or
 - (ii) is for any other reason not the investor's tax file number; and
 - (b) the Commissioner is not satisfied that the investor has a tax file number;
- the Commissioner may, by written notice given to the investment body concerned, inform the investment body accordingly.
- (4) A notice under subsection (3) takes effect on the day specified in the notice, being a day not earlier than the day on which a copy of the notice is given to the investor under subsection (5).
- (5) The Commissioner shall give a copy of any notice under subsection (3) to the investor concerned, together with a written statement of the reasons for the decision to give the notice.
- (6) On and from the day on which a notice under subsection (3) takes effect, the investor concerned shall be taken not to have quoted the investor's tax file number in connection with the investment.

202DG Investments held jointly

- (1) Where 2 persons are jointly entitled to the property or rights that constitute an investment to which this Part applies, neither person shall be taken to have quoted the person's tax file number in connection with the investment unless both persons have quoted their tax file numbers under this Division in connection with the investment.
- (2) Where more than 2 persons are jointly entitled to the property or rights that constitute an investment to which this Part applies, all of the persons are to be taken to have quoted their tax file numbers in connection with the investment if and only if:
- (a) where one of those persons has a tax file number and is not an exempt person in relation to the investment—that person has quoted that number, and at least one of the other persons is, for the purposes of this Part, to be taken to have quoted his or her tax file number, under this Division in connection with the investment; or

- (b) where 2 or more of those persons have tax file numbers and are not exempt persons in relation to the investment—at least 2 of those persons have quoted their own tax file numbers under this Division in connection with the investment; or
 - (c) in any other case—at least 2 of those persons are, for the purposes of this Part, to be taken to have quoted their tax file numbers under this Division in connection with the investment.
- (2A) A reference in subsection (2) to an exempt person in relation to an investment is a reference to a person who, for the purposes of this Part, is to be taken to have quoted his or her tax file number under this Division in connection with the investment although the person has not actually done so.
- (3) This section does not apply in relation to persons who are jointly entitled to property or rights merely because they are partners in a partnership.
- (4) This section does not apply in relation to investments covered by section 202DDB.

202DH Tax file number quoted for superannuation or surcharge purposes taken to be quoted for purposes of the taxation of eligible termination payments

- (1) If a person (the *first person*) who is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or possible future operation of the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* or the *Termination Payments Tax (Assessment and Collection) Act 1997*, the first person is taken, so long as he or she continues to be such a beneficiary, to have made a TFN declaration in relation to the trustee that has effect under Division 3..

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- (2) In this section and in section 202DHA, *eligible superannuation entity* and *regulated exempt public sector superannuation scheme* have the same meanings as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

202DHA Tax file number quoted for Division 3 purposes taken to have been quoted for superannuation purposes

If:

- (a) a person has on or after 1 July 2007 made a TFN declaration in relation to a payer; and
- (b) the person is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme or is an RSA holder; and
- (c) the payer makes a contribution to the person's eligible superannuation entity or regulated exempt public sector superannuation scheme or RSA for the benefit of the person;

the person is taken to have authorised the payer to inform the trustee of the superannuation entity or scheme or the RSA provider of the person's tax file number.

202DI Tax file number quoted for RSA purposes taken to be quoted for purposes of the taxation of superannuation benefits

If a person (the *first person*) who is the holder of an RSA has quoted his or her tax file number to the provider of the RSA in connection with the operation or possible future operation of the *Retirement Savings Accounts Act 1997*, the first person is taken, so long as he or she continues to be the holder of the RSA, to have made a TFN declaration in relation to the provider of the RSA that has effect under Division 3.

202DJ Tax file number quoted for purposes of taxation of superannuation benefits taken to be quoted for surcharge purposes

- (1) If a person who is:
 - (a) a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; or

(b) a member of a constitutionally protected superannuation fund; or

(c) the holder of an RSA;

has made a TFN declaration in relation to the trustee of the entity, scheme or fund, or the RSA provider, that states his or her tax file number, and has effect under Division 3 (except a declaration that includes a statement mentioned in subsection 202CB(2)), the person is taken, so long as he or she continues to be such a beneficiary, member or holder, to have quoted that tax file number to the trustee of the entity, scheme or fund or to the RSA provider, as the case may be, in connection with the operation or possible future operation of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.

(2) In this section:

constitutionally protected superannuation fund has the same meaning as *constitutionally protected fund* has in the *Income Tax Assessment Act 1997*.

eligible superannuation entity and *regulated exempt public sector superannuation scheme* have the same meanings as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

holder, RSA and *RSA provider* have the same meanings as in the *Retirement Savings Accounts Act 1997*.

Part VA Tax file numbers

Division 4A Quotation of tax file numbers in connection with farm management deposits

Section 202DK

Division 4A—Quotation of tax file numbers in connection with farm management deposits

202DK Interpretation

Expressions used in this Division that are also used in Schedule 2G have the same meanings as in that Schedule.

202DL Quotation of tax file number

A depositor of a farm management deposit *quotes* the owner's tax file number to the financial institution in connection with the deposit by:

- (a) stating the number in the form mentioned in subsection 393-30(3) of Schedule 2G in relation to the deposit; or
- (b) informing the financial institution of the number in any other manner approved by the Commissioner in connection with the deposit.

202DM Effect of incorrect quotation of tax file number

Commissioner may notify financial institution of correct tax file number

- (1) If the Commissioner is satisfied:
 - (a) that the tax file number quoted to a financial institution in connection with a farm management deposit:
 - (i) has been cancelled or withdrawn since it was quoted; or
 - (ii) is otherwise wrong; and
 - (b) that the owner has a tax file number;the Commissioner may give the financial institution notice in writing of the owner's correct tax file number.

Commissioner may notify financial institution if owner does not have a tax file number etc.

- (3) If:
- (a) the Commissioner is satisfied that the tax file number quoted to a financial institution in connection with a farm management deposit:
 - (i) has been cancelled since it was quoted; or
 - (ii) is for any other reason not the owner's tax file number;and
 - (b) the Commissioner is not satisfied that the owner has a tax file number;

the Commissioner may give the financial institution notice in writing accordingly.

Commissioner to give owner copy of notice

- (4) If a notice is given under subsection (3), the Commissioner must give the depositor a copy of the notice, together with a written statement of the reasons for the decision to give the notice.

Notice takes effect when given to owner

- (5) The notice takes effect on the day specified in the notice, being a day not earlier than the day on which the copy of the notice is given to the depositor.

Tax file number deemed not quoted

- (6) On and from the day on which the notice takes effect, the depositor is taken not to have quoted the owner's tax file number in connection with the deposit.

Division 5—Exemptions

202EA Persons receiving certain pensions etc.—employment

- (1) Nothing in this Part shall be taken to provide for a person who is a recipient because the person receives, or expects to receive, a pension or benefit referred to in subsection (5) to make a TFN declaration, or to quote his or her tax file number, in connection with the payment of that pension, benefit or allowance.
- (2) For the purposes of this Part, a person who is being paid a pension or benefit referred to in subsection (5) shall be taken to have quoted his or her tax file number in a TFN declaration given to a payer of the person if a statement is made in the declaration to the effect that the person is being paid such a pension or benefit.
- (3) A person who, as a person who is being paid a pension or benefit referred to in subsection (5), is taken, because of this section, to have quoted his or her tax file number in a TFN declaration shall continue to be taken to have, because of this section, quoted the number in the declaration until the Commissioner gives a written notice to the person to the effect that the person is no longer entitled to exemption under this section.
- (4) The Commissioner may not give a notice under subsection (3) until the person has ceased to be paid any pension or benefit referred to in subsection (5).
- (5) This section applies in relation to the following:
 - (a) an age pension under Part 2.2 of the *Social Security Act 1991*;
 - (b) a disability support pension under Part 2.3 of that Act;
 - (c) a wife pension under Part 2.4 of that Act;
 - (d) a carer payment under Part 2.5 of that Act;
 - (f) a widow B pension under Part 2.8 of that Act;
 - (fa) a parenting payment that is a pension PP (single) under Part 2.10 of that Act;
 - (g) a special benefit under Part 2.15 of that Act;
 - (h) a special needs pension under Part 2.16 of that Act;

- (i) a pension under Part III of the *Veterans' Entitlements Act 1986*;
- (ia) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*;
- (j) Defence Force Income Support Allowance under Part VIIAB of the *Veterans' Entitlements Act 1986*.

202EB Persons receiving certain pensions etc.—investments

- (1) For the purposes of this Part, a person to whom this section applies shall be taken to have quoted his or her tax file number under Division 4 in connection with the investment if the investment body concerned is given the following information by the person in a manner approved by the Commissioner:
 - (a) the person's full name;
 - (b) the nature of the pension, benefit or allowance by virtue of the payment of which the person is a person to whom this section applies.
- (3) A person who, as a person to whom this section applies, is taken, because of this section, to have quoted his or her tax file number in connection with an investment shall continue to be taken to have, because of this section, quoted the number in connection with the investment until the Commissioner gives a written notice to the person to the effect that the person is no longer entitled to exemption under this section.
- (4) The Commissioner may not give a notice under subsection (3) until the person has ceased to be a person to whom this section applies.
- (5) A person to whom this section applies is a person who is being paid:
 - (a) one of the following:
 - (i) an age pension under Part 2.2 of the *Social Security Act 1991*;
 - (ii) a disability support pension under Part 2.3 of that Act;
 - (iii) a wife pension under Part 2.4 of that Act;
 - (iv) a carer payment under Part 2.5 of that Act;
 - (vi) a widow B pension under Part 2.8 of that Act;
 - (via) a parenting payment that is a pension PP (single) under Part 2.10 of that Act;

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- (vii) a special benefit under Part 2.15 of that Act;
- (viii) a special needs pension under Part 2.16 of that Act; or
- (c) a pension under Part III of the *Veterans' Entitlements Act 1986*; or
- (d) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

202EC Entities not required to lodge income tax returns

- (1) For the purposes of this Part, where:
 - (a) an entity that is not required to furnish to the Commissioner a return under section 161 in respect of a year of income is, at any time during that year, an investor in relation to an investment to which this Part applies; and
 - (b) the entity does not have a tax file number;the entity shall be taken to have quoted its tax file number in connection with the investment if the investment body concerned is given the following information by the eligible representative in a manner approved by the Commissioner:
 - (c) the name and address of the entity;
 - (d) the reason why the entity is not obliged to furnish to the Commissioner a return under section 161 in respect of the year of income.
- (3) An entity that, as an entity that is not required to furnish to the Commissioner a return under section 161 in respect of a year of income, is to be taken, because of this section, to have quoted its tax file number in connection with an investment shall continue to be taken to have, because of this section, quoted the number in connection with the investment until 2 months after the end of the first year of income, following the time at which the entity is to be taken to have quoted the number, in respect of which the entity is required so to furnish a return.
- (4) Where an entity in respect of which information has been given to an investment body under subsection (1) in connection with an investment becomes obliged under section 161 to furnish a return in respect of a year of income, the person who is the public officer of the entity for the purposes of this Act is guilty of an offence if:
 - (a) the entity is, at the end of the year of income, still an investor in relation to the investment; and

- (b) the investment body is not, within 2 months after the end of the year of income, informed of the entity's tax file number or informed that the entity is obliged to furnish the return.

Penalty: \$1,000.

- (5) For the purposes of this section, a person is an eligible representative of an entity if the person is:
- (a) where the entity is a body corporate—a person who is any one or more of the following:
 - (i) the public officer of the body corporate for the purposes of this Act;
 - (ii) an officer of the body corporate within the meaning of section 8Y of the *Taxation Administration Act 1953*;
 - (iii) a receiver of property of the body corporate, whether appointed by a court or otherwise and whether or not also a manager;
 - (iv) a liquidator of the body corporate appointed by a court;
 - (v) in the case of a foreign company within the meaning of the *Corporations Act 2001*—a local agent of the company within the meaning of that Act;
 - (vi) an employee of the body corporate in relation to whom there is in force a written authorisation to act as an eligible representative of the body corporate, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the body corporate by virtue of one or more of the preceding subparagraphs; or
 - (b) where the entity is an unincorporated association—a person who is any one or more of the following:
 - (i) the public officer of the unincorporated association for the purposes of this Act;
 - (ii) a director, secretary, office-holder, liquidator, receiver or trustee of the association;
 - (iii) an employee or member of the unincorporated association in relation to whom there is in force a written authorisation to act as an eligible representative of the unincorporated association, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the

unincorporated association by virtue of either or both of the preceding subparagraphs.

202EE Non-residents

- (1) For the purposes of this Part, where:
 - (a) a non-resident is an investor in relation to an investment to which this Part applies; and
 - (b) at a particular time, the investment body pays an amount to the non-resident by way of income derived from the investment;
the non-resident is taken to have quoted the non-resident's tax file number in connection with the investment at that time if:
 - (c) the investment body is required to withhold an amount under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953* from the payment; or
 - (d) the investment body would have been required to withhold such an amount but for the operation of paragraph 128B(3)(a), (ga) or (jb) or subparagraph 128B(3)(h)(iv) of this Act or subsection 802-15(1) of the *Income Tax Assessment Act 1997*.
- (2) If:
 - (a) a person who was a non-resident and an investor in relation to an investment to which this Part applies becomes a resident of Australia at a particular time; and
 - (b) the person is, at that time, still an investor in relation to the investment; and
 - (c) the investment body concerned is not, within one month after that time, informed of the person's tax file number or informed that the person has become such a resident;
the person is guilty of an offence.
Penalty: 10 penalty units.
- (3) Nothing in this section affects the person's liability to pay withholding tax.

202EF Territory residents etc.

- (1) For the purposes of this Part, a recipient is taken to have quoted the recipient's tax file number in a TFN declaration given to the payer
-

concerned under section 202C if all eligible PAYG payments by the payer to the recipient would be exempt from income tax because of Division 1A of Part III.

- (2) For the purposes of this Part, an investor in relation to an investment to which this Part applies shall be taken to have quoted the investor's tax file number under Division 4 in connection with the investment if income derived from the investment would be exempt from income tax because of Division 1A of Part III.
- (3) Subsection (1) or (2) continues to have effect until the end of one month after the payments or income would no longer be exempt from income tax because of Division 1A of Part III.
- (4) Where:
 - (a) a person has been taken, because of this section, to have quoted the person's tax file number in connection with payments, or with an investment; and
 - (b) the payments, or income derived from the investment, ceases to be exempt from income tax because of Division 1A of Part III;

the person is guilty of an offence if, within one month of the income ceasing to be exempt from income tax, the payer concerned, or the investment body concerned, is not informed of the person's tax file number or informed that the income is no longer exempt from income tax.

Penalty: 10 penalty units.

202EG Manner of completing declarations

Where a person is unable to make a declaration under this Division, the declaration may be made by another person on behalf of the first-mentioned person.

202EH Declarations under this Division to be retained in certain circumstances

- (1) The Commissioner may direct an investment body to retain declarations, or declarations of a particular kind, made under this Division for such time as is specified in the direction.

Section 202EH

- (2) A direction mentioned in subsection (1) must be given to the investment body in writing or by notice published in the *Gazette*.
- (3) An investment body that is retaining a declaration in accordance with such a direction must, if required to do so by the Commissioner:
 - (a) forward the declaration to the office of a Deputy Commissioner in accordance with the Commissioner's directions; or
 - (b) give to the Commissioner such information contained in the declaration as the Commissioner specifies.

Division 6—Review of decisions

202F Review of decisions

- (1) Applications may be made to the Tribunal for review of the following decisions of the Commissioner:
 - (a) a decision refusing an application for the issue of a tax file number under section 202BA (including a decision that is to be taken to have been made by virtue of section 202BC);
 - (b) a decision to cancel a tax file number under section 202BE;
 - (c) a decision to give a notice under subsection 202CE(3);
 - (d) a decision to give a notice under subsection 202DF(3);
 - (da) a decision to give a notice under subsection 202DM(3);
 - (e) a decision to give a notice under subsection 202EB(3);
 - (f) a decision under subsection 202G(4) not to exempt a person from compliance with section 202G or to vary or revoke a notice given under that subsection;
 - (fa) a decision to give a notice under subsection 190-15(1) or (1A) of the *Higher Education Support Act 2003*;
 - (fb) a decision to give a notice under subsection 190-20(1) or (1A) of the *Higher Education Support Act 2003*;
 - (g) a decision stated by the regulations to be a reviewable decision for the purposes of this section.
- (2) Where an application has been made to the Tribunal for review of a decision referred to in paragraph (1)(a), the orders that may be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* include an order that the Commissioner issue a tax file number to the applicant pending the determination of the application for review.
- (3) A tax file number issued in accordance with an order referred to in subsection (2) ceases to have effect when the application is finally disposed of.
- (4) When a tax file number ceases to have effect under subsection (3), this Part (other than this section) applies as if the number had been cancelled.

202FA Statements to accompany notification of decisions

- (1) Where a decision of a kind referred to in section 202F is made and notice in writing of the decision is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

Division 7—Manner of providing information

202G Transmission of information in accordance with specifications

- (1) The Commissioner may, by notice published in the *Gazette*, set out specifications for transmission to the Commissioner of information to which this section applies.
- (2) A notice under subsection (1) has effect on and from the day specified in the notice.
- (3) Where the whole or part of the information to which this section applies that a person is obliged to give to the Commissioner is kept by or on behalf of the person by means of a data processing device, the person shall, when giving any of that information to the Commissioner, give it in a manner and form that is in accordance with the specifications set out in the notice under subsection (1), as amended from time to time.
- (4) A person is exempt from compliance with subsection (3) if, on an application by the person, the Commissioner has, by written notice to the person, exempted the person from compliance with this section.
- (5) A notice under subsection (4) has effect for the period specified in the notice.
- (6) Refusal by the Commissioner of an application under subsection (4) shall be by notice in writing to the applicant.
- (7) In deciding whether to exempt a person, the Commissioner shall consider:
 - (a) the amount of information concerned;
 - (b) any difficulties in giving the information in the manner required by this section;
 - (c) the purposes of this Part; and
 - (d) any other matters that the Commissioner thinks are relevant.
- (8) A person is exempt from compliance with subsection (3) if the person is included in a class of persons specified by the Commissioner by notice published in the *Gazette*.

Part VA Tax file numbers

Division 7 Manner of providing information

Section 202G

- (9) This section applies to information that a person is or will be obliged to give to the Commissioner, whether by means of a report, form, certificate or otherwise:
- (a) under this Part;
 - (b) under regulations made for the purposes of this Part; or
 - (c) under this Act, being information in respect of which this Act provides for the inclusion of tax file numbers.

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008
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Volume 4 includes: Table of Contents
Sections 204 – 624

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

The operation of amendments that have been incorporated may be
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Part VI—Collection and recovery of tax

Division 1—General

204 When tax payable

- (1) Subject to the provisions of this Part, the tax payable by a taxpayer other than a full self-assessment taxpayer for a year of income becomes due and payable:
- (a) if the taxpayer's return of income is lodged on or before the due date for lodgment—on the later of:
 - (i) 21 days after the due date for lodgment of that return specified in the *Gazette* under section 161 for the year of income; or
 - (ii) 21 days after a notice of assessment is given to the taxpayer; or
 - (b) in any other case—21 days after that due date for lodgment.

Note 1: The Commissioner may defer the time at which the tax is, or would become, due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The Commissioner may defer the due date for lodgment: see section 388-55 in that Schedule.

- (1AA) To avoid doubt, the reference in subparagraph (1)(a)(ii) to an assessment does not include a reference to an amended assessment.
- (1A) Subject to the provisions of this Part, the tax payable by a full self-assessment taxpayer for a year of income becomes due and payable as follows:
- (a) if the taxpayer's year of income ends on 30 June—on 1 December of the following year of income or on such later date as the Commissioner allows by notice published in the *Gazette*;
 - (b) if the taxpayer's year of income ends on a day other than 30 June—on the first day of the sixth month of the following year of income, or on such later date as the Commissioner allows by notice published in the *Gazette*.
- (2) An amount of tax that a taxpayer is liable to pay because the Commissioner amends the taxpayer's assessment is due and

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payable on the 21st day after the day on which the Commissioner gives the taxpayer notice of the amended assessment.

- (2A) An amount of shortfall interest charge that a taxpayer is liable to pay is due and payable on the 21st day after the day on which the Commissioner gives the taxpayer notice of the amount of the charge.
- (3) If any of the tax or shortfall interest charge which a person is liable to pay remains unpaid after the time by which the tax or charge is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:
- (a) started at the beginning of the day by which the tax or shortfall interest charge was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the tax or shortfall interest charge;
 - (ii) general interest charge on any of the tax or shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*, and the shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: For provisions about collection and recovery of income tax and related amounts, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

213 Temporary business

- (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in Australia intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived by that person.
- (2) A person who refuses or fails to give security when required to do so under this section is guilty of an offence.

Penalty for contravention of this subsection: 20 penalty units.

219 Consolidated assessments

Where several persons are in receipt of income, or of profits or gains of a capital nature, for or on behalf of a non-resident or a person absent from Australia, the Commissioner, if it appears to him to be expedient to do so, may consolidate all or any of the assessments thereof, and declare any one of such persons to be the agent of the non-resident or absent person in respect of the consolidated assessment, and require him to pay income tax on the amount thereof, and thereupon the person so declared to be agent shall be liable to pay the tax.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AFA

Division 8—Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Subdivision A—Object and interpretation

222AFA Object and outline

- (1) The purpose of this Division is to enable the Commissioner to take prompt and effective action to recover amounts not remitted as required by Divisions 1AAA, 3B and 4 of this Act, or Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) It does so by empowering the Commissioner to make an estimate of the amounts, and to recover the amount of the estimate.
- (3) Although an estimate creates a liability distinct from the underlying liability to remit amounts, the person liable can ensure that the Commissioner does not keep more than those amounts.
- (4) This Division also empowers the Commissioner to agree to a person paying off over a period liabilities under:
 - (a) Division 1AAA, 3B or 4; or
 - (b) this Division; or
 - (c) Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.
- (5) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* provides for the recovery of amounts payable under this Division.

222AFB Interpretation

- (1) In this Division, unless the contrary intention appears:

director, in relation to a company:

 - (a) means someone who is a director of the company for the purposes of the *Corporations Act 2001*; and
 - (b) in the case of an unincorporated company—includes an officeholder of the company.

due date, in relation to an amount required to be paid to the Commissioner under a remittance provision, means the day on, by or before which the amount must be paid to the Commissioner.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or a State or Territory.

non-cash benefit has the same meaning as in the *Income Tax Assessment Act 1997*.

person means an entity within the meaning of the *Income Tax Assessment Act 1997* or a government body.

relate, in the case of a reference to the liability to which an estimate relates, includes purport to relate.

remittance provision means any of the following provisions:

- (a) in former Division 1AAA—former sections 220AAE, 220AAM and 220AAR;
- (c) in former Division 3B—former subsections 221YH(1) and (1A);
- (d) in former Division 4—former subsection 221YN(1);
- (e) in Schedule 1 to the *Taxation Administration Act 1953*—section 16-70.

statutory demand has the same meaning as in the *Corporations Act 2001*.

statutory minimum has the same meaning as in the *Corporations Act 2001*.

trustee, in relation to a person, means:

- (a) a trustee (as defined in section 6) in whom the person's property is vested, or who has control of the person's property; and
- (b) if the person is a partnership—includes someone who is a trustee of any of the partners because of paragraph (a).

Note: Subsection (4) deals with the case where there are 2 or more trustees of a person.

underlying liability, in relation to an estimate, means the liability to which the estimate relates.

unpaid amount has the meaning given by section 222AFC.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AFC

- (2) If a partnership is liable under this Division to pay an amount, the partners are jointly and severally liable to pay the amount.
- (3) Any other obligation that this Division imposes on a partnership may be discharged by any of the partners.
- (4) If there are 2 or more trustees of a person, anything this Division provides for to be done by or in relation to the person's trustee may be done by or in relation to any of them.

222AFC Unpaid amount

- (1) The *unpaid amount* of a liability to pay amounts is:
 - (a) if the liability remains undischarged to the extent of a particular amount—that amount; or
 - (b) otherwise—a nil amount.
- (2) The *unpaid amount* of an estimate is:
 - (a) if the liability to pay the estimate remains undischarged to the extent of a particular amount—that amount; or
 - (b) otherwise—a nil amount.

Subdivision B—Making, reducing and revoking estimates

222AGA When Commissioner may make estimate

- (1) If the Commissioner has reason to suspect that:
 - (a) a person (the *person liable*) has become liable under a remittance provision to pay an amount to the Commissioner; and
 - (b) the liability to pay that amount remains undischarged after the due date;the Commissioner may make what he or she thinks is a reasonable estimate of the unpaid amount of that liability.
- (2) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant, for example, information about:
 - (a) amounts deducted; or
 - (b) amounts withheld from payments; or
 - (c) payments received; or
 - (d) non-cash benefits provided;

during a period earlier than the period in relation to which the liability arose.

222AGB Notice to person liable

- (1) If the Commissioner makes an estimate, he or she must send written notice of it to the person liable or to the person's trustee.
- (2) The notice must:
 - (a) identify the liability to which the estimate relates; and
 - (b) specify the day as at which the estimate is made; and
 - (c) set out the amount of the estimate; and
 - (d) state that the amount of the estimate is due and payable; and
 - (e) state that if the person or the person's trustee gives the Commissioner a statutory declaration substantiating the actual unpaid amount of the liability to which the estimate relates, the estimate will be reduced accordingly; and
 - (ea) state that the estimate will be revoked if the person or the person's trustee gives the Commissioner a statutory declaration to the effect that, during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or
 - (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule;as the case requires; and
 - (eb) state that a statutory declaration mentioned in paragraph (e) or (ea) must comply with section 222AGF; and
 - (f) state the effect of section 222AGF.
- (3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AGC

222AGC Reducing amount of estimate

- (1) If:
- (a) the Commissioner makes an estimate; and
 - (b) the person liable or the person's trustee gives the Commissioner a statutory declaration that complies with section 222AGF; and
 - (c) the declaration is to the effect that a specified amount is the unpaid amount of the liability to which the estimate relates; and
 - (d) the specified amount is less than the unpaid amount of the estimate;
- the amount of the estimate is reduced by the amount by which the unpaid amount of the estimate (immediately before the reduction) exceeds the specified amount.

Note 1: The effect of subsection (1) is to reduce the unpaid amount of the estimate to the specified amount.

Note 2: Sections 222AHD, 222AIC and 222AIG also provide for the automatic reduction of an estimate.

- (2) The Commissioner may at any time reduce the amount of an estimate, but is not obliged to consider whether or not to do so.
- (3) If the Commissioner reduces under subsection (2) the amount of an estimate, he or she must send to the person liable or to the person's trustee a written notice that:
- (a) identifies the liability to which the estimate relates; and
 - (b) sets out the reduced amount of the estimate.
- The reduction takes effect when the notice is sent.

222AGD Revoking estimate

- (1) This subsection revokes an estimate if:
- (a) the person liable or the person's trustee gives the Commissioner a statutory declaration that complies with section 222AGF; and
 - (b) the declaration is to the effect that, during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or

Section 222AGE

- (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or
 - (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule;
- as the case requires.

Note: Sections 222AHD, 222AIC and 222AIG also provide for the automatic revocation of an estimate.

- (2) The Commissioner may at any time revoke an estimate, but is not obliged to consider whether or not to do so.
- (3) If the Commissioner revokes an estimate under subsection (2), he or she must send to the person liable or to the person's trustee a written notice that:
 - (a) identifies the liability to which the estimate relates; and
 - (b) states that the estimate has been revoked.

The revocation takes effect when the notice is sent.

222AGE Matters for Commissioner to consider under sections 222AGC and 222AGD

In exercising a power under subsection 222AGC(2) or 222AGD(2), the Commissioner is to have regard to the following:

- (a) an estimate is of the unpaid amount of a liability as at a particular time;
- (b) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at that time, and so bring the unpaid amount of the estimate closer to the unpaid amount of the underlying liability as at the time of the reduction;
- (c) reductions in the unpaid amount of the underlying liability that happen after the time as at which the estimate was made are dealt with by section 222AHA and so should not be taken into account in exercising such a power;
- (d) the effects of Subdivision F.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AGF

222AGF Requirements for statutory declaration under section 222AGC or 222AGD

- (1) This section sets out the requirements for a statutory declaration for the purposes of section 222AGC or 222AGD.
- (2) The declaration must be a statutory declaration made under the *Statutory Declarations Act 1959*.
- (3) It must be given to the Commissioner within 7 days, or a longer period allowed by the Commissioner, after the Commissioner sends notice of the estimate to the person liable or to the person's trustee.
- (4) The declaration must:
 - (a) specify:
 - (i) the total of the amounts of the deductions that the person made for the purposes of Division 1AA, 2, 3A, 3B or 4 during the period concerned; or
 - (ii) the total of the amounts withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during the period concerned; or
 - (iii) the total of the amounts of the payments received during the period concerned that gave rise to a liability under Division 13 in that Schedule and the total of the amounts of those liabilities; or
 - (iv) the total of the values of the non-cash benefits, or the amounts of the dividends, interest or royalties, provided during the period concerned that gave rise to a liability under Division 14 in that Schedule and the total of the amounts of those liabilities;as the case requires; or
 - (b) state to the effect that during the period concerned, the person did not:
 - (i) make any deductions for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (ii) withhold any amounts under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iii) receive any payments that gave rise to a liability under Division 13 in that Schedule; or

- (iv) provide any non-cash benefits that gave rise to a liability under Division 14 in that Schedule; as the case requires.
- (5) For each amount (if any) paid or applied for the purpose of complying with a remittance provision, the declaration must specify the amount and the day on which it was so paid, applied or spent.
- (6) The declaration must specify, as the unpaid amount of the liability to which the estimate relates, the difference between:
 - (a) the total (if any) specified under paragraph (4)(a); and
 - (b) the total of the amounts (if any) specified under subsection (5).
- (7) The declaration must be made by:
 - (a) if the person is a company that has directors, a secretary or both—a director or secretary; or
 - (b) if the person is an individual—the person; or
 - (c) if the person is a government body—a prescribed person; or
 - (d) if the person consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or
 - (e) in any case—the person’s trustee.

222AGG Further estimate after previous estimate revoked or discharged

- (1) While an estimate is in force, the Commissioner cannot make under section 222AGA another estimate relating to the same liability.
- (2) An estimate is in force if the Commissioner has given notice of it to the person liable or to the person’s trustee and:
 - (a) the estimate has not been revoked; and
 - (b) the person’s liability to pay the estimate has not been discharged.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AHA

Subdivision C—Recovering unpaid amount of estimate

222AHA Nature of liability created by notice

- (1) If the Commissioner makes an estimate and sends notice of it to the person liable or to the person's trustee, the person must pay to the Commissioner the amount of the estimate. This liability is called *a liability to pay an estimate*.
- (2) A liability to pay an estimate is separate and distinct from the liability to which the estimate relates. It is separate and distinct for all purposes. For example, the Commissioner may take proceedings to recover the unpaid amount of the estimate, proceedings to recover the unpaid amount of the liability to which the estimate relates, or both.
- (3) However, the following are *parallel liabilities*:
 - (a) a liability to pay an estimate;
 - (b) the liability to which the estimate relates;
 - (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).
- (4) This means that if, at a particular time:
 - (a) an amount is paid or applied towards discharging one of the parallel liabilities; or
 - (b) because of section 222AOH or 222APG, one of the parallel liabilities is discharged to the extent of a particular amount;each of the others that is in existence at that time is discharged to the extent of the same amount. However, this section does not discharge a liability to a greater extent than the amount of the liability.

222AHB Refund if estimate exceeds underlying liability

- (1) If:
 - (a) an amount is paid or applied towards discharging a liability to pay an estimate; and
 - (b) the amount exceeds the unpaid amount of the underlying liability as at the time (*the liability time*) immediately before the payment or application;the Commissioner must either refund the excess or:

- (c) apply the excess against any liability of the person to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and
 - (d) refund so much of the excess as is not applied under paragraph (c).
- (2) If the Commissioner refunds or applies an amount under subsection (1), he or she must also reduce the amount of the estimate by the amount by which the unpaid amount of the estimate as at the liability time exceeded the unpaid amount of the underlying liability at that time.

222AHC Defences in recovery proceedings

- (1) This section has effect for the purposes of proceedings, in so far as they relate to the recovery of the unpaid amount of an estimate.
- (2) The Commissioner or Deputy Commissioner is not entitled to recover if the person liable or the person's trustee files an affidavit that complies with section 222AHE and verifies facts sufficient to prove that the underlying liability never existed or has been discharged in full.
- (3) If the person liable or the person's trustee files an affidavit that complies with section 222AHE and verifies facts sufficient to prove that the unpaid amount of the underlying liability is a specified amount that is less than the unpaid amount of the estimate, the court is to enter judgment in favour of the Commissioner or Deputy Commissioner for the specified amount.
- (4) The court is to make whatever orders are necessary because of subsection (2) or (3).
- (5) If a judgment under subsection (3) is in effect, the Commissioner or a Deputy Commissioner is not entitled to recover the balance of the estimate (in the same or different proceedings or otherwise).
- (6) However, the judgment does not prevent the Commissioner or a Deputy Commissioner from recovering (in the same or different proceedings or otherwise) the amount (if any) by which the unpaid amount of the underlying liability exceeds the amount specified in the affidavit.

Part VI Collection and recovery of tax

Division 8 Prompt recovery, through estimates and payment agreements, of certain amounts not remitted

Section 222AHD

- (7) Except as provided in subsection (2) or (3), it is not a defence that:
- (a) the underlying liability never existed or has been discharged in full; or
 - (b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

222AHD Effect of affidavit on estimate

- (1) This subsection revokes an estimate if subsection 222AHC(2) prevents recovery of the unpaid amount because an affidavit verifies facts sufficient to prove that the underlying liability never existed.
- (2) If subsection 222AHC(2) prevents recovery of the unpaid amount of an estimate because an affidavit verifies facts sufficient to prove that the underlying liability has been discharged in full, the amount of the estimate is reduced by the unpaid amount of the estimate (immediately before the reduction).

Note: The effect of subsection (2) is to reduce to a nil amount the unpaid amount of the estimate.

- (3) While a judgment for an amount is in effect under subsection 222AHC(3), the amount of the estimate is reduced by the amount by which the unpaid amount of the estimate (immediately before the reduction) exceeds the first-mentioned amount.

Note: The effect of subsection (3) is to reduce the unpaid amount of the estimate to the amount of the judgment.

222AHE Requirements for affidavit under section 222AHC

- (1) An affidavit for the purposes of section 222AHC must comply with this section.
- (2) The affidavit must be filed with the court, and a copy served on the Commissioner or Deputy Commissioner, as the case requires, within 14 days after the first day on which the person liable or the person's trustee takes a procedural step as a party to the proceedings (for example, entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance).
- (3) However, the court may extend the period for compliance with subsection (2).

- (4) The facts that the affidavit must verify include:
- (a) the total of the deductions made for the purposes of Division 1AA, 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;
 - (b) what has been done to comply with Division 1AAA, 3B or 4 in relation to the deductions (if any) so made;
 - (c) the sum of all amounts withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were withheld during the period;
 - (ca) the sum of all amounts required to be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (d) the sum of all amounts required to be paid under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (e) what has been done to comply with Division 16 in Schedule 1 to the *Taxation Administration Act 1953* in relation to the amounts withheld (if any) and the amounts so paid (if any);
 - (f) without limiting paragraphs (b) and (e), what has been done to discharge the liability to which the estimate relates.
- (5) The affidavit must be sworn by:
- (a) if the person is a company that has directors, a secretary or both—a director or secretary; or
 - (b) if the person is an individual—the person; or
 - (c) if the person is a government body—a prescribed person; or
 - (d) if the person consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or
 - (e) in any case—the person's trustee.

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Subdivision D—Insolvency proceedings

222AIA Effect on statutory demand if estimate reduced or revoked

- (1) If:
 - (a) the Commissioner serves on a company a statutory demand relating to the company's liability to pay the unpaid amount of an estimate; and
 - (b) the amount of the estimate is later reduced or the estimate is later revoked;then:
 - (c) this subsection changes the statutory demand accordingly; and
 - (d) the demand is taken to have had effect (as so changed) from the time when it was served on the company.
- (2) This subsection sets aside the statutory demand if subsection (1) reduces below the statutory minimum the amount of the debt, or the total of the amounts of the debts, to which the demand relates.

222AIB Defences on winding up application

- (1) This section has effect for the purposes of:
 - (a) an application under section 234, 459P, 462 or 464 of the *Corporations Act 2001*; or
 - (b) an application for leave to make an application under section 459P of the *Corporations Act 2001*.
- (2) The court is not to presume, merely because the company has failed to comply with a statutory demand, that the company is insolvent if:
 - (a) the demand relates only to a liability in respect of an estimate and the sworn amount of the liability to which the estimate relates is less than the statutory minimum; or
 - (b) the demand relates only to liabilities in respect of 2 or more estimates and the total of the sworn amounts of the liabilities to which the estimates relate is less than the statutory minimum; or
 - (c) the demand relates to:
 - (i) one or more liabilities in respect of one or more estimates; and

- (ii) one or more liabilities none of which is a liability in respect of an estimate;
and the total of:
 - (iii) the sworn amount of the liability to which the estimate relates, or the total of the sworn amounts of the liabilities to which the estimates relate, as the case may be; and
 - (iv) the amount of the liability, or the total of the liabilities, referred to in subparagraph (ii);is less than the statutory minimum.
- (3) The **sworn amount** of a liability to which an estimate relates is:
 - (a) if the company has filed an affidavit that complies with section 222AID and verifies facts sufficient to prove that the liability never existed or has been discharged in full—a nil amount; or
 - (b) if the company has filed an affidavit that complies with section 222AID and verifies facts sufficient to prove that the unpaid amount of the liability is a specified amount that is less than the unpaid amount of the estimate—the specified amount; or
 - (c) otherwise—the unpaid amount of the estimate.
- (4) Except as provided in subsection (2), the company is not entitled to oppose the application on the ground that:
 - (a) a liability to which an estimate relates never existed or has been discharged in full; or
 - (b) the unpaid amount of such a liability is less than the unpaid amount of the estimate.

222AIC Effect of affidavit on estimate

If the unpaid amount of an estimate exceeds the amount that is the sworn amount of the underlying liability for the purposes of section 222AIB because of an affidavit filed for the purposes of that section, the amount of the estimate is reduced by the excess.

Note: The effect is to reduce the unpaid amount of the estimate to the sworn amount of the underlying liability.

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222AID Requirements for affidavit under section 222AIB

- (1) An affidavit for the purposes of section 222AIB must comply with this section.
- (2) The affidavit must be filed with the court, and a copy served on the applicant, within 14 days after notice of the application was served on the company.
- (3) However, the court may extend the period for compliance with subsection (2).
- (4) The facts that the affidavit must verify in relation to a liability to which an estimate relates include:
 - (a) the deductions made for the purposes of Division 1AA, 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;
 - (b) what has been done to comply with Division 1AAA, 3B or 4 in relation to the deductions (if any) so made;
 - (c) the sum of all amounts withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were withheld during the period;
 - (ca) the sum of all amounts required to be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (d) the sum of all amounts required to be paid under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (e) what has been done to comply with Division 16 in Schedule 1 to the *Taxation Administration Act 1953* in relation to the amounts withheld (if any) and the amounts so paid (if any);
 - (f) without limiting paragraphs (b) and (e), what has been done to discharge the liability to which the estimate relates.
- (5) The affidavit must be sworn by a director, secretary or trustee of the company.

222AIE Defences under section 222AIB not available on application to set aside statutory demand

A court is not to set aside or vary a statutory demand on a ground referred to in subsection 222AIB(4).

222AIF Estimate provable in bankruptcy or winding up

- (1) A liability to pay the unpaid amount of an estimate is provable in a bankruptcy or winding up of the person liable, even if the estimate was made after the date of the bankruptcy, or after the relevant date within the meaning of the *Corporations Act 2001*, as the case may be.
- (2) However, the liability is so provable only in so far as the underlying liability would be so provable if the unpaid amount of it were the same as the unpaid amount of the estimate.

Note: Subsection (2) prevents proof of an estimate if the underlying liability could not be proved because, for example, of when it arose.
- (3) Subsections (1) and (2) do not apply if the underlying liability has already been admitted to proof and the proof has not been set aside.
- (4) If the liability in respect of the estimate has been admitted to proof at a particular amount (*the admitted amount*), the underlying liability is provable only in so far as the unpaid amount of it exceeds the admitted amount.
- (5) In so far as a liability is provable because of this section, it is taken for the purposes of the *Bankruptcy Act 1966* to be provable in bankruptcy under that Act.

222AIG Rejection of proof of debt relating to estimate

- (1) This section applies if the Commissioner lodges a proof of debt relating to the unpaid amount of an estimate.
- (2) The trustee of the person liable may reject the proof in whole on the ground that the underlying liability never existed or has been discharged in full, but may only do so if the trustee has given the Commissioner a statutory declaration that complies with section 222AIH and verifies facts sufficient to prove that ground.

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- (3) The trustee may reject the proof in part on the ground that the unpaid amount of the estimate exceeds the unpaid amount of the underlying liability, but may only do so if the trustee has given the Commissioner a statutory declaration that complies with section 222AIH and verifies facts sufficient to prove that the unpaid amount of the underlying liability is a specified amount that is less than the unpaid amount of the estimate.
- (4) If the Commissioner appeals from, or applies for review of, the trustee's decision, nothing in subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.
- (5) This subsection revokes the estimate if:
- (a) the trustee rejects the proof under subsection (2) on the ground that the underlying liability never existed; and
 - (b) the Commissioner does not appeal from, or apply for review of, the trustee's decision, or the result of all appeals from, and applications for review of, the decision being finally determined or otherwise disposed of is that the proof is rejected in whole on that ground.
- (6) If:
- (a) the trustee:
 - (i) rejects the proof under subsection (2) on the ground that the underlying liability has been discharged in full; or
 - (ii) rejects the proof under subsection (3); and
 - (b) the Commissioner does not appeal from, or apply for review of, the trustee's decision;
- the amount of the estimate is reduced by so much of the unpaid amount of the estimate (immediately before the reduction) as is rejected.
- Note: The effect of subsection (6) is to reduce the unpaid amount of the estimate to nil if the proof is rejected in whole, and otherwise to the amount admitted to proof.
- (7) If:
- (a) the trustee rejects the proof under subsection (2) or (3); and
 - (b) the Commissioner appeals from, or applies for review of, the trustee's decision and the result of all appeals from, and applications for review of, the decision being finally determined or otherwise disposed of is that the proof:

- (i) is rejected in whole on the ground that the underlying liability has been discharged in full; or
 - (ii) is rejected in part;
- the amount of the estimate is reduced by so much of the unpaid amount of the estimate (immediately before the reduction) as is rejected.

Note: The effect of subsection (7) is to reduce the unpaid amount of the estimate to nil if the proof is rejected in whole, and otherwise to the amount admitted to proof.

222AIH Requirements for statutory declaration under section 222AIG

- (1) A statutory declaration for the purposes of section 222AIG must comply with this section.
- (2) The declaration must be a statutory declaration made under the *Statutory Declarations Act 1959*.
- (3) The facts that the declaration must verify include:
 - (a) the total of the deductions made for the purposes of Division 1AA, 2, 3A, 3B or 4, as the case requires, during the relevant period, or the fact that no deductions were so made;
 - (b) what has been done to comply with Division 1AAA, 3B or 4 in relation to the deductions (if any) so made;
 - (c) the sum of all amounts withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were withheld during the period;
 - (ca) the sum of all amounts required to be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (d) the sum of all amounts required to be paid under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* during the relevant period, or the fact that no amounts were so paid during the period;
 - (e) what has been done to comply with Division 16 in Schedule 1 to the *Taxation Administration Act 1953* in relation to the amounts withheld (if any) and the amounts so paid (if any);

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- (f) without limiting paragraphs (b) and (e), what has been done to discharge the liability to which the estimate relates.
- (4) The declaration must be made by:
 - (a) if the person liable is a company that has directors, a secretary or both—a director or secretary; or
 - (b) if the person liable is an individual—the person; or
 - (c) if the person liable is a government body—a prescribed person; or
 - (d) if the person liable consists of 2 or more persons including one or more individuals and is neither a company nor a government body—that individual or one of those individuals; or
 - (e) in any case—the trustee of the person liable.

222AII Provisions altering effect of Corporations Act

This Subdivision has effect despite any provision of the *Corporations Act 2001*.

Subdivision E—Late payment of estimate

222AJA Liability to the general interest charge

- (1) This section applies if a liability to pay an estimate remains undischarged at the end of 7 days after the Commissioner sends notice of the estimate to the person liable or to the person's trustee, unless the person liable is the Commonwealth.
- (2) The unpaid amount of the estimate, as at the end of the 7 days, continues to be payable and is called the *principal amount*.
- (3) The person is also liable to pay the general interest charge on the unpaid amount of the estimate for each day in the period that:
 - (a) started at the beginning of the day by which the underlying liability was due to be paid; and

- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the estimate;
 - (ii) general interest charge on any of the estimate.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

222AJB Effect of paying the general interest charge

- (1) If a person is liable to pay the general interest charge under subsection 222AJA(3) in relation to an estimate, the following are ***parallel liabilities***:
 - (a) the person's liability to the general interest charge;
 - (b) a liability of the person to pay a general interest charge, under a corresponding provision of Division 1AAA, 3B or 4 of this Part, or Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953*, as the case requires, because the underlying liability remained undischarged;
 - (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b);
 - (d) a liability of the person to pay interest carried by a judgment debt, to the extent that the judgment debt is based on the liability to pay the estimate or on the liability to pay the general interest charge under subsection 222AJA(3) on an unpaid amount of the estimate.
- (2) This means that if, at a particular time, an amount is paid or applied towards discharging one of the parallel liabilities, each of the others that is in existence at that time is discharged to the extent of the same amount. However, this section does not discharge a liability to a greater extent than the amount of the liability.
- (3) If, because a judgment debt carries interest, section 8AAH of the *Taxation Administration Act 1953* reduces the amount of a general interest charge payable as mentioned in paragraph (1)(b), the amount of the reduction is taken for the purposes of subsection (2) to have been applied towards discharging the person's liability to the charge.

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Subdivision F—Effect on liabilities under this and other Divisions if estimate reduced or revoked

222AKA Liabilities adjusted with effect from when they arose

- (1) If the amount of an estimate is reduced, or an estimate is revoked, section 222AHA, Subdivision E and Division 9 have effect, and are taken always to have had effect, as if:
 - (a) the original amount of the estimate had been the reduced amount, not the amount set out under paragraph 222AGB(2)(c); or
 - (b) the estimate had never been made;as the case may be.
- (2) If because of subsection (1) an amount is taken to have been overpaid by a person, the Commissioner must either refund it or:
 - (a) apply it against any liability of the person to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and
 - (b) refund so much of it as is not applied under paragraph (a).
- (3) If the amount of an estimate is reduced again, or an estimate is revoked after its amount has been reduced on one or more occasions, subsections (1) and (2) apply again accordingly.

222AKB Reduction or revocation does not prejudice Commissioner's rights in relation to underlying liability

Reduction of the amount of an estimate, or revocation of an estimate, does not affect the Commissioner's rights or remedies in relation to the underlying liability, except so far as this Division expressly provides.

Subdivision G—Payment agreements

222ALA Commissioner may make agreement

- (1) The Commissioner may make with a person a written agreement under which the person is to pay specified amounts, on specified days, for the purpose of discharging one or more specified liabilities of the person, each of which is:

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- (a) a liability under a remittance provision; or
 - (b) a liability to pay an estimate.
- (2) An agreement may contain other provisions.
- (3) An agreement may also provide that, if the person contravenes specified provisions of it, so much of the total of the specified amounts as remains unpaid becomes due and payable on the day of the contravention. If an agreement so provides, the specified provisions are called *special conditions*.
- (4) The amounts specified in an agreement are due and payable on the specified days.
- (5) However, if:
- (a) a specified amount is not paid on or before the specified day;
or
 - (b) the person contravenes a special condition;
- so much of the total of the specified amounts as remains unpaid:
- (c) becomes due and payable on that day, or on the day of the contravention, as the case may be; and
 - (d) is called *the balance payable under the agreement*.
- (6) Subsections (4) and (5) have effect despite Divisions 1AAA, 3B and 4 and the other provisions of this Division, but are to be ignored:
- (a) in calculating a penalty under any of those Divisions; and
 - (b) for the purposes of this Division (except this section) and Division 9.
- (7) The Commissioner may make with a person a written agreement varying or terminating an agreement with the person that is in force under this section.
- (8) Nothing in Division 9 obliges the Commissioner to enter into an agreement with a company.

222ALB Effect of certain payments

- (1) If an amount is paid under an agreement relating to 2 or more liabilities at least one of which is:
- (a) a liability to pay an estimate; or

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- (b) a liability to which an estimate relates;
the Commissioner may apply the amount, in whatever way he or she thinks appropriate, towards discharging any one or more of those liabilities.
- (3) If, because of section 222AOH or 222APG, a liability to which an agreement relates is discharged to the extent of a particular amount, the liability to pay the amounts specified in the agreement is discharged to the extent of the same amount.

Subdivision H—Miscellaneous

222AMA Effect of judgment on liability on which it is based

- (1) The unpaid amount of an estimate, or of a liability to which an estimate relates, does not cease to be payable merely because a judgment has been given by, or entered in, a court.
- (2) The provisions of this Division (except sections 222AHA, 222AIF and 222AIG) apply in relation to liability under a judgment, so far as it is based on:
 - (a) a liability to pay an estimate; or
 - (b) a liability to which an estimate relates;in the same way as they apply to the liability referred to in paragraph (a) or (b) of this subsection.
- (3) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

222AMB Notices under this Division where trustee has control of affairs of person liable

- (1) If:
 - (a) the Commissioner has given a notice to a person under this Division; and
 - (b) there is a trustee of the person;the person must give a copy of the notice to the trustee as soon as practicable, and in any event within 7 days, after:
 - (c) if the Commissioner gave the notice to the person before the day when the person's property vested in, or control of the person's property passed to, the trustee—that day; or

- (d) otherwise—the day when the Commissioner gave the notice to the person.
- (2) If the Commissioner sends a notice at different times to a person and to the person's trustee, each notice is taken to have been sent at the later or latest of those times.

Division 9—Penalties for directors of non-remitting companies

Subdivision A—Object and interpretation

222ANA Object and outline

- (1) The purpose of this Division is to ensure that a company either meets its obligations under Division 8 of this Act, or under Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953*, or goes promptly into voluntary administration under Part 5.3A of the *Corporations Act 2001* or into liquidation.
- (2) The Division imposes a duty on the directors to cause the company to do so. The duty is enforced by penalties. However, a penalty can be recovered only if the Commissioner gives written notice to the person concerned. The penalty is automatically remitted if the company meets its obligations, or goes into voluntary administration or liquidation, within 14 days after the notice is given.
- (3) A penalty recovered under this Division is applied towards meeting the company's obligations under the relevant Division. Conversely, amounts paid by the company reduce the amount of a penalty.
- (4) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* provides for the recovery of amounts payable under this Division.

222ANB Interpretation

- (1) Except so far as the contrary intention appears, an expression has the same meaning in this Division as in Division 8.
- (2) A deduction purporting to be made for the purposes of a Division is taken to be made for the purposes of that Division.
- (3) A person purporting to withhold an amount under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* is taken to have withheld the amount under that Division.

Subdivision B—Company failing to remit deductions, amounts withheld etc.

222AOA Application

- (1) This Subdivision applies if a company incorporated under the *Corporations Act 2001* has:
 - (a) made one or more deductions having a particular due date, for the purposes of Division 1AA, 2, 3A, 3B or 4; or
 - (b) withheld one or more amounts having a particular due date, for the purposes of Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (ba) received one or more alienated personal services payments on a particular day in relation to which it is required to pay an amount to the Commissioner under Division 13 in Schedule 1 to the *Taxation Administration Act 1953*, and has not paid that amount or those amounts.
 - (c) provided one or more non-cash benefits on a particular day in relation to which it is required to pay an amount to the Commissioner under Division 14 in Schedule 1 to the *Taxation Administration Act 1953*, and has not paid that amount or those amounts.
- (2) The earliest day on which the company, for the purposes of one of those Divisions (other than Division 13 or 14 in Schedule 1 to the *Taxation Administration Act 1953*):
 - (a) made a deduction that has that particular due date; or
 - (b) withheld an amount that has that particular due date;is called the ***first deduction day***.
- (3) That due date is called ***the due date***.
- (4) In this section, ***alienated personal services payment*** and ***non-cash benefit*** have the meanings given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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222AOB Directors to cause company to remit or to go into voluntary administration or liquidation—deductions and amounts withheld

- (1) The persons who are directors of the company from time to time on or after the first deduction day must cause the company to do at least one of the following on or before the due date:
 - (a) comply with its obligations in relation to deductions (if any) and amounts withheld (if any) whose due date is the same as the due date;
 - (b) make an agreement with the Commissioner under section 222ALA in relation to the company's liability under a remittance provision in respect of such deductions (if any) and amounts withheld (if any);
 - (c) appoint an administrator of the company under section 436A of the *Corporations Act 2001*;
 - (d) begin to be wound up within the meaning of that Act.
- (1A) For the purposes of paragraph (1)(a), the obligations are:
 - (a) to comply with Division 1AAA, 3B or 4, as the case may be, in relation to each deduction (if any):
 - (i) that the company has made for the purposes of Division 1AAA, 3B or 4; and
 - (ii) whose due date is the same as the due date; and
 - (b) to comply with Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953* in relation to each amount that the company has withheld (if any):
 - (i) for the purposes of Division 12 of that Schedule; and
 - (ii) whose due date is the same as the due date.
- (2) This section is complied with when:
 - (a) the company complies as mentioned in paragraph (1)(a); or
 - (b) the company makes an agreement as mentioned in paragraph (1)(b); or
 - (c) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
or

- (d) the company begins to be wound up within the meaning of that Act;
whichever first happens, even if the directors did not cause the event to happen.
- (3) If this section is not complied with on or before the due date, the persons who are directors of the company from time to time after the due date continue to be under the obligation imposed by subsection (1) until this section is complied with.

222AOBAA Directors to cause company to remit or to go into voluntary administration or liquidation—alienated personal services payments

- (1) The persons who are directors of the company on the payment day in relation to the payment or payments (referred to in paragraph 222AOA(1)(ba)) must cause the company to do at least one of the following before the end of the payment day:
 - (a) comply with section 13-5 and Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953* in relation to each payment relating to the payment day;
 - (b) make an agreement with the Commissioner under section 222ALA in relation to the company's liability under that Subdivision in respect of each such payment;
 - (c) appoint an administrator of the company under section 436A of the *Corporations Act 2001*;
 - (d) begin to be wound up within the meaning of that Act.
- (2) The **payment day** is the day on which the company must pay an amount under section 13-5 in Schedule 1 to the *Taxation Administration Act 1953* to the Commissioner in relation to the payment or payments (referred to in paragraph 222AOA(1)(ba)).
- (3) This section is complied with when:
 - (a) the company complies as mentioned in paragraph (1)(a); or
 - (b) the company makes an agreement as mentioned in paragraph (1)(b); or
 - (c) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
or

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- (d) the company begins to be wound up within the meaning of that Act;
whichever first happens, even if the directors did not cause the event to happen.
- (4) If this section is not complied with before the end of the payment day, the persons who are directors of the company on that day continue to be under the obligation imposed by subsection (1) until this section is complied with.

222AOBA Directors to cause company to remit or to go into voluntary administration or liquidation—non-cash benefits

- (1) The persons who are directors of the company on the day (the *benefit day*) on which the benefit or benefits (referred to in paragraph 222AOA(1)(c)) are provided must cause the company to do at least one of the following before the end of the benefit day:
 - (a) comply with Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953* in relation to each benefit provided on the benefit day;
 - (b) make an agreement with the Commissioner under section 222ALA in relation to the company's liability under that Subdivision in respect of each such benefit;
 - (c) appoint an administrator of the company under section 436A of the *Corporations Act 2001*;
 - (d) begin to be wound up within the meaning of that Act.
- (2) This section is complied with when:
 - (a) the company complies as mentioned in paragraph (1)(a); or
 - (b) the company makes an agreement as mentioned in paragraph (1)(b); or
 - (c) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
or
 - (d) the company begins to be wound up within the meaning of that Act;whichever first happens, even if the directors did not cause the event to happen.

- (3) If this section is not complied with before the end of the benefit day, the persons who are directors of the company on that day continue to be under the obligation imposed by subsection (1) until this section is complied with.

222AOC Penalty for directors in office on or before due date

- (1) If section 222AOB is not complied with on or before the due date, each person who was a director of the company at any time during the period beginning on the first deduction day and ending on the due date is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the company's liability under a remittance provision in respect of deductions or amounts withheld:
- (a) that the company has deducted for the purposes of Division 1AAA, 3B or 4 of this Act, or withheld for the purposes of Division 12 in Schedule 1 to the *Taxation Administration Act 1953* (as the case requires); and
 - (b) whose due date is the same as the due date.
- (1A) If section 222AOBAA is not complied with before the end of the payment day, each person who is a director of the company on the payment day is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount or amounts that the company is required to pay under section 13-5 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the payment or payments relating to the payment day.
- (2) If section 222AOBA is not complied with before the end of the benefit day, each person who is a director of the company on the benefit day is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount or amounts that the company is required to pay under Subdivision 16-B in Schedule 1 to the *Taxation Administration Act 1953* in respect of the benefit or benefits provided on the benefit day.

222AOD Penalty for new directors

- (1) If:
- (a) after the due date, a person becomes, or again becomes, a director of the company at a time when section 222AOB has not yet been complied with; and

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(b) at the end of 14 days after the person becomes a director, that section has still not been complied with;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the liability referred to in subsection 222AOC(1).

(1A) If:

(a) after the payment day, a person becomes, or again becomes, a director of the company at a time when section 222AOBAA has not yet been complied with in relation to the payment or payments relating to the payment day; and

(b) at the end of 14 days after the person becomes a director, that section has still not been complied with in relation to that payment or those payments;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the liability referred to in subsection 222AOC(1A).

(2) If:

(a) after the benefit day, a person becomes, or again becomes, a director of the company at a time when section 222AOBA has not yet been complied with in relation to the benefit or benefits provided on the benefit day; and

(b) at the end of 14 days after the person becomes a director, that section has still not been complied with in relation to that benefit or those benefits;

the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the liability referred to in subsection 222AOC(2).

222AOE Commissioner must give 14 days' notice before recovering penalty

The Commissioner is not entitled to recover from a person a penalty payable under this Subdivision until the end of 14 days after the Commissioner gives to the person a notice that:

(a) sets out details of the unpaid amount of the liability referred to in subsection 222AOC(1), (1A) or (2) (whichever relates to the penalty); and

- (b) states that the person is liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount, but that the penalty will be remitted if, at the end of 14 days after the notice is given:
- (i) the liability has been discharged; or
 - (ii) an agreement relating to the liability is in force under section 222ALA; or
 - (iii) the company is under administration within the meaning of the *Corporations Act 2001*; or
 - (iv) the company is being wound up.

222AOF How notice may be given

- (1) If it appears from ASIC documents that a person is, or has been within the last 7 days, a director of the company, the Commissioner may give the person a notice under section 222AOE by leaving it at, or sending it by post to, an address that appears from such documents to be, or to have been within the last 7 days, the person's place of residence or business.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* are also relevant to giving a notice under section 222AOE.

- (2) In this section:

ASIC document means a return:

- (a) lodged with the Australian Securities and Investments Commission under section 205A, 205B or 346C of the *Corporations Act 2001*; or
- (b) lodged with a person under a law that, for the purposes of the *Corporations Act 2001*, is a previous law corresponding to section 205A, 205B or 346C of that Act.

222AOG Remission of penalty if section 222AOB, 222AOBAA or 222AOBA complied with before notice period ends

If:

- (a) a penalty is payable by a person under this Subdivision; and
- (b) section 222AOB, 222AOBAA or 222AOBA (whichever relates to the penalty) is complied with at a time when the Commissioner has not yet given the person a notice under

Section 222AOH

section 222AOE, or within 14 days after the Commissioner gives the person such a notice;
the penalty is remitted because of this section.

222AOH Effect of director paying penalty or company discharging underlying liability

- (1) If one or more persons are liable to a penalty under this Subdivision, the following are *parallel liabilities*:
 - (a) the liability of that person, or of each of those persons, to the penalty;
 - (b) the liability referred to in subsection 222AOC(1), (1A) or (2) (whichever relates to the penalty);
 - (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).
- (2) This means that if, at a particular time:
 - (a) an amount is paid or applied towards discharging one of the parallel liabilities; or
 - (b) because of section 222AHA, one of the parallel liabilities is discharged to the extent of a particular amount;each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

222AOI Director's rights of indemnity and contribution

A person who pays an amount under section 222AOC or 222AOD has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
 - (b) against the company or anyone else;
- as if the payment had been made under a guarantee:
- (c) of the liabilities referred to in section 222AOC; and
 - (d) under which the person, and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Subdivision, were jointly and severally liable as guarantors.

222AOJ Defences

- (1) This section has effect for the purposes of:
 - (a) proceedings to recover from a person a penalty payable under this Subdivision; or
 - (b) proceedings under section 222AOI against a person of the kind referred to in paragraph 222AOI(d).
- (2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time when:
 - (a) the person was a director; and
 - (b) the directors were under the obligation to comply with subsection 222AOB(1) or 222AOBAA(1).
- (3) It is also a defence if it is proved that:
 - (a) the person took all reasonable steps to ensure that the directors complied with subsection 222AOB(1), 222AOBAA(1) or 222AOBA(1) (whichever is relevant); or
 - (b) there were no such steps that the person could have taken.
- (4) In subsection (3):

reasonable means reasonable having regard to:

 - (a) when, and for how long, the person was a director and took part in the management of the company; and
 - (b) all other relevant circumstances.

Subdivision C—Company failing to pay estimate under Division 8

222APA Application

This Subdivision applies if a company incorporated under the *Corporations Act 2001* becomes liable under section 222AHA to pay an estimate.

222APB Directors to cause company to pay estimate or to go into voluntary administration or liquidation

- (1) The persons who are directors of the company from time to time on and after the day when the Commissioner sent to the company

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notice of the estimate must cause the company to do at least one of the following within 14 days after that day:

- (a) pay to the Commissioner the amount of the estimate;
 - (b) make an agreement with the Commissioner under section 222ALA in relation to the company's liability to pay the estimate;
 - (c) appoint an administrator of the company under section 436A of the *Corporations Act 2001*;
 - (d) begin to be wound up within the meaning of that Act.
- (2) This section is complied with when:
- (a) the company's liability to pay the estimate is discharged; or
 - (b) the company makes an agreement as mentioned in paragraph (1)(b); or
 - (c) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (d) the company begins to be wound up within the meaning of that Act;

whichever first happens, even if the directors did not cause the event to happen.

- (3) If this section is not complied with before the end of the 14 days, the persons who are directors of the company from time to time after the 14 days continue to be under the obligation imposed by subsection (1) until this section is complied with.

222APC Penalty for directors in office within 14 days after notice of estimate

If section 222APB is not complied with before the end of the 14 days, each person who was a director of the company at any time during the 14 days is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the estimate.

222APD Penalty for new directors

If:

- (a) after the end of the 14 days, a person becomes, or again becomes, a director of the company at a time when section 222APB has not yet been complied with; and

- (b) at the end of 14 days after the person becomes a director, that section has still not been complied with;
the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the estimate.

222APE Commissioner must give 14 days' notice before recovering penalty

- (1) The Commissioner is not entitled to recover from a person a penalty payable under this Subdivision until the end of 14 days after the Commissioner gives to the person a notice (*the penalty notice*) that:
- (a) sets out details of the unpaid amount of the estimate; and
 - (b) if the penalty notice is given within 14 days after the Commissioner sent to the company notice of the estimate—states that at the end of those 14 days the person will become liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount unless:
 - (i) the company's liability to pay the estimate has been discharged; or
 - (ii) an agreement relating to that liability is in force under section 222ALA; or
 - (iii) the company is under administration within the meaning of the *Corporations Act 2001*; or
 - (iv) the company is being wound up; and
 - (c) if the penalty notice is given more than 14 days after the Commissioner sent to the company notice of the estimate—states that the person is liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount; and
 - (d) states that the penalty will be remitted if, at the end of 14 days after the penalty notice is given:
 - (i) the company's liability to pay the estimate has been discharged; or
 - (ii) an agreement relating to that liability is in force under section 222ALA; or
 - (iii) the company is under administration within the meaning of the *Corporations Act 2001*; or
 - (iv) the company is being wound up.

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- (2) Section 222AOF applies to a notice under this section in the same way as to a notice under section 222AOE.

222APF Remission of penalty if section 222APB complied with before notice period ends

If:

- (a) a penalty is payable by a person under this Subdivision; and
- (b) section 222APB is complied with at a time when the Commissioner has not yet given the person a notice under section 222APE, or within 14 days after the Commissioner gives the person such a notice;

the penalty is remitted because of this section.

222APG Effect of director paying penalty or company discharging liability in respect of estimate

- (1) If one or more persons are liable to a penalty under this Subdivision, the following are *parallel liabilities*:
- (a) the liability of that person, or of each of those persons, to the penalty;
 - (b) the company's liability to pay the estimate;
 - (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).
- (2) This means that if, at a particular time:
- (a) an amount is paid or applied towards discharging one of the parallel liabilities; or
 - (b) because of section 222AHA, one of the parallel liabilities is discharged to the extent of a particular amount;
- each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

222APH Director's rights of indemnity and contribution

A person who pays an amount under section 222APC or 222APD has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and

- (b) against the company or anyone else;
as if the payment had been made under a guarantee:
- (c) of the liability to pay the estimate; and
- (d) under which the person, and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Subdivision, were jointly and severally liable as guarantors.

222API Defences

- (1) This section has effect for the purposes of:
 - (a) proceedings to recover from a person a penalty payable under this Subdivision; or
 - (b) proceedings under section 222APH against a person of the kind referred to in paragraph 222APH(d).
- (2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time when:
 - (a) the person was a director; and
 - (b) the directors were under the obligation to comply with subsection 222APB(1).
- (3) It is also a defence if it is proved that:
 - (a) the person took all reasonable steps to ensure that the directors complied with subsection 222APB(1); or
 - (b) there were no such steps that the person could have taken.
- (4) In subsection (3):
reasonable means reasonable having regard to:
 - (a) when, and for how long, the person was a director and took part in the management of the company; and
 - (b) all other relevant circumstances.

Subdivision D—Company contravening payment agreement under Division 8

222AQA Directors to ensure that company complies with payment agreement

- (1) If a company incorporated under the *Corporations Act 2001* makes an agreement with the Commissioner under section 222ALA of this Act, the persons who are directors of the company from time to time must cause the company to comply with the agreement.
- (2) If the company contravenes the agreement by failing to pay a specified amount on or before the specified day, or by contravening a special condition, each person who was a director of the company at any time during the period beginning on the day when the agreement was made and ending on the day of the contravention is liable to pay to the Commissioner, by way of penalty, an amount equal to the balance payable under the agreement.

222AQB Effect of director paying penalty or company discharging liability

- (1) If one or more persons are liable under section 222AQA to a penalty equal to the balance payable under the agreement, the following are *parallel liabilities*:
 - (a) the liability of that person, or of each of those persons, to the penalty;
 - (b) the company's liability to pay that balance;
 - (c) liability under a judgment, so far as it is based on a liability referred to in paragraph (a) or (b).
- (2) This means that if, at a particular time, an amount is paid or applied towards discharging one of the parallel liabilities, each of the others that is in existence at that time is discharged to the extent of the same amount. However, this subsection does not discharge a liability to a greater extent than the amount of the liability.

- (3) If, because of subsection (2), the company's liability to pay that balance is discharged to the extent of a particular amount:
- (a) the Commissioner may determine in writing how he or she would have applied the amount under subsection 222ALB(1) if it had been paid under the agreement; and
 - (b) if the Commissioner does so—section 222AHA has effect as if the amount had been paid under the agreement and then applied as set out in the determination.

222AQC Director's rights of indemnity and contribution

A person who pays an amount under section 222AQA has the same rights:

- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
 - (b) against the company or anyone else;
- as if the payment had been made under a guarantee:
- (c) of the company's liability to pay the balance payable under the agreement; and
 - (d) under which the person and every other person who was a director of the company as mentioned in subsection 222AQA(2) were jointly and severally liable as guarantors.

222AQD Defences

- (1) This section has effect for the purposes of:
- (a) proceedings to recover from a person a penalty payable under section 222AQA; or
 - (b) proceedings under section 222AQC against a person of the kind referred to in paragraph 222AQC(d).
- (2) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at any time, during the period referred to in subsection 222AQA(2), when the person was a director.
- (3) It is also a defence if it is proved that:
- (a) the person took all reasonable steps to ensure that the company complied with the agreement; or
 - (b) there were no such steps that the person could have taken.

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(4) In subsection (3):

reasonable means reasonable having regard to:

- (a) when, and for how long, the person was a director and took part in the management of the company; and
 - (b) all other relevant circumstances.
- (5) If the person was a director of the company at the time when the agreement was made, he or she is not entitled to rely on a defence under subsection (2) or (3) unless it is also proved that, at that time, the person had reasonable grounds to expect, and did expect, that the company would comply with the agreement.

Division 10—Miscellaneous

222ARA This Part not to limit or exclude Chapter 5 of the Corporations Act

To avoid doubt, this Part is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001*, in so far as that Chapter can operate concurrently with this Part.

Part VIIA—Registration of tax agents

Division 1—Interpretation

251A Interpretation

In this Part, unless the contrary intention appears:

application means an application to a Board in pursuance of this Part.

approved form means a form approved in writing by the Board concerned for the purposes of the provision in which the expression appears.

authorised trustee company means a company that is authorised by or under a law of the Commonwealth, a State or a Territory to act as an executor, administrator and trustee.

BAS provisions has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

BAS service has the meaning given by section 251L.

Board means a Tax Agents' Board constituted, or deemed to be constituted, under this Part.

conviction, in relation to a person, in relation to an offence, includes the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

executive officer, in relation to a company, means:

- (a) a director of the company;
- (b) a secretary of the company; or
- (c) a person (by whatever name called) who is concerned in, or takes part in, the management of the company.

registered tax agent means a person or partnership who or which is registered as a tax agent in pursuance of this Part.

serious taxation offence means:

- (a) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, being an offence that relates to a tax liability within the meaning of the *Taxation Administration Act 1953*; or
- (c) an offence that is:
 - (i) a taxation offence within the meaning of Part III of the *Taxation Administration Act 1953*; and
 - (ii) punishable on conviction by either or both of the following:
 - (A) a fine exceeding 20 penalty units;
 - (B) imprisonment.

taxation law means an Act of which the Commissioner has the general administration, or regulations under such an Act, but does not include:

- (a) Customs Acts as defined in section 4 of the *Customs Act 1901*; or
- (b) Excise Acts as defined in section 4 of the *Excise Act 1901*; or
- (d) a sales tax law as defined in section 5 of the *Sales Tax Assessment Act 1992*; or
- (e) *A New Tax System (Goods and Services Tax Transition) Act 1999*.

251B Territories

For the purposes of this Part:

- (a) the Australian Capital Territory and Norfolk Island shall each be deemed to be part of the State of New South Wales;
- (c) the Northern Territory shall be deemed to be part of the State of South Australia; and
- (d) the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands shall each be deemed to be part of the State of Western Australia.

251BA Companies in which qualified directors have a substantial interest

- (1) For the purposes of this Part, a company shall be taken to be a company in which qualified directors have a substantial interest if:

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- (a) shares in the company carrying between them the right to exercise not less than 25 per cent of the voting power in the company are beneficially owned by a director who, or by directors each of whom, is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters; and
 - (b) the voting power in the company, to the extent to which it relates to those shares, is not controlled, or capable of being controlled, by a person or persons other than the director or directors concerned.
- (2) A reference in subsection (1) to control of the voting power in a company is a reference to control that is direct or indirect and includes a reference to control that is exercisable as a result or by means of arrangements or practices:
- (a) whether or not having legal or equitable force; and
 - (b) whether or not based on legal or equitable rights.

251BB Non-exempt companies

For the purposes of this Part, a company shall be taken to be a non-exempt company as at a particular time unless either of the following paragraphs applies:

- (a) all of the following conditions are satisfied:
 - (i) the company was registered as a tax agent immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (No. 2) 1988*;
 - (ii) the company was registered as a tax agent at all times after that commencement and before that time;
 - (iii) at all times after that commencement and before that time, shares in the company carrying between them:
 - (A) the right to exercise more than one-half of the voting power in the company;
 - (B) the right to receive more than one-half of any dividends that may be paid by the company; and
 - (C) the right to receive more than one-half of any distribution of capital of the company;were beneficially owned by persons who, immediately before that commencement, beneficially owned shares

in the company carrying between them rights of those kinds;

(b) the company is an authorised trustee company.

251BC Fit and proper persons to prepare income tax returns

- (1) Without limiting the generality of an expression used in this Part, but subject to this section, a person is not a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters, as at a particular time, if:
- (a) the person is not a natural person;
 - (b) both of the following conditions are satisfied:
 - (i) the person was not registered as a tax agent, or as a nominee, for the purposes of this Part immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (No. 2) 1988*;
 - (ii) the person does not hold such qualifications (whether academic, by way of experience or otherwise) as are prescribed;
 - (c) the person has not attained the age of 18 years;
 - (d) the person is not of good fame, integrity and character;
 - (e) the person has been convicted of a serious taxation offence during the previous 5 years; or
 - (f) the person is under sentence of imprisonment for a serious taxation offence.
- (2) Nothing in paragraph (1)(e) or (f) limits the generality of paragraph (1)(d).
- (3) Where:
- (a) a Board is required, in considering an application for:
 - (i) re-registration as a tax agent; or
 - (ii) re-registration of a nominee of a tax agent;to decide whether the Board is satisfied that a particular person is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (b) the person is not under sentence of imprisonment for a serious taxation offence; and
 - (c) the Board is satisfied that, because of special circumstances:

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- (i) a conviction of the person;
 - (ii) the doing of an act or thing by the person; or
 - (iii) an omission of the person;
- should be disregarded;

the Board may, in making the decision referred to in paragraph (a), disregard the conviction, the doing of the act or thing or the omission, as the case requires.

(4) For the purposes of this section:

- (a) a person who has been released from serving a part of a sentence of imprisonment on parole or upon licence to be at large shall be taken to be under sentence of imprisonment during any period during which action can be taken by way of requiring the person to serve the whole or a part of the remainder of that sentence; and
- (b) a person who has been released by a court from serving the whole or a part of a sentence of imprisonment upon the person giving a good behaviour security shall be taken to be under sentence of imprisonment during any period during which action can be taken for a breach of a condition of that security.

(5) A reference in subsection (4) to a good behaviour security given by a person is a reference to a security given by the person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to his or her behaviour.

Division 2—Tax Agents' Boards

251C Tax Agents' Boards

For the purposes of this Part there shall be in each State a Tax Agents' Board.

251D Constitution of Boards

- (1) Subject to this Part, each Board shall consist of 3 members who shall be:
 - (a) an officer of the Australian Taxation Office appointed by the Minister; and
 - (b) 2 other persons appointed by the Minister.
- (1A) The Minister shall appoint as Chairperson one of the persons referred to in paragraph (1)(b).
- (2) A vacancy in the office of a member shall not invalidate the proceedings of a Board.
- (3) A member of a Board holds office on a part-time basis.

251DA Remuneration and allowances

- (1) A member of a Board shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

251E Conduct of business of Board

At all meetings of a Board:

- (a) any 2 members shall form a quorum;
- (b) all questions shall be decided by a majority of the members present;
- (c) if the Chairperson is not present—the members present shall elect one of their number to preside; and

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- (d) the Chairperson or member presiding shall have a deliberative, but not a casting, vote.

251F Board not to be sued

No action or suit shall be brought or maintained against any person who is or has been a member of a Board for any nonfeasance or misfeasance in connexion with his duties.

251G Summoning of witnesses etc.

A Board or a member of a Board shall have such powers as are prescribed with respect to the taking of evidence, the administration of oaths or affirmations, the summoning of witnesses and the production of documents.

Division 3—Registration of tax agents

Subdivision A—Original registration of tax agents

251J Applications for original registration of tax agents

- (1) A person or partnership desiring to be registered as a tax agent may make application to a Board for registration.
- (2) Every application under this section shall be accompanied by a lodgment fee of \$80, or such higher fee as is prescribed, which the Board shall pay to the Commissioner.
- (3) An application shall be in the approved form and shall be accompanied by such information as is required by the form to be provided.

251JA Original registration of tax agents

- (1) The Board shall register the applicant as a tax agent if the applicant satisfies the Board that:
 - (a) if the applicant is a natural person:
 - (i) the applicant is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters; and
 - (ii) the applicant is not an undischarged bankrupt;
 - (b) if the applicant is a partnership:
 - (i) a partner specified in the application as the original nominee of the partnership is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (ii) in the case of each partner who is a natural person—the partner:
 - (A) has attained the age of 18 years at the date on which the application is made; and
 - (B) is of good fame, integrity and character;
 - (iii) in the case of each partner that is a company—each executive officer of the company:

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- (A) has attained the age of 18 years at the date on which the application is made; and
- (B) is of good fame, integrity and character; and
- (iv) there is no partner who is an undischarged bankrupt; or
- (c) if the applicant is a company:
 - (i) a person employed by the company and specified in the application as the original nominee of the company is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (ii) each executive officer of the company:
 - (A) has attained the age of 18 years at the date on which the application is made; and
 - (B) is of good fame, integrity and character;
 - (iii) except where the company is an authorised trustee company—the company is a company in which qualified directors have a substantial interest; and
 - (iv) the company has not gone into liquidation.
- (2) The Board shall refuse to register the applicant in any other case.
- (3) Where a Board makes a decision refusing to register an applicant as a tax agent, the Board shall cause to be served on the applicant a notice in writing setting out that decision and giving the reasons for that decision.

Subdivision B—Re-registration of tax agents

251JB Applications for re-registration of tax agents

- (1) A registered tax agent may apply to the Board by which the tax agent was registered for re-registration.
- (2) An application shall be accompanied by a lodgment fee of \$40, or such higher fee as is prescribed, which the Board shall pay to the Commissioner.
- (3) An application shall be in the approved form and shall be accompanied by such information as is required by the form to be provided.

- (4) An application for re-registration as a tax agent shall be made:
 - (a) during the period:
 - (i) commencing 60 days before; and
 - (ii) ending 30 days before;the day on which the existing registration ceases to be in force; or
 - (b) if the Board, on request in writing made by the tax agent, allows the application to be made at a later time but before the existing registration ceases to be in force—before that later time.
- (5) Where a Board makes a decision refusing to allow a later time for the making of an application for re-registration, the Board shall cause to be served on the applicant a notice in writing setting out that decision and giving the reasons for that decision.

251JC Re-registration of tax agents

- (1) The Board shall re-register the applicant as a tax agent if the applicant satisfies the Board that:
 - (a) if the applicant is a natural person:
 - (i) the applicant is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters; and
 - (ii) the applicant is not an undischarged bankrupt;
 - (b) if the applicant is a partnership:
 - (i) a partner specified in the application as the original nominee of the partnership is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (ii) in the case of each partner who is a natural person—the partner:
 - (A) has attained the age of 18 years at the date on which the application is made; and
 - (B) is of good fame, integrity and character;
 - (iii) in the case of each partner that is a company—each executive officer of the company:
 - (A) has attained the age of 18 years at the date on which the application is made; and
 - (B) is of good fame, integrity and character; and

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- (iv) there is no partner who is an undischarged bankrupt;
 - (c) if the applicant is a company:
 - (i) a person employed by the company and specified in the application as the original nominee of the company is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (ii) each executive officer of the company:
 - (A) has attained the age of 18 years at the date on which the application is made; and
 - (B) is of good fame, integrity and character;
 - (iii) if the company is a non-exempt company—the company is a company in which qualified directors have a substantial interest; and
 - (iv) the company has not gone into liquidation; and
 - (d) in all cases—the applicant has not permanently ceased to carry on business as a tax agent.
- (2) The Board shall refuse to re-register the applicant in any other case.
- (3) Where a Board makes a decision refusing to re-register an applicant as a tax agent, the Board shall cause to be served on the applicant a notice in writing setting out that decision and giving the reasons for that decision.
- (4) Where:
- (a) a Board makes a decision refusing to re-register an applicant as a tax agent; and
 - (b) notice of that decision was served on the applicant at a time (in this subsection called the *notice time*) after the time (in this subsection called the *expiry time*) when the existing registration ceased to be in force;
- the applicant shall be taken to have been registered as a tax agent during the period commencing at the expiry time and ending at the notice time.

Subdivision C—Effect of changes in constitution of partnerships

251JD Registration of a partnership terminated if constitution changes

Where:

- (a) a partnership is registered as a tax agent; and
 - (b) there is a change in the constitution of the partnership;
- the registration shall be taken to be terminated at the time of that change.

Subdivision D—Changes in constitution of partnerships—registration of successor tax agents

251JE Applications for registration of successor tax agents

(1) Where:

- (a) the registration of a partnership (in this section called the *original partnership*) is terminated because of section 251JD;
- (b) the registration of the original partnership was not suspended immediately before the termination; and
- (c) both of the following conditions are satisfied in relation to a particular natural person:
 - (i) the person was a partner, and a registered nominee, of the original partnership immediately before the termination;
 - (ii) the person is not an undischarged bankrupt;the person may apply to a Board for registration as a tax agent.

(2) Where:

- (a) the registration of a partnership (in this section also called the *original partnership*) is terminated because of section 251JD;
- (b) the registration of the original partnership was not suspended immediately before the termination; and
- (c) both of the following conditions are satisfied in relation to another partnership (in this section called the *new partnership*):

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- (i) a partner was a partner, and a registered nominee, of the original partnership immediately before the termination;
 - (ii) there is no partner who is an undischarged bankrupt;
- the new partnership may apply to a Board for registration as a tax agent.
- (3) An application shall be in the approved form and shall be accompanied by such information as is required by the form to be provided.
 - (4) Subject to subsection (9), an application shall be made within 30 days after the termination of the registration of the original partnership.
 - (5) An application by a natural person may specify, as the original nominee or original nominees of the natural person, a person who, or persons each of whom:
 - (a) was a registered nominee of the original partnership immediately before the termination; and
 - (b) is an employee of the natural person.
 - (6) An application made by a new partnership shall specify, as an original nominee of the partnership, a partner of the kind referred to in subparagraph (2)(c)(i).
 - (7) An application made by a new partnership may specify, as an additional original nominee or original nominees of the partnership, a person who, or persons each of whom:
 - (a) was a registered nominee of the original partnership immediately before the termination; and
 - (b) is a partner, or an employee, of the new partnership.
 - (8) Where:
 - (a) a Board receives a document purporting to be an application made in accordance with this section; and
 - (b) the Board is of the opinion that the document is not an application made in accordance with this section;the Board shall cause to be served on the person who lodged the document a notice in writing setting out that opinion.
 - (9) Where:

- (a) a Board causes to be served a notice under subsection (8) relating to a document purporting to be an application made in accordance with this section in consequence of a change in the constitution of the original partnership;
- (b) the purported application was made within 30 days after the termination of the registration of the original partnership; and
- (c) the notice under subsection (8) was served after the end of the period of 21 days after the termination of the registration of the original partnership;

the person who made the purported application may make an application under this section in consequence of the change in the constitution of the original partnership within 7 days after the day of service of the notice under subsection (8).

251JF Registration of successor

The Board shall register the applicant as a tax agent within 60 days after receiving the application.

Subdivision E—Duration of registration of tax agents

251JG Registration of tax agents to be in force for 3 years

- (1) The registration of a tax agent granted by a Board comes into force, or shall be deemed to have come into force, as the case requires:
 - (a) if the registration was granted under section 251JA—on the day on which it was granted;
 - (b) if the registration was granted under section 251JC by way of the re-registration of an existing registration—immediately after the existing registration ceases or ceased to be in force; or
 - (c) if the registration was granted under section 251JF in consequence of a change in the constitution of a partnership:
 - (i) if the tax agent is a natural person—immediately after that change; or
 - (ii) if the tax agent is a partnership (in this subparagraph called the *new partnership*)—immediately after whichever of the following times is the later:
 - (A) the time of that change;

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- (B) the time of the formation of the new partnership.
- (2) The registration of a tax agent granted by a Board under section 251JA or 251JC shall, unless terminated, cancelled or surrendered under this Act, continue in force for a period of 3 years.
- (3) The registration of a tax agent granted by a Board under section 251JF in consequence of a change in the constitution of a partnership shall, unless terminated, cancelled or surrendered under this Act, continue in force until the end of the period (including a period that is applicable because of one or more applications of this subsection) during which the registration of the partnership would have been in force if it had not been terminated because of section 251JD.

Subdivision F—Surrender of registration of tax agents

251JH Surrender of registration

A person or partnership that is registered as a tax agent may, by notice in writing to the Board by which the tax agent was registered, surrender that registration.

Subdivision G—Termination of registration of tax agents other than partnerships

251JK Death of natural person

The registration of a natural person as a tax agent terminates on death.

251JM Companies ceasing to exist

The registration of a company as a tax agent terminates upon the company ceasing to exist.

Subdivision H—Cancellation or suspension of registration of tax agents

251K Cancellation or suspension of registration of tax agents

- (1) Where a Board is satisfied that a tax agent, or a registered nominee of a tax agent, has been convicted of:
 - (a) an offence against section 8N, 8T or 8U of the *Taxation Administration Act 1953*, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law (within the meaning of the *Taxation Administration Act 1953*); or
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*; being an offence that relates to an offence of the kind referred to in paragraph (a) of this subsection;the Board shall suspend or cancel the registration of the tax agent.
- (1B) Nothing in subsection (1) shall be taken to restrict or limit, by implication, the generality of subsection (2).
- (2) A Board may suspend or cancel the registration of any tax agent upon being satisfied that:
 - (a) any return which has been prepared by or on behalf of the tax agent is false in any material particular; unless the tax agent establishes to the satisfaction of the Board that he had no knowledge of the falsity or that the falsity was due to his inadvertence;
 - (b) the tax agent:
 - (i) has neglected the business of a principal; or
 - (ii) has been guilty of misconduct as a tax agent; or
 - (c) a registered nominee of the tax agent is not a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (d) if the tax agent is a natural person—the tax agent is not a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters;
 - (e) if the tax agent is a partnership:
 - (i) in the case of a partner who is a natural person—the partner:

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- (A) has not attained the age of 18 years; or
 - (B) is not of good fame, integrity and character; or
 - (ii) in the case of a person who is an executive officer of a partner that is a company—the person:
 - (A) has not attained the age of 18 years; or
 - (B) is not of good fame, integrity and character; or
 - (f) if the tax agent is a company—an executive officer of the company:
 - (i) has not attained the age of 18 years; or
 - (ii) is not of good fame, integrity and character.
- (3) If the registration of a tax agent is not already suspended, a suspension of the registration of the tax agent shall be for such period as the Board concerned thinks fit.
- (3A) If the registration of a tax agent is already suspended, a suspension of the registration of the tax agent shall be for such further period as the Board concerned thinks fit, being a period commencing at the end of the period for which the registration of the tax agent is already suspended.
- (3B) The period, or further period, of a suspension under subsection (1) shall not be less than 3 months.
- (3C) A Board shall cancel the registration of a tax agent who is a natural person if:
 - (a) the person becomes an undischarged bankrupt; or
 - (b) the person permanently ceases to carry on business as a tax agent.
- (3D) A Board shall cancel the registration of a tax agent that is a non-exempt company if the company ceases to be a company in which qualified directors have a substantial interest.
- (4) A Board shall cancel the registration of a tax agent which is a partnership or a company:
 - (a) in a case where the tax agent is a partnership:
 - (i) if there is no partner registered as a nominee in respect of the tax agent; or
 - (ii) if any partner becomes an undischarged bankrupt;

- (b) in a case where the tax agent is a company:
 - (i) if there is no nominee registered in respect of the tax agent; or
 - (ii) if the company goes into liquidation; or
 - (c) if the tax agent permanently ceases to carry on business as a tax agent.
- (5) Where a Board makes a decision suspending or cancelling the registration of a tax agent, the Board shall cause to be served on the tax agent a notice in writing setting out that decision and giving the reasons for that decision.
- (6) A person or partnership whose registration as a tax agent is suspended shall, except for the purposes of section 251BB or 251BC, Division 3, 4 or 6 or section 251Q, be taken not to be registered as a tax agent while that registration remains suspended.
- (7) A suspension of the registration of a tax agent continues notwithstanding that, during the period of suspension, the tax agent is re-registered.

Division 4—Registration of nominees of tax agents

251KA Original nominee to be registered as a nominee

- (1) Where a partnership or company is registered by a Board as a tax agent under section 251JA or 251JC, the person specified in the application for registration or re-registration as the original nominee of the partnership or company, as the case may be, shall be registered by the Board as a nominee of the tax agent for the purposes of this Part.
- (2) Where a partnership or company is registered as a tax agent during a particular period because of subsection 251JC(4), the person specified in the application for re-registration as the original nominee of the partnership or company, as the case may be, shall be taken to have been registered as a nominee of the tax agent for the purposes of this Part during that period.
- (3) Where a person or partnership is registered as a tax agent under section 251JF, the person or each of the persons specified in the application for registration as the original nominee or as the original nominees of the person or partnership, as the case may be, shall be registered by the Board concerned as a nominee of the tax agent for the purposes of this Part.

251KB Applications for registration or re-registration of nominees

- (1) A person or partnership may, in an application made for the purpose, request a Board to register or re-register, as a nominee of the person or partnership for the purposes of this Part:
 - (a) in the case of a partnership—a partner or an employee of the partnership; or
 - (b) in the case of a natural person or company—an employee of the person or company.
- (2) An application shall be accompanied by a lodgment fee of:
 - (a) if the proposed nominee is not already registered as a nominee of the person or partnership—\$80, or such higher fee as is prescribed; or

- (b) if the proposed nominee is already registered as a nominee of the person or partnership—\$5, or such higher fee as is prescribed;
which the Board shall pay to the Commissioner.
- (3) An application shall be in the approved form and shall be accompanied by such information as is required by the form to be provided.
- (4) An application for re-registration as a nominee of a tax agent shall be made:
 - (a) during the period:
 - (i) commencing 60 days before; and
 - (ii) ending 30 days before;the day on which the existing registration ceases to be in force; or
 - (b) if the Board, on request in writing made by the tax agent, allows the application to be made at a later time but before the existing registration ceases to be in force—before that later time.
- (5) Where a Board makes a decision refusing to allow a later time for the making of an application for re-registration, the Board shall cause to be served on the applicant and on the proposed nominee a notice in writing setting out that decision and giving the reasons for that decision.

251KC Registration and re-registration of nominees of tax agents

- (1) The Board shall register or re-register the proposed nominee as a nominee of the tax agent for the purposes of this Part if the Board is satisfied that the proposed nominee is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters.
- (2) The Board shall refuse to register or re-register the proposed nominee in any other case.
- (3) Where the Board makes a decision refusing to register or re-register a proposed nominee, the Board shall cause to be served on the applicant and on the proposed nominee a notice in writing setting out that decision and giving the reasons for that decision.

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- (4) Where:
- (a) a Board makes a decision refusing to re-register a proposed nominee as a nominee of a tax agent;
 - (b) notice of that decision was served on the proposed nominee at a time (in this subsection called the *notice time*) after the time (in this subsection called the *expiry time*) when the existing registration ceased to be in force; and
 - (c) the tax agent was registered during the whole or a part of the period (which whole or part is in this subsection called the *post-expiry period*) commencing at the expiry time and ending at the notice time;
- the proposed nominee shall be taken to have been registered as a nominee of the tax agent during the post-expiry period.

251KD Duration of registration of nominees

- (1) The registration of a nominee granted by a Board comes into force, or shall be deemed to have come into force, as the case requires:
- (a) if the registration was granted by way of the re-registration of an existing registration—immediately after the existing registration ceases or ceased to be in force;
 - (b) if the registration was granted under section 251KA—at the time when the registration of the tax agent concerned came or comes into force; or
 - (c) in any other case—on the day on which it was granted.
- (2) A person ceases to be a registered nominee of a tax agent if:
- (a) in a case where the tax agent is a natural person—the nominee ceases to be an employee of the tax agent;
 - (b) in a case where the tax agent is a partnership—there comes a time when the nominee is neither a member of the partnership nor an employee of the partnership;
 - (c) in a case where the tax agent is a company—the nominee ceases to be an employee of the company;
 - (d) the tax agent notifies the Board by which it was registered that the tax agent no longer desires that person to be its nominee;
 - (e) the registration of the nominee is cancelled;
 - (f) the nominee dies; or

- (g) the registration of the tax agent is terminated, cancelled, surrendered or otherwise ceases to be in force.

251KE Cancellation of registration of nominees

- (1) A Board may cancel the registration of a nominee of a tax agent if the Board is satisfied that the nominee is not a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters.
- (2) Where a Board makes a decision cancelling the registration of a nominee of a tax agent, the Board shall cause to be served on the tax agent and on the nominee a notice in writing setting out that decision and giving the reasons for that decision.

Division 5—Refund of lodgment fees

251KF Refund of lodgment fees if application withdrawn

Where:

- (a) an application under section 251J, 251JB or 251KB is withdrawn; and
- (b) the application was neither granted nor refused before the withdrawal;

the Commissioner shall refund the lodgment fee paid in respect of the application.

Division 6—Notification obligations of tax agents etc.

251KG Tax agents who are natural persons

- (1) A natural person who is registered as a tax agent shall forthwith notify the Board by which the tax agent was registered if:
 - (a) the person becomes an undischarged bankrupt;
 - (b) the person permanently ceases to carry on business as a tax agent; or
 - (c) a person who is a registered nominee of the tax agent for the purposes of this Part ceases to be employed by the tax agent.

Penalty: 5 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

251KH Tax agents that are partnerships

- (1) A partnership that is registered as a tax agent shall forthwith notify the Board by which it was registered if:
 - (a) a partner becomes an undischarged bankrupt;
 - (b) a person becomes an executive officer of a partner that is a company;
 - (c) a person who is a registered nominee of the partnership for the purposes of this Part and was employed by the partnership at the time the person was last registered as a nominee ceases to be employed by the partnership; or
 - (d) the partnership permanently ceases to carry on business as a tax agent.

Penalty: 5 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

251KJ Changes in the constitution of partnerships

- (1) Where:
 - (a) a partnership is registered as a tax agent; and

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(b) there is a change in the constitution of the partnership;
each person who was a partner immediately before the change shall
forthwith notify the Board by which the tax agent was registered.

(1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) A person who was a partner in a partnership immediately before a
change in the constitution of the partnership is not guilty of an
offence against subsection (1) in relation to that change if another
person who was a partner in the partnership immediately before
that change complies with subsection (1).

Penalty: 5 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in
subsection (2), see subsection 13.3(3) of the *Criminal Code*.

251KK Tax agents that are companies

(1) A company that is registered as a tax agent shall forthwith notify
the Board by which it was registered if:

- (a) the company goes into liquidation;
- (b) any person who is a nominee of the company for the
purposes of this Part ceases to be employed by the company;
- (c) a person becomes an executive officer of the company; or
- (d) the company permanently ceases to carry on business as a tax
agent.

(2) A registered tax agent that is a non-exempt company shall
forthwith notify the Board if it has reasonable grounds to believe
that the company has ceased to be a company in which qualified
directors have a substantial interest.

Penalty: 5 penalty units.

(3) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 7—Privileges and duties of registered tax agents

251L Unregistered tax agents not to charge fees

- (1) Subject to this section, a person who is not a registered tax agent must not knowingly or recklessly demand or receive any fee for:
- (a) preparing or lodging on behalf of a taxpayer a return, notice, statement, application or other document about the taxpayer's liabilities under a taxation law; or
 - (b) giving advice about a taxation law on behalf of a taxpayer; or
 - (c) preparing or lodging on behalf of a taxpayer an objection under Part IVC of the *Taxation Administration Act 1953* against an assessment, determination, notice or decision under a taxation law; or
 - (d) applying for a review of, or instituting an appeal against, a decision on such an objection; or
 - (e) on behalf of a taxpayer, dealing with the Commissioner or a person who is exercising powers or performing functions under a taxation law.

Penalty: 200 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) A person shall not be entitled to sue for, recover or set-off any fee which he is prohibited by this section from demanding.
- (6) Subsection (1) does not apply to the provision of a BAS service on behalf of a taxpayer by:
- (a) a member (except a student member or retired member) of a recognised professional association; or
 - (b) a bookkeeper working under the direction of a registered tax agent; or
 - (c) where the BAS service is under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*—a person who provides payroll services to an employer; or
 - (d) where a BAS service relates to imports or exports to which an indirect tax law (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*) applies—a

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customs broker licensed under Part XI of the *Customs Act 1901*.

- (7) A **BAS service** is any of these:
- (a) preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision;
 - (b) giving advice about a BAS provision;
 - (c) dealing with the Commissioner or a person who is exercising powers or performing functions under a taxation law in relation to a BAS provision.
- (8) Subsection (1) does not apply to the provision of any of these services on behalf of a taxpayer by a barrister or solicitor who is acting in the course of his or her profession:
- (a) preparing or lodging a notice, application or other document about the taxpayer's liabilities under a taxation law;
 - (b) giving advice about a taxation law;
 - (c) preparing or lodging an objection under Part IVC of the *Taxation Administration Act 1953* against an assessment, determination, notice or decision under a taxation law;
 - (d) applying for a review of, or instituting an appeal against, a decision on such an objection or undertaking any litigation or proceedings about a taxation law;
 - (e) while acting for a trust or a deceased estate for which the barrister or solicitor is the trustee or legal personal representative, preparing or lodging a return or statement about the trust's or estate's liabilities, obligations or entitlements under a taxation law;
 - (f) dealing with the Commissioner or a person who is exercising powers or performing functions under a taxation law about any of the matters specified in paragraphs (a) to (e).
- (9) A member of a recognised professional association can provide BAS services through an entity for:
- (a) if the member is a partner in a partnership—the partnership;
or
 - (b) if the member is a director or employee of a company—the company.
- (10) A defendant does not bear an evidential burden in relation to a matter specified in subsection (6) or (8).

251LA Recognised professional associations

- (1) A **recognised professional association** is an organisation that:
 - (a) meets the requirements in subsections (2) to (10); or
 - (b) is a charitable institution or a public educational institution:
 - (i) that meets the requirements in subsections (2) to (4);
and
 - (ii) whose income is exempt from income tax under section 50-5 of the *Income Tax Assessment Act 1997*;
and
 - (iii) whose sole or principal activity is providing education, training and information about taxation.
- (2) The organisation must:
 - (a) be administered by a committee of management elected by and accountable to its members; and
 - (b) not be carried on for profit or gain (excluding a reasonable salary or honorarium) to:
 - (i) an office holder of the organisation; or
 - (ii) its members; or
 - (iii) members of bodies (**member bodies**) that are its members; and
 - (iv) any person who is a member of that committee of management.
- (3) The individuals who are members of that committee must be of good fame, integrity and character.
- (4) The organisation must have at least 1,000 financial members who have the right to vote at meetings of the organisation.
- (5) An individual or member body must not be eligible for membership of the organisation unless the individual, or each individual who is a member of the member body (except a student member), has completed the requirements for:
 - (a) a diploma or certificate in accounting from a college or institute of technical and further education involving at least 2 years' full time, or 4 years' part time, study; or
 - (b) an Australian tertiary qualification in accountancy involving at least 3 years' full time, or 6 years' part time, study; or

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- (c) some other similar qualification, or exemption from qualification, acceptable to the organisation; or
 - (d) admission as a legal practitioner in Australia.
- (6) Under the rules of the organisation, individuals who are its members or members of its member bodies and who carry on a profession must:
 - (a) be subject to rules controlling their conduct in the practice of that profession; and
 - (b) be subject to discipline for breaches of those rules; and
 - (c) be required to undertake at least 15 hours of continuing professional education in each year (unless exempted in special circumstances); and
 - (d) if they are permitted by that organisation to be in public practice—have professional indemnity insurance.
- (7) The organisation must have in place adequate operational procedures to ensure it is properly managed and its rules are enforced.
- (8) The organisation must have satisfactory arrangements in place for:
 - (a) notifying clients of its members or of members of its member bodies as to how to make complaints; and
 - (b) hearing and deciding those complaints; and
 - (c) taking disciplinary action if complaints are justified.
- (9) The organisation must have satisfactory arrangements in place for publishing annual statistics about:
 - (a) the kinds and frequency of complaints (except complaints under this Act about registered tax agents); and
 - (b) findings made as a result of the complaints; and
 - (c) action taken as a result of those findings.
- (10) The organisation must be able to pay its debts as they fall due.

251M Negligence of registered tax agent etc.

- (1) If, through the negligence of a registered tax agent, or of a person exempted under section 251L, a taxpayer becomes liable to pay a fine or other penalty, the general interest charge under a provision of this Act, or to pay shortfall interest charge, the registered tax agent, or the person, as the case may be, shall be liable to pay to
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the taxpayer the amount of that fine or other penalty, additional tax, general interest charge or shortfall interest charge, and that amount may be sued for and recovered by the taxpayer in any court of competent jurisdiction.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953* and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the general interest charge.

- (2) Nothing in this section shall exonerate the taxpayer from his liability.

251N Preparation of returns etc. on behalf of registered tax agents

- (1) A registered tax agent or a person exempted under section 251L shall not allow any person, not being his employee, a registered tax agent or, in the case of a partnership which is registered as a tax agent, a member of that partnership:

- (a) to prepare on his behalf, either directly or indirectly, his own or any other income tax return or objection; or
- (b) to conduct on his behalf, either directly or indirectly, any business of himself or any other person relating to any income tax return or income tax matter.

Penalty: 10 penalty units.

- (2) A partnership or company which is registered as a tax agent shall not allow any person to do anything specified in paragraph (1)(a) or (b).

Penalty: 10 penalty units.

- (2A) Subsection (2) does not apply to the extent that the person does the thing under the supervision and control of a registered nominee of the partnership or company.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

- (2B) A natural person who is registered as a tax agent must not allow any person to do anything specified in paragraph (1)(a) or (b).

Penalty: 10 penalty units.

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(2C) Subsection (2B) does not apply to the extent that the person does the thing under the supervision and control of:

- (a) the tax agent; or
- (b) a registered nominee of the tax agent.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2C), see subsection 13.3(3) of the *Criminal Code*.

(3) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent or person exempted under section 251L of solicitor or counsel to act in the course of his profession in the preparation of any objection or in any litigation or proceedings before a board, the Tribunal or a court, or in an advisory capacity either in connexion with the preparation of any such return or the conduct of any such business.

251O Advertising etc. by persons other than registered tax agents

(1) Subject to this section, a person, not being a registered tax agent or a person exempted under section 251L, shall not, directly or indirectly:

- (a) describe himself as or represent himself to be a tax agent; or
- (b) advertise in any manner whatsoever that income tax returns will be prepared by him or that any other matter in connexion with income tax will be attended to by him.

Penalty: 10 penalty units.

(2) Paragraph (1)(b) does not apply in relation to advertising that relates to acts or things done or to be done:

- (a) by a solicitor or counsel acting in the course of his or her profession:
 - (i) in the preparation of an objection;
 - (ii) in litigation or proceedings before a board, the Tribunal or a court; or
 - (iii) in an advisory capacity in connection with the preparation of an income tax return or with any income tax matter; or
- (b) by a person providing services on a voluntary basis under a scheme approved by the Commissioner by notice published in the *Gazette*.

Division 8—Miscellaneous

251P Offences by partnerships

Where, under any provision of this Part, an obligation is imposed on a partnership to do, or refrain from doing, anything, every partner shall, upon the refusal or failure of the partnership to comply with the obligations, unless he proves that he had no knowledge of the refusal or failure, be guilty of an offence, and be liable to the penalty provided in respect of the obligation:

Provided that not more than one partner shall be punished for one offence.

251Q Removal of business to another State

Where a registered tax agent or a person exempted under section 251L removes his place of business, or if he has more than one place of business, his principal place of business, to another State, the Board in that State shall, for the purposes of this Part, be deemed to be the Board by which the tax agent or person was registered or exempted.

251QA Review of decisions

Applications may be made to the Tribunal for review of the following decisions of a Board:

- (a) a decision refusing to register a person or a partnership as a tax agent (not being a decision under Subdivision D of Division 3);
- (b) a decision refusing to re-register a tax agent;
- (c) a decision refusing to allow a later time for the making of an application for re-registration as a tax agent;
- (d) a decision to suspend or cancel the registration of a tax agent;
- (e) a decision refusing to register a person as a nominee of a tax agent;
- (f) a decision refusing to re-register a person as a nominee of a tax agent;
- (g) a decision refusing to allow a later time for the making of an application for re-registration as a nominee of a tax agent;

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- (h) a decision to cancel the registration of a nominee of a tax agent.

251QB Statements to accompany notification of decisions

- (1) Where a decision of a kind referred to in section 251QA is made and notice in writing of the decision is given to a person affected by the decision, that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, make application to the Tribunal for review of the decision.
- (2) Any failure to comply with subsection (1) does not affect the validity of the decision.

Part VIIB—Medicare levy and Medicare levy surcharge

251R Interpretation

- (1) In this Part, *Medicare levy* or *levy* means Medicare levy imposed as such by any Act as assessed under this Act.
- (1A) In this Part, unless the contrary intention appears:
- surcharge* means Medicare levy surcharge imposed by the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.
- (2) If, during any period, 2 persons (whether of the same sex or different sexes):
- (a) had a relationship that was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
 - (b) lived together in a relationship as a couple on a genuine domestic basis, although not legally married to each other;
- this Part and any Act imposing levy has effect in relation to the period as if the persons were married to each other.
- (2A) If, during the period, either or both of the persons was legally married to another person, or in a relationship mentioned in paragraph (2)(a) with another person, this Part and any Act imposing levy has effect as if the person or persons were not legally married to, or in a relationship mentioned in paragraph (2)(a) with, the other person or persons.
- (3) Subject to subsections (4), (5), (6), (6B), (6C) and (6D), a person shall be taken to have been a dependant of another person for the purposes of this Part during any part of the year of income in which:
- (a) the first-mentioned person was a resident of Australia;
 - (b) the first-mentioned person was:
 - (i) the spouse of the other person;
 - (ii) a child of the other person less than 21 years of age; or

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- (iii) a child of the other person not less than 21 years of age but less than 25 years of age and receiving full-time education at a school, college or university; and
 - (c) the other person contributed to the maintenance of the first-mentioned person.
- (4) A child referred to in subparagraph (3)(b)(iii) shall not be taken to have been a dependant of a person for the purposes of this Part during a period being the whole or a part of a year of income unless the person would be entitled to a rebate in respect of that child under section 159J in his assessment in respect of income of that year of income but for subsection 159J(1A).
- (5) If, in relation to a period, being the whole or a part of a year of income:
 - (a) the parents of a child referred to in paragraph (3)(b) lived separately and apart from each other; and
 - (b) the child would, but for this subsection, be taken, for the purposes of this Part, to be a dependant of each of his or her parents in respect of that period; and
 - (c) both of the parents or their spouses, being partners as defined in the *A New Tax System (Family Assistance) Act 1999*, are eligible for family tax benefit at the Part A rate under that Act in respect of that child (whether the child is an FTB child or a regular care child within the meaning of that Act) in respect of the period; and
 - (d) the Secretary of the Department whose Minister administers that Act has determined, under subsection 22(6A) of that Act, the percentage of the period during which the child was, or will be, in the care of each parent or spouse, as the case requires;the child is to be taken to be a dependant of each parent for the purposes of Part VIIB of this Act, for so much only of that period as represents that percentage of the period.
- (6) For the purposes of paragraph (3)(c), a person shall be taken to have contributed to the maintenance of another person during any period during which the person and that other person resided together, unless the contrary is established to the satisfaction of the Commissioner.

- (6A) A reference in subsections (6B), (6C) and (6D) to an eligible prescribed person in relation to a period is a reference to a person who would, apart from subsections 251U(2) and (3), be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during that period by virtue of paragraph 251U(1)(a), (b), (c), (ca), (caa) or (cb).
- (6B) For the purposes of this Part, where:
- (a) a person (in this subsection called the *first person*) was an eligible prescribed person in relation to a period in a year of income; and
 - (b) apart from this subsection, another person (in this subsection called the *leviable person*) would be a dependant of the first person during that period; and
 - (c) levy is payable by the leviable person upon the taxable income of the year of income;
- the leviable person is not to be taken to have been a dependant of the first person during that period.
- (6C) For the purposes of this Part, where:
- (a) a person (in this subsection called the *first person*) was an eligible prescribed person in relation to a period in a year of income; and
 - (b) another person (in this subsection called the *spouse*) was the spouse of the first person during the whole of that period; and
 - (c) the spouse was not an eligible prescribed person in relation to that period; and
 - (d) levy is payable by the spouse upon the taxable income of the year of income; and
 - (e) apart from this subsection, a child of both the first person and the spouse would be a dependant of both the first person and the spouse during that period;
- that child is not to be taken to have been a dependant of the first person during that period.
- (6D) Subject to subsection (6F), for the purposes of this Part, where:
- (a) a person (in this subsection and subsections (6E) to (6H) (inclusive) called the *first person*) was an eligible prescribed person in relation to a period in a year of income; and
 - (b) another person (in this subsection called the *spouse*) was the spouse of the first person during the whole of that period; and

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- (c) the spouse was an eligible prescribed person in relation to that period; and
 - (d) apart from this subsection, levy would be payable by both the first person and the spouse upon their respective taxable incomes of the year of income; and
 - (e) apart from this subsection, a child of both the first person and the spouse would be a dependant of both the first person and the spouse during that period; and
 - (f) the first person and the spouse have entered into an agreement (in subsections (6E) to (6H) (inclusive) called the ***family agreement***) stating that, for levy purposes, that child:
 - (i) is not to be treated as a dependant of the first person during that period; and
 - (ii) is to be treated as a dependant of the spouse during that period;that child is not to be taken to be a dependant of the first person during that period.
- (6E) The family agreement must be entered into on or before the date of lodgment of the return of income of the first person for the year of income concerned or within such further time as the Commissioner allows.
- (6F) Subsection (6D) does not apply, and is taken never to have applied, if the first person fails to retain the family agreement until the end of:
- (a) 5 years beginning on the date of lodgment of the first person's return of income for the year of income concerned; or
 - (b) a shorter period determined by the Commissioner in writing for the first person; or
 - (c) a shorter period determined by the Commissioner by legislative instrument for a class of persons that includes the first person.
- (6FA) A determination under paragraph (6F)(c) may specify different periods for different classes of taxpayers.
- (6G) Where the family agreement is lost or destroyed and the Commissioner is satisfied that the first person has a document (in this subsection called the ***substitute family agreement***) that:
- (a) is a copy of the family agreement; or

- (b) properly records all the matters set out in the family agreement and was in existence when the family agreement was lost or destroyed;
- the substitute family agreement is to be taken, for the purposes of this section, to be, and to have been at all times after the family agreement was lost or destroyed, the family agreement.
- (6H) Where the family agreement is lost or destroyed and the Commissioner is satisfied that:
- (a) the family agreement was lost or destroyed because of circumstances beyond the control of the first person; and
 - (b) subsection (6G) does not apply;
- subsection (6F) does not apply and is to be taken never to have applied.
- (6J) Section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to subsection (6F), (6G) or (6H).
- (7) In this Act (other than this Part, the definition of *year of tax* in subsection 6(1) and Division 17 of Part III), unless the contrary intention appears, *income tax* or *tax* includes levy payable in accordance with this Part and surcharge.
- (8) In determining for the purposes of this Part and of any Act imposing levy whether a person was, or but for subsection 251U(2) would have been, or was not, a prescribed person during the whole or a part of the year of income that commenced on 1 July 1983, that year of income shall be deemed to be constituted by the period commencing on 1 February 1984 and ending on 30 June 1984.

251S Medicare levy

- (1) Subject to this Part, a levy by the name of Medicare levy is levied, and shall be paid, at the rate applicable under the relevant Act imposing the levy, for the financial year that commenced on 1 July 1983, and for each succeeding financial year, upon:
- (a) the taxable income of the year of income of a person, not being a company or a person in the capacity of a trustee, who, at any time during the year of income, was a resident of Australia otherwise than by virtue of subsection 7A(2);

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- (b) if the trustee of a trust estate is required to be assessed in pursuance of section 98 in respect of a share of the net income of the trust estate of the year of income, being a share to which a beneficiary who, at any time during the year of income, was a resident of Australia otherwise than by virtue of subsection 7A(2) is presently entitled—that share of that net income; and
- (c) if the trustee of a trust estate (other than a trust estate of a deceased person) is required to be assessed, and is liable to pay tax, in pursuance of section 99 or 99A in respect of the whole or a part of the net income of the trust estate of the year of income—that net income or that part of that net income, as the case may be.

Note: Subdivision 61-L (tax offset for Medicare levy surcharge (lump sum payments in arrears)) of the *Income Tax Assessment Act 1997* might provide a tax offset for a person if Medicare levy surcharge (within the meaning of that Act) is payable by the person.

- (1A) If the taxpayer is entitled to a tax offset under subsection 301-20(2) of the *Income Tax Assessment Act 1997* for a year of income, paragraph (1)(a) of this section applies as if the taxable income of the taxpayer of the year of income were reduced by the amount mentioned in subsection 301-20(3) of that Act for the person for the year.
- (2) Levy payable by a person in accordance with this Part is payable in addition to any tax payable by him in accordance with any other provision of this Act.
- (3) In determining for the purposes of paragraph (1)(a) or (b) whether, in relation to the year of income commencing on 1 July 1985 or any subsequent year of income, a person was a resident of Australia otherwise than by virtue of subsection 7A(2), that subsection shall be applied as if the reference in that subsection to the Territory of Christmas Island were omitted.
- (4) In determining for the purposes of paragraph (1)(a) or (b) whether, in relation to the 1991-92 year of income or any subsequent year of income, a person was a resident of Australia otherwise than by virtue of subsection 7A(2), that subsection is to be applied as if the reference in that subsection to the Territory of Cocos (Keeling) Islands were omitted.

251T Levy (other than certain levy increases) not payable by prescribed persons or by certain trustees

Notwithstanding anything contained in section 251S, Medicare levy (other than an increase in the levy payable under section 8B, 8C, 8D, 8E, 8F or 8G of the *Medicare Levy Act 1986*) is not payable by:

- (a) a person (not being a person in the capacity of a trustee) who was a prescribed person during the whole of the year of income;
- (b) a person in the capacity of a trustee of a trust that is a Territory trust for the purposes of Division 1A of Part III in relation to the year of income, in respect of income of the trust of the year of income; or
- (c) a person in the capacity of a trustee of a trust, in respect of a share of the net income of the trust estate of the year of income (being a share to which a beneficiary who was a prescribed person during the whole of the year of income is presently entitled) in respect of which the trustee is required to be assessed in pursuance of section 98.

251U Prescribed persons

- (1) Subject to this section, a person shall be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period if:
 - (a) the person was entitled to free medical treatment during the whole of that period in respect of every incapacity, disease or disabling condition because the person was a member of the Defence Force or was a relative of, or was otherwise associated with, a member of the Defence Force;
 - (b) the person was entitled under the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004* to free medical treatment during the whole of that period in respect of every incapacity, disease or disabling condition;
 - (c) the person was, during the whole of that period, a recipient of a sickness allowance under Part 2.14 of the *Social Security Act 1991*;
 - (ca) the person was, during the whole of that period, a recipient of:

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- (i) an age pension under Part 2.2 of the *Social Security Act 1991*; or
 - (ii) a disability support pension under Part 2.3 of the *Social Security Act 1991*;
where the rate of the pension was calculated under section 1065 of the *Social Security Act 1991*;
 - (caa) the person was, during the whole of that period, a recipient of a disability support pension under Part 2.3 of the *Social Security Act 1991* where the rate of the pension was calculated under section 1066B of the *Social Security Act 1991*;
 - (cb) the person was, during the whole of that period, a recipient of:
 - (i) an age service pension under Division 3 of Part III of the *Veterans' Entitlements Act 1986*; or
 - (ii) an invalidity service pension under Division 4 of Part III of the *Veterans' Entitlements Act 1986*; or
 - (iii) a partner service pension under Division 5 of Part III of the *Veterans' Entitlements Act 1986*;
where the rate of the pension was calculated under Method statement 2 in subpoint SCH6-A1(3), or Method statement 4 in subpoint SCH6-A1(5), in Schedule 6 to the *Veterans' Entitlements Act 1986*;
 - (cc) during the whole of that period:
 - (i) the person was receiving income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*; and
 - (ii) the rate of the person's income support supplement was worked out under Method statement 6 in subpoint SCH6-A1(7) in Schedule 6 to the *Veterans' Entitlements Act 1986*;
 - (d) during the whole of that period the person was a non-resident, or was a resident solely because subsection 7A(2) treats Norfolk Island as part of Australia;
 - (e) during the whole of that period the person was:
 - (i) the head of a diplomatic mission, or the head of a consular post, established in Australia;
 - (ii) a member of the staff of a diplomatic mission, or a member of the consular staff of a consular post, established in Australia; or
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(iii) a member of the family of a person referred to in subparagraph (i) or (ii), being a member who forms part of the household of that person;

and was not an Australian citizen and was not ordinarily resident in Australia; or

(f) the Minister for Health has certified that, had any service, treatment or care to which Medicare benefits under the *Health Insurance Act 1973* relate been rendered to the person or to another person during that period, the first-mentioned person would not have been entitled to Medicare benefits in respect of that service, treatment or care.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining family relationships for the purposes of subparagraph (1)(e)(iii).

(2) A person shall not be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period unless every person who was a dependant of the first-mentioned person during that period is to be taken, or but for this subsection would be taken, to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during that period.

(3) Where:

(a) a person would not, but for this subsection, be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period; and

(b) the person would, but for subsection (2), be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during that period by virtue of paragraph (1)(a), (b), (c), (ca), (caa) or (cb);

the person shall be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during one-half of that period.

(4) In this section:

(a) expressions that are defined by the Vienna Convention on Diplomatic Relations referred to in the *Diplomatic Privileges and Immunities Act 1967* have the same respective meanings as in that Convention; and

(b) expressions that are defined by the Vienna Convention on Consular Relations referred to in the *Consular Privileges and*

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Immunities Act 1972 have the same respective meanings as in that Convention.

251V Subsections 251R(4), (5), (6B), (6C) and (6D) not to apply to certain medicare levy increases

- (1) This section applies to a person during a period if, apart from this section, another person would be taken under subsection 251R(4), (5), (6B), (6C) or (6D) not to have been a dependant of the first-mentioned person during the period.
- (2) For the purposes of working out the amount of the increase in the levy (if any) payable by:
 - (a) the first-mentioned person under section 8B, 8C or 8D of the *Medicare Levy Act 1986*; or
 - (b) a trustee under section 8E, 8F or 8G of that Act in relation to a share of the net income of the trust estate to which the first-mentioned person is presently entitled;subsection 251R(4), (5), (6B), (6C) or (6D), as the case requires, does not apply to the other person.

251VA Subsection 251U(3) not to apply for certain medicare levy increases

- (1) This section applies to a person, whether or not the person is a person to whom section 251V applies, during a period if, apart from this section, the person would be taken under subsection 251U(3) to be a prescribed person during one-half of the period.
- (2) For the purposes of working out the amount of the increase in the levy (if any) payable by:
 - (a) the person under section 8B, 8C or 8D of the *Medicare Levy Act 1986*; or
 - (b) a trustee under section 8E, 8F or 8G of that Act in relation to a share of the net income of the trust estate to which the person is presently entitled;the person is taken not to be a prescribed person during the whole of the period.

251W Regulations

- (1) The regulations may make provision for and in relation to requiring any person to supply to the Commissioner for the purposes of this Part or of any Act imposing levy or surcharge such information as is prescribed, being information that is in the possession of the person or to which the person has access.
- (2) In subsection (1), *person* includes any authority or officer of the Commonwealth or of a State.

251X Notice of assessment to set out Medicare levy and surcharge

The notice of assessment to be served under section 174 on a taxpayer who must pay levy or surcharge for a year of income must specify the total of levy and surcharge (if any) payable by the taxpayer for the year of income.

251Z Administration of Medicare levy surcharge Act

The Commissioner has the general administration of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

Part VIII—Miscellaneous

252 Public officer of company

- (1) Every company carrying on business in Australia, or deriving in Australia income from property, shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and public officer the following provisions shall apply:
 - (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business or derive income in Australia.
 - (b) The company shall keep the office of the public officer constantly filled.
 - (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner.
 - (d) The company shall duly appoint a public officer when and as often as such an appointment becomes necessary.
 - (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
 - (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
 - (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act

or the regulations, or from any penalty for refusal or failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.

- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
 - (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.
 - (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.
- (2) A person is not capable of being a public officer of a company at a particular time unless the person:
- (a) is a natural person who has attained the age of 18 years;
 - (b) is ordinarily resident:
 - (i) in the case of a company that:
 - (A) at that time carries on business solely or principally in a prescribed Territory (in this paragraph referred to as the *relevant prescribed Territory*); or
 - (B) at that time does not carry on business solely or principally in a prescribed Territory, but derived not less than 50% of its income from sources in Australia and the prescribed Territories from sources in a particular prescribed Territory (in this paragraph referred

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- to as the *relevant prescribed Territory*) during the year immediately preceding that time;
in Australia or the relevant prescribed Territory; or
(ii) in any other case—in Australia; and
(c) is capable of understanding the nature of the person's appointment as the public officer of the company.
- (3) A company that contravenes paragraph (1)(d) is, in respect of each day on which it contravenes that paragraph (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit.
- (4) An offence under subsection (3) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (5) A reference in subsection (1) (other than in paragraph (a)) to this Act or the regulations includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act or the regulations.
- (6) In subsection (2):

Australia does not include a prescribed Territory.

prescribed Territory means an external Territory referred to in subsection 7A (2).

252A Public officer of trust estate

- (1) Where, at any time after the expiration of the period of 90 days after the commencement of this section:
- (a) any business of a trust estate is carried on in Australia or any income from property (not being solely income in respect of which tax is payable under Division 11A of Part III) is derived by a trust estate from sources in Australia;
 - (b) there is not a trustee of the trust estate who is a resident;
 - (c) there is not in force in relation to the trust estate an exemption granted by the Commissioner under subsection (3); and

- (d) there is not in force in relation to the trust estate an appointment of a public officer made in accordance with subsection (5);

each person who, at that time, is a trustee of the trust estate is, in respect of each day on which the circumstances set out in paragraphs (a), (b), (c) and (d) are in existence (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) A reference in subsection (1) to the period of 90 days after the commencement of this section shall, in the application of that subsection in relation to a trust estate that, before the commencement of this section, did not carry on any business in Australia or derive income from property (not being solely income in respect of which tax is payable under Division 11A of Part III) from sources in Australia, be read as a reference to the period of 90 days after the date on which any business of the trust estate is commenced to be carried on in Australia, or the date on which the trust estate commences to derive such income from sources in Australia, whichever first occurs.

- (2A) A person is not capable of being a public officer of a trust estate at a particular time unless the person:

- (a) is a natural person who has attained the age of 18 years;
(b) is ordinarily resident:

- (i) in the case of a trust estate that:

- (A) at that time carries on its business solely or principally in a prescribed Territory (in this paragraph referred to as the *relevant prescribed Territory*); or

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- (B) at that time does not carry on its business solely or principally in a prescribed Territory, but derived not less than 50% of its income from sources in Australia and the prescribed Territories from sources in a particular prescribed Territory (in this paragraph referred to as the *relevant prescribed Territory*) during the year immediately preceding that time;
 - in Australia or the relevant prescribed Territory; or
 - (ii) in any other case—in Australia; and
 - (c) is capable of understanding the nature of the person's appointment as the public officer of the trust estate.
- (3) The Commissioner may, by writing signed by him, grant to the trustee of a trust estate an exemption from the provisions of subsection (1) in relation to the trust estate.
- (4) An exemption under subsection (3) may be granted unconditionally or on such conditions as the Commissioner thinks fit and may be granted without limitation as to time or may be granted in respect of a period specified in the exemption.
- (5) An appointment of a public officer of a trust estate for the purposes of this section shall be made by giving notice in writing to the Commissioner:
 - (a) that is signed by a trustee of the trust estate or by a duly authorized agent or attorney of a trustee of a trust estate; and
 - (b) that specifies the name of the public officer and an address in Australia for service upon the public officer of any documents that are required or permitted by or under this Act or the regulations to be served upon the public officer of the trust estate.
- (6) The appointment of a public officer of a trust estate ceases to be in force if the public officer dies or lodges with the Commissioner a notice of his resignation as public officer of the trust estate.
- (7) Where, by or under this Act or the regulations:
 - (a) a document is permitted to be served upon or given to the trustee of a trust estate; or

- (b) a requisition is permitted or required to be made upon the trustee of a trust estate;
that document shall be deemed to have been served upon or given to the trustee if it is served upon the public officer of the trust estate or at the address for service of the public officer of the trust estate, or that requisition shall be deemed to have been made upon the trustee if it is made upon the public officer of the trust estate, as the case may be.
- (8) A reference in subsection (7) to the service of a document upon the public officer of a trust estate, or the making of a requisition upon the public officer of a trust estate, shall, if there is not in force an appointment under this section of a public officer in relation to the trust estate, be read as a reference to any person acting or appearing to act in the business of the trust estate.
- (9) The public officer of a trust estate shall be answerable for the doing of all such things as are required to be done by the trustee of the trust estate under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (10) Where any proceedings for an offence against this Act or the regulations are taken against the public officer, those proceedings shall be deemed to have also been taken against the trustee or trustees of the trust estate and the trustee or trustees shall be liable jointly with the public officer for any penalty in respect of the offence.
- (11) Notwithstanding the preceding provisions of this section and without affecting any of the obligations or liabilities of the public officer of a trust estate, any notice, process or proceeding that, under this Act or the regulations, may be given to, served upon or taken against the trustee or public officer of the trust estate may, if the Commissioner thinks fit, be given to, served upon or taken against any agent or attorney of the trustee of the trust estate and that agent or attorney shall have the same liability in respect of that notice, process or proceeding as the trustee or public officer would have had if it had been given to, served upon or taken against the trustee or public officer.
- (12) Everything done by the public officer of a trust estate that he is required to do in his capacity of public officer shall be deemed to have been done by the trustee of the trust estate.
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- (13) The absence or non-appointment of a public officer shall not excuse the trustee of a trust estate from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for refusal or failure to comply with any of those provisions, but the trustee shall be liable to the provisions of this Act and the regulations as if there were no requirement to appoint a public officer.
- (14) A reference in this section to this Act or the regulations includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act or the regulations.
- (15) In subsection (2A):
- Australia* does not include a prescribed Territory.
- prescribed Territory* means an external Territory referred to in subsection 7A(2).

254 Agents and trustees

- (1) With respect to every agent and with respect also to every trustee, the following provisions shall apply:
- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income, or any profits or gains of a capital nature, derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon.
- (b) He shall in respect of that income, or those profits or gains, make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay tax which is or will become due in respect of the income, profits or gains.

- (e) He is hereby made personally liable for the tax payable in respect of the income, profits or gains to the extent of any amount that he has retained, or should have retained, under paragraph (d); but he shall not be otherwise personally liable for the tax.
 - (f) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.
 - (g) Where as one of 2 or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid.
 - (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax.
- (2) In subsection (1), *tax* includes the general interest charge under section 163AA, former section 170AA, subsection 204(3), former subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB, additional tax under former Part VII and shortfall interest charge.
- Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953* and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.
- Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the general interest charge.
- (3) In paragraphs (1)(d) and (e), and in its first occurrence in paragraph (1)(h), *tax* includes, in addition to the things mentioned in subsection (2):
- (a) trustee beneficiary non-disclosure tax within the meaning of Division 6D of Part III; and
 - (b) general interest charge payable under section 102UP in respect of such tax.

255 Person in receipt or control of money from non-resident

- (1) With respect to every person having the receipt control or disposal of money belonging to a non-resident, who derives income, or
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profits or gains of a capital nature, from a source in Australia or who is a shareholder, debenture holder, or depositor in a company deriving income, or profits or gains of a capital nature, from a source in Australia, the following provisions shall, subject to this Act, apply:

- (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident;
 - (b) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident;
 - (c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under paragraph (b); but he shall not be otherwise personally liable for the tax;
 - (d) he is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.
- (2) Every person who is liable to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and, subject to subsection (2A), all money due by him to the non-resident shall be deemed to be money which comes to him on behalf of the non-resident.
- (2A) For the purposes of this section, money due by a person to a non-resident from which an amount must be withheld under section 12-325 in Schedule 1 to the *Taxation Administration Act 1953* (about natural resource payments) or Subdivision 12-H in that Schedule (about distributions to foreign residents from managed investment trusts) shall be deemed not to be money which comes to the person on behalf of the non-resident.
- (3) Where the Commonwealth, a State or an authority of the Commonwealth or a State has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (1)(c)) applies to and in relation to the Commonwealth, the State or the authority, as the case may be, in the same manner as it applies to and in relation to any other person.

- (4) In this section, *tax* includes the general interest charge under section 163AA, former section 170AA, subsection 204(3), subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB, additional tax under former Part VII and shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953* and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the general interest charge.

- (5) This section applies to an equity holder in the same way as it applies to a shareholder.

257 Payment of tax by banker

Where any income of any person out of Australia is paid, or any proceeds of the disposal of an asset of any person out of Australia are paid, into the account of that person with a banker, the Commissioner may, by notice in writing to the banker, appoint him to be the person's agent in respect of the money so paid so long as the banker is indebted in respect thereof, and thereupon the banker shall accordingly be that person's agent.

260 Contracts to evade tax void

- (1) Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly:
- (a) altering the incidence of any income tax;
 - (b) relieving any person from liability to pay any income tax or make any return;
 - (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
 - (d) preventing the operation of this Act in any respect;
- be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.

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- (2) This section does not apply to any contract, agreement or arrangement made or entered into after 27 May 1981.

262 Periodical payments in the nature of income

Where under any contract agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall, to the extent to which they are in that opinion in the nature of income, be included in his assessable income.

262A Keeping of records

- (1) Subject to this section, a person carrying on a business must keep records that record and explain all transactions and other acts engaged in by the person that are relevant for any purpose of this Act.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (1A) Without limiting subsection (1), if the person is an OBU (within the meaning of Division 9A of Part III), the person must, subject to this section, maintain the same accounting records in respect of, and separately account for, money used in its OB activities (within the meaning of that Division) as it would if it were a bank conducting banking activities with another person.
- (1AA) Subsection (1A) does not require an OBU to maintain a separate nostro account or vostro account for its OBU activities. Nostro accounts and vostro accounts are accounts held or maintained by the OBU for the sole purpose of settling international transactions.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (1AA), see subsection 13.3(3) of the *Criminal Code*.
- (1B) Without limiting subsection (1), a foreign bank must maintain accounting records in respect of, and separately account for, money

used in the activities of a permanent establishment in Australia through which the bank carries on banking business.

- (1BA) Without limiting subsection (1), a foreign entity (as defined in the *Income Tax Assessment Act 1997*) that is a financial entity (as defined in that Act) must maintain accounting records in respect of, and separately account for, money used in the activities of a permanent establishment in Australia of the entity.
- (1C) Without limiting subsection (1), if a trust is taken to be 2 separate trusts under section 50-80 of the *Income Tax Assessment Act 1997*, the trustee must maintain accounting records in respect of, and separately account for, those 2 trusts.
- (1D) A taxpayer who is a full self-assessment taxpayer must:
- (a) keep a record containing particulars of the basis of the calculation of the amounts that the taxpayer specified under section 161AA in a return for a year of income; and
 - (b) produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing those particulars.
- (2) The records to be kept under subsection (1) include:
- (a) any documents that are relevant for the purpose of ascertaining the person's income and expenditure; and
 - (b) documents containing particulars of any election, choice, estimate, determination or calculation made by the person under this Act and, in the case of an estimate, determination or calculation, particulars showing the basis on which and method by which the estimate, determination or calculation was made.
- (2AAA) Subsection (1) applies to a participant in a forestry managed investment scheme in relation to the scheme even if the participant is not carrying on a business in relation to the scheme.
- (2AAB) Subsection (2AAC) applies to the forestry manager of a forestry managed investment scheme if:
- (a) the forestry manager (or an associate of the forestry manager) receives an amount under the scheme; and
 - (b) the amount is included in the forestry manager's (or the associate's) assessable income under section 15-46 of the *Income Tax Assessment Act 1997*.
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- (2AAC) The records to be kept under subsection (1) by the forestry manager include records about the basis on which the scheme satisfies the requirement in paragraph 394-10(1)(c) of the *Income Tax Assessment Act 1997* (the 70% DFE rule).
- (2AA) The records to be kept under subsection (1) include records required to be kept for the purposes of section 820-960, 820-980 or 820-985 of the *Income Tax Assessment Act 1997*.
- (2A) If an entity is required to withhold an amount under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*, or to pay an amount to the Commissioner under Division 13 or 14 of that Schedule, the entity must keep records that record and explain all transactions and other acts engaged in by the entity that are relevant for the purposes of that Schedule.
- (3) A person who is required by this section to keep records must:
- (a) keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) keep the records so as to enable the person's liability under this Act to be readily ascertained; and
 - (c) for records required to be kept under section 820-960 of the *Income Tax Assessment Act 1997*—comply with the applicable provisions of that section; and
 - (d) for records required to be kept under section 820-980 of that Act—comply with subsections (2) and (3) of that section; and
 - (e) for records required to be kept under section 820-985 of that Act—comply with subsections (2) and (3) of that section.
- (4) A person who has possession of any records kept or obtained under or for the purposes of this Act must retain those records until:
- (a) in a case to which paragraph (b) does not apply—the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later; or
 - (b) if the period (in this paragraph called the *assessment period*) within which the Commissioner may, under section 170, amend an assessment in respect of the person's income of the year of income to which those records relate, or in which a

transaction or act to which those records relate was completed, is extended under subsection 170(7):

- (i) the end of the period of 5 years referred to in paragraph (a); or
 - (ii) the end of the assessment period as so extended;
- whichever is the later.

(4AAA) Subsection (4) does not apply to any record required to be kept by a provision in Schedule 1 to the *Taxation Administration Act 1953*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4AAA), see subsection 13.3(3) of the *Criminal Code*.

(4A) A person who makes an election under subsection 371(8) must retain the election until the end of 5 years after the election was made.

(4AA) A person who is a party to a joint election for roll-over relief made under former section 59AA, 122R, 123F or 124AO or under section 124W must retain the election, or a copy, until the end of 5 years after the earlier of:

- (a) the disposal by the person of the property; or
- (b) the loss or destruction of the property.

(4ACA) Subsection (4AC) does not apply in relation to a disposal of property:

- (a) to which former subsection 58(1), 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) applies; and
- (b) that occurs in the 1997-98 year of income or a later year of income.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4ACA), see subsection 13.3(3) of the *Criminal Code*.

(4AC) If former subsection 58(1), subsection 73AA(1), 73E(1), 73F(1) or 73G(1), former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) or subsection 124PA(1) applies to the disposal of property by the transferor referred to in that subsection to the transferee referred to in that subsection:

- (a) the transferor must give to the transferee, within the period specified in subsection (4AD), a notice containing such information about the transferor's holding of the property as

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will enable the transferee to work out how former section 58, section 73AA, 73E, 73F or 73G, former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA or 124JD or section 124PA, as the case may be, will apply to the transferee's holding of the property; and

- (b) the transferee must retain the notice, or a copy, until the end of 5 years after the earlier of:
 - (i) the disposal by the person of the property; or
 - (ii) the loss or destruction of the property.

(4AD) The notice referred to in subsection (4AC) must be given within 6 months after the later of the following:

- (a) the end of the year of income of the transferee in which the disposal occurred;
 - (b) the commencement of subsection (4AC);
- or within such further period as the Commissioner allows.

(4AE) A person who made an election under former paragraph 54A(1)(a) in relation to a unit of property must retain the election, or a copy, until the end of 5 years after the earlier of:

- (a) the disposal by the person of the property; or
- (b) the loss or destruction of the property.

(4AF) If:

- (a) a person (the *transferor*) disposes of, or of a lease of, any part of a building within the meaning of former Division 10C of Part III to another person (the *transferee*); and
- (b) either:
 - (i) one or more deductions have been allowed to the transferor under former subsection 124ZC(2A) or (4A) in respect of qualifying hotel expenditure or qualifying apartment expenditure in respect of the building; or
 - (ii) if there have been one or more prior successive owners or lessees of the building—one or more deductions have been allowed to any of the prior successive owners or lessees under former subsection 124ZC(2A) or (4A) in respect of qualifying hotel expenditure or qualifying apartment expenditure in respect of the building;

then:

- (c) the transferor must give to the transferee, within the period specified in subsection (4AG), a notice containing such

information about the transferor's holding or lease of the building as will enable the transferee to work out how former Division 10C of Part III applies to the transferee's holding or lease of the building; and

- (d) the transferee must retain the notice, or a copy, until the end of 5 years after the earlier of:
 - (i) the transferee ceasing to be the owner or lessee of the part of the building; or
 - (ii) the destruction of the building.

(4AG) The notice referred to in subsection (4AF) must be given within 6 months after the later of the following:

- (a) the end of the year of income of the transferee in which the disposal occurred;
 - (b) the commencement of subsection (4AF);
- or within such further period as the Commissioner allows.

(4AH) If:

- (a) a person (the *transferor*) disposes of, or of a lease of, any part of a building within the meaning of former Division 10D of Part III to another person (the *transferee*); and
- (b) either:
 - (i) one or more deductions have been allowed to the transferor under former subsection 124ZH(2A) in respect of qualifying expenditure in respect of the building; or
 - (ii) if there have been one or more prior successive owners or lessees of the building—one or more deductions have been allowed to any of the prior successive owners or lessees under former subsection 124ZH(2A) in respect of qualifying expenditure in respect of the building;

then:

- (c) the transferor must give to the transferee, within the period specified in subsection (4AJ), a notice containing such information about the transferor's holding or lease of the building as will enable the transferee to work out how former Division 10D of Part III applies to the transferee's holding or lease of the building; and
- (d) the transferee must retain the notice, or a copy, until the end of 5 years after the earlier of:

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- (i) the transferee ceasing to be the owner or lessee of the part of the building; or
 - (ii) the destruction of the building.
- (4AJ) The notice referred to in subsection (4AH) must be given within 6 months after the later of the following:
 - (a) the end of the year of income of the transferee in which the disposal occurred;
 - (b) the commencement of subsection (4AH);or within such further period as the Commissioner allows.
- (4AJA) If:
 - (a) a person (the *transferor*) disposes of capital works within the meaning of Division 43 of the *Income Tax Assessment Act 1997*, being capital works begun after 26 February 1992, to another person (the *transferee*); and
 - (b) a deduction has been allowed under former Division 10C or 10D of Part III of this Act, or under Division 43 of the *Income Tax Assessment Act 1997*, in respect of those capital works;then:
 - (c) the transferor must give the transferee, within 6 months after the end of the year of income in which the disposal occurred or within a further period allowed by the Commissioner, a notice containing such information as will allow the transferee to work out how Division 43 of the *Income Tax Assessment Act 1997* will apply to the transferee in respect of the capital works; and
 - (d) the transferee must retain the notice or a copy of it until the end of 5 years after the transferee disposes of the capital works or the capital works are destroyed, whichever is the earlier.
- (4AL) A person who makes an election in accordance with subitem 22(3), 22A(3), 23(3) or 23A(2) of the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* must retain the election until the end of 5 years after the election was made.
- (5) Nothing in this section requires a person to retain records or an election where:
 - (a) the Commissioner has notified the person that retention of the records or election is not required; or

- (b) the person is a company that has gone into liquidation and finally ceased to exist.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (5A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) In this section:

associate has the same meaning as in the *Income Tax Assessment Act 1997*.

foreign bank means body corporate that is a foreign ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

forestry managed investment scheme has the same meaning as in the *Income Tax Assessment Act 1997*.

forestry manager of a forestry managed investment scheme has the same meaning as in the *Income Tax Assessment Act 1997*.

participant in a forestry managed investment scheme has the same meaning as in the *Income Tax Assessment Act 1997*.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

263 Access to books etc.

- (1) The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for that purpose may make extracts from or copies of any such books, documents or papers.
- (2) An officer is not entitled to enter or remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

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- (3) The occupier of a building or place entered or proposed to be entered by the Commissioner, or by an officer, under subsection (1) shall provide the Commissioner or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

264 Commissioner may require information and evidence

- (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connexion with any department of a Government or by any public authority:
- (a) to furnish him with such information as he may require; and
 - (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.
- (2) The Commissioner may require the information or evidence to be given on oath or affirmation and either verbally or in writing, and for that purpose he or the officers so authorized by him may administer an oath or affirmation.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

264AA Reporting to Department of Primary Industries and Energy

Financial institution to provide quarterly information

- (1) A financial institution that, at the end of any month in a quarter beginning on 1 January, 1 April, 1 July or 1 October in any year (including a quarter in which this section commences), holds any farm management deposit must, within 60 days after the end of the quarter, give the information in subsection (2) in writing to the Secretary to the Department of Primary Industries and Energy.

Penalty: 10 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Information required

- (2) The information is:
- (a) the number of farm management deposits held at the end of each month in the quarter; and
 - (b) the number of depositors in respect of such deposits at the end of each month in the quarter; and
 - (c) the sum of the balances of such deposits at the end of each month in the quarter; and
 - (d) subject to subsection (3), any other information, in relation to farm management deposits held by the institution at any time in the quarter, that is required by the regulations for the purposes of this section.

Regulations not to require identity of depositor

- (3) The regulations must not, for the purposes of this section, require information that discloses the identity of a depositor or from which the identity could reasonably be inferred.
- (4) The expressions “depositor”, “farm management deposit” and “financial institution” have the same meanings as in Schedule 2G.

264A Offshore information notices

- (1) Where the Commissioner has reason to believe that:
- (a) information relevant to the assessment of a taxpayer is:
 - (i) within the knowledge (whether exclusive or otherwise) of a person outside Australia; or
 - (ii) recorded (whether exclusively or otherwise) in a document outside Australia; or
 - (iii) kept (whether exclusively or otherwise) by means of a mechanical, electronic or other device outside Australia; or

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- (b) documents relevant to the assessment of a taxpayer are outside Australia (whether or not copies are in Australia or, if the documents are copies of other documents, whether or not those other documents are in Australia);
- the Commissioner may, by notice in writing served on the taxpayer (which notice is in this section called the *offshore information notice*), request the taxpayer:
- (c) to give to the Commissioner, within the period and in the manner specified in the offshore information notice, any such information; or
 - (d) to produce to the Commissioner, within the period and in the manner specified in the offshore information notice, any such documents; or
 - (e) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the offshore information notice, those copies.
- (2) The period specified in the offshore information notice must end 90 days after the date of service of the notice.
 - (3) Upon written application made by the taxpayer within the period specified in the offshore information notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the offshore information notice.
 - (4) Where:
 - (a) an application under subsection (3) is made before the end of the period specified in the offshore information notice; and
 - (b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner's decision on the application;the following provisions have effect:
 - (c) the Commissioner is taken to have extended the period under subsection (3) to the end of the day (in this subsection called the *decision day*) on which the Commissioner's decision is notified to the taxpayer;
 - (d) if the Commissioner decides to extend the period—the extended period must end after the decision day.
 - (5) A reference in this section (other than subsection (3)) to the period specified in the offshore information notice is a reference to the period as extended under subsection (3).
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- (6) Where:
- (a) an offshore information notice (in this subsection called the *first notice*) was served on a taxpayer; and
 - (b) during the period specified in the first notice (including a period specified by virtue of one or more previous applications of this subsection), another offshore information notice (which other notice is in this subsection called the *subsequent notice*) is served on the taxpayer; and
 - (c) the subsequent notice is expressed to be by way of variation of the first notice;
- the following provisions have effect:
- (d) the request, or each of the requests, set out in the subsequent notice is taken, for the purposes of subsections (10), (11) and (14), to have been set out in the first notice;
 - (e) if the period specified in the first notice would, apart from this subsection, end before the end of the period specified in the subsequent notice—the period specified in the first notice is taken to have been extended under subsection (3) to the end of the period specified in the subsequent notice.
- (7) The Commissioner may, by notice in writing served on the taxpayer, vary the offshore information notice by:
- (a) reducing its scope; or
 - (b) correcting a clerical error or obvious mistake;
- and, if the Commissioner does so, a reference in this section to the offshore information notice is to be read as a reference to the notice as so varied.
- (8) The Commissioner may withdraw an offshore information notice.
- (9) If the Commissioner withdraws an offshore information notice, nothing in this section prevents the Commissioner giving another offshore information notice in substitution, in whole or in part, for the withdrawn notice.
- (10) If the taxpayer refuses or fails to comply with the request or requests set out in the offshore information notice, then, except with the consent of the Commissioner:
- (a) if the information or documents to which the request or requests apply are only relevant to one issue concerning the assessment of the taxpayer:

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- (i) where the request, or any of the requests, apply to information—the information is not admissible in proceedings disputing the taxpayer's assessment; or
 - (ii) where the request, or any of the requests, apply to documents—neither the documents, nor any secondary evidence of the documents, are admissible in proceedings disputing the taxpayer's assessment; or
- (b) if:
- (i) the information or documents to which the request or requests apply are relevant to 2 or more issues concerning the assessment of the taxpayer; and
 - (ii) the refusal or failure of the taxpayer relates to information or documents that are relevant to any or all of those issues;

the following provisions have effect:

- (iii) where the request, or any of the requests, apply to information—the information, to the extent to which it is relevant to the issue or issues mentioned in subparagraph (ii), is not admissible in proceedings disputing the taxpayer's assessment;
- (iv) where the request, or any of the requests, apply to documents—neither:
 - (A) the documents, to the extent to which they are relevant to the issue or issues mentioned in subparagraph (ii); nor
 - (B) secondary evidence of the documents, to the extent to which the secondary evidence is relevant to the issue or issues mentioned in subparagraph (ii);are admissible in proceedings disputing the taxpayer's assessment.

- (11) Without limiting the power conferred by subsection (10), where:
- (a) the taxpayer refuses or fails to comply with the request or requests set out in the offshore information notice; and

- (b) the refusal or failure of the taxpayer relates to some, but not all, of the information or documents to which the request or requests apply and that are relevant to a particular issue concerning the assessment of the taxpayer;
the Commissioner, in exercising that power, must have regard to whether there is reason to believe that, because of the absence of that information or those documents, the remaining information or documents that are relevant to that issue are, or are likely to be, misleading.
- (12) The Commissioner, in exercising the power conferred by subsection (10), must ignore the consequences (whether direct or indirect) of an obligation arising under a law of, or of a part of, a foreign country, in so far as that obligation relates to the secrecy of information or documents.
- (13) In spite of anything in this section, the Commissioner must give a consent under subsection (10) in any case where a refusal would have the effect, for the purposes of the Constitution, of making any tax or penalty incontestable.
- (14) Where, before the commencement of the hearing of proceedings disputing the taxpayer's assessment, the Commissioner forms both of the following views:
- (a) the view that the taxpayer has refused or failed to comply with the request or requests set out in the offshore information notice;
 - (b) the view that the Commissioner is unlikely to give a consent under subsection (10) in relation to that request or those requests and in relation to those proceedings;
- the Commissioner must serve on the taxpayer a notice in writing setting out those views.
- (15) A failure to comply with subsection (14) does not affect the validity of a decision under subsection (10).
- (16) A reference in this section to a refusal or failure of a taxpayer to comply with a request includes a reference to a refusal or failure resulting from the taxpayer being incapable of complying with the request.
- (17) A reference in this section to proceedings disputing the taxpayer's assessment is a reference to proceedings before a court or the
-

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Tribunal arising out of, or relating to, an objection against the assessment.

- (18) Nothing in this Act precludes an offshore information notice from being set out in the same document as a notice under section 264.
- (19) An offshore information notice must set out the effect of subsection (10).
- (20) A failure to comply with subsection (19) does not affect the validity of the offshore information notice.
- (21) A request under this section is not taken to be a requirement for the purposes of any other provision of this Act or of any provision of the *Taxation Administration Act 1953*.
- (22) A refusal or failure to comply with a request set out in an offshore information notice is not an offence.
- (23) The express references in this section to documents do not imply that references to documents in any other provision of this Act, or in a provision of the *Taxation Administration Act 1953*, do not have the meaning given by section 25 of the *Acts Interpretation Act 1901*.
- (24) Nothing in this section affects the operation of section 264 and nothing in section 264 affects the operation of this section.

264BB Commissioner may require private health insurers to provide information

- (1) The Commissioner may, by notice in writing, require a private health insurer to provide information relevant to the operation of this Act about each person who is covered at any time during a financial year specified in the notice by a complying health insurance policy issued by the insurer or who paid premiums under such a policy.
- (2) The information that the Commissioner may require the private health insurer to provide includes the following:
 - (a) the name, address and date of birth of each person mentioned in subsection (1);
 - (b) the membership number of the policy;

- (c) the name, address and date of birth of any spouse of a person covered by the policy (other than a spouse permanently living separately and apart from the person);
 - (d) whether the policy covers hospital treatment, general treatment or both;
 - (e) the date on which the policy was issued;
 - (f) whether the policy has terminated or been suspended, and, if it has, the date on which it terminated or was suspended;
 - (g) the amount of the premium payable under the policy;
 - (h) the period to which the premium relates;
 - (i) any increase or decrease in the premium;
 - (j) whether a payment in respect of a premium that was due within a period specified by the Commissioner was not paid.
- (3) The information required by a notice under subsection (1) is to be provided:
- (a) in a form (including an electronic form) approved by the Commissioner; and
 - (b) within the period specified in the notice.
- (4) In this section, the following terms have the same meanings as in the *Private Health Insurance Act 2007*:

complying health insurance policy

general treatment

hospital treatment

private health insurer

265A Release of liability of members of the Defence Force on death

- (1) Subject to subsection (2), where, in respect of the income of any year of income, income tax is payable by the trustee of the estate of a deceased person who has been a member of the Defence Force, the trustee shall, by force of this section, be released from the payment of so much of that tax as remains after deducting any tax deductions unapplied:
- (a) where the assessable income of the year of income consists solely of pay and allowances earned as a member of the

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- Defence Force—from the amount of income tax so payable by the trustee; or
- (b) where the assessable income of the year of income includes income other than such pay and allowances:
- (i) from the amount of income tax so payable by the trustee; or
 - (ii) from the amount by which the income tax payable in respect of the income of the year of income has been increased by the inclusion of such pay and allowances in the assessable income of that year;
- whichever is the less.
- (2) Nothing in subsection (1) shall be construed so as to authorize or require the Commissioner to refund any amount paid as or for income tax by or on behalf of the taxpayer or his trustee.
- (3) The provisions of subsection (1) do not apply in any case where the death of the taxpayer has occurred in circumstances (including the circumstances of his or her service) in which the Commonwealth would not be liable to pay pensions or compensation:
- (a) under Part II or IV of the *Veterans' Entitlements Act 1986* to the dependants of deceased members of the Forces or veterans; or
 - (b) mentioned in paragraph 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004* to the wholly dependent partners of deceased members (within the meaning of that Act).
- (4) Any decision of an authority constituted under the *Repatriation Act 1920-1962* on any question affecting the right of any dependants of a deceased member of the Forces to a pension under that Act or under the *Repatriation (Far East Strategic Reserve) Act 1956-1962* or the *Repatriation (Special Overseas Service) Act 1962*, or any decision of an authority constituted under the *Veterans' Entitlements Act 1986* on a question affecting the right of a dependant of a deceased veteran to a pension under Part II or IV of that Act, or any decision of the Military Rehabilitation and Compensation Commission established under section 361 of the *Military Rehabilitation and Compensation Act 2004* on a question affecting the right of a dependant of a deceased member (within the meaning of that Act) to compensation under Chapter 5 of that Act, in respect of his or her death shall, so long as that decision has

not been reversed or overruled, be conclusive evidence of the matters of fact or law so decided for the purposes of the application of subsection (3) in relation to that deceased member of the Forces.

(5) In this section:

tax deductions unapplied, in relation to a deceased person, means the total of any amounts withheld under paragraph 12-45(1)(c) in Schedule 1 to the *Taxation Administration Act 1953* from amounts earned by the deceased person as a member of the Defence Force where:

- (a) the amounts have not been credited in payment of income tax; and
- (b) the Commissioner has not made a payment in respect of them.

265B Notices in relation to certain securities

(1) Subject to subsection (2), for the purposes of this section:

- (a) expressions used in this section that are also used in Division 16E of Part III have the same respective meanings as in that Division; and
- (b) sections 159GV (other than subsection 159GV(2)) and 159GZ apply as if references in those sections to *this Division* were references to *section 265B*.

(2) Subsection (1) applies as if paragraph (c) of the definition of *qualifying security* in subsection 159GP(1) were omitted.

(3) The holder of a security, not being a prescribed security within the meaning of section 26C, may apply at any time to the issuer for a notice under this section in relation to the security.

(4) Where the issuer of a security receives an application under subsection (3) in relation to the security, the issuer shall within 21 days of receipt of the application issue a notice in writing to the applicant, expressed to be issued under this section and identifying the security, that states that the notice was issued at a specified time on a specified date and:

- (a) where the security is not a qualifying security—that the security is not a qualifying security; or
- (b) where the security is a qualifying security—that:

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- (i) the security is a qualifying security;
- (ii) the security was issued for a specified consideration;
- (iii) where the security was partially redeemed on one or more occasions before the time of issue of the notice—that the security was partially redeemed by a specified amount or amounts on a specified date or dates; and
- (iv) where the security was varied to become a qualifying security—the security was varied, for a specified consideration, to become a qualifying security.

266 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act or the *Income Tax Assessment Act 1997*, prescribing all matters which by this Act or the *Income Tax Assessment Act 1997* are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act or the *Income Tax Assessment Act 1997*, and for prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.

Part X—Attribution of income in respect of controlled foreign companies

Division 1—Preliminary

316 Object of Part

- (1) The object of this Part is to provide for certain amounts to be included in a taxpayer's assessable income (Division 9) in respect of:
 - (a) the attributable income of a CFC (section 456); and
 - (b) certain changes of residence by a CFC (section 457).
- (2) To that end (and for other purposes of this Act) this Part contains rules relating to the following:
 - (a) interpretation (Division 1);
 - (b) types of entities (Division 2);
 - (c) control interests, attribution interests, attributable taxpayers and attribution percentages (Division 3);
 - (d) attribution accounts (Division 4);
 - (g) the calculation of attributable income of a CFC (Division 7);
 - (h) the active income test (Division 8);
 - (j) post-attribution asset disposals (Division 10);
 - (k) the keeping of records (Division 11).

317 Interpretation

- (1) In this Part, unless the contrary intention appears:

accounting period, in relation to company, means an accounting period used by the company in the accounts by reference to which it distributes dividends.

accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

accounts means ledgers, journals, profit and loss accounts and balance-sheets, and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

accruals tax law, in relation to a listed country, means a law of the listed country that is declared by regulations for the purposes of this definition to be an accruals tax law.

active income test has the meaning given by section 432.

adjusted tainted income has the meaning given by section 386.

AFI or **Australian financial institution** means any of the following Australian entities:

- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
- (b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution;
- (c) a registered entity under the *Financial Sector (Collection of Data) Act 2001*;
- (d) a life assurance company.

AFI subsidiary or **Australian financial institution subsidiary** has the meaning given by section 326.

aircraft means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include an air-cushion vehicle.

associate has the meaning given by section 318.

associate-inclusive control interest has the meaning given by section 349.

attributable income has the meaning given by Division 7.

attributable taxpayer, has the meaning given by section 361.

attribution account entity has the meaning given by section 363.

attribution account payment has the meaning given by section 365.

attribution credit has the meaning given by section 371.

attribution debit has the meaning given by section 372.

attribution percentage has the meaning given by section 362.

attribution tracing interest:

- (a) in relation to a CFC—has the meaning given by section 358;
and
- (b) in relation to a CFP—has the meaning given by section 359;
and
- (c) in relation to a CFT—has the meaning given by section 360.

Australian 1% entity, in relation to a company or trust, means an Australian entity whose associate-inclusive control interest in the company or trust is at least 1%.

Australian entity has the meaning given by section 336.

Australian partnership has the meaning given by section 337.

Australian tax means income tax or withholding tax.

Australian trust has the meaning given by section 338.

CFC or **controlled foreign company** has the meaning given by section 340.

CFE or **controlled foreign entity** has the meaning given by section 339.

CFP or **controlled foreign partnership** has the meaning given by section 341.

CFT or **controlled foreign trust** has the meaning given by section 342.

CGT roll-over provisions means former section 160ZZF and Divisions 5A, 5B, 7A and 17 of former Part IIIA of this Act or Divisions 122, 124 and 126, and section 118-350, of the *Income Tax Assessment Act 1997*.

commodity means any thing that is capable of delivery under an agreement for its delivery, but does not include an instrument creating or evidencing a chose in action.

commodity investment means:

- (a) either of the following contracts:
 - (i) a forward contract in respect of a commodity;
 - (ii) a futures contract in respect of a commodity; or
- (b) a right or option in respect of such a contract.

company does not include a company in the capacity of trustee.

company title interest, in relation to land, means a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building.

control tracing interest:

- (a) in relation to a CFC—has the meaning given by section 353;
or
- (b) in relation to a CFP—has the meaning given by section 354;
or
- (c) in relation to a CFT—has the meaning given by section 355.

currency exchange gain, in relation to a company, in relation to a statutory accounting period, means a currency gain realised by the company in the statutory accounting period, to the extent to which it is attributable to currency exchange rate fluctuations.

currency exchange loss, in relation to a company, in relation to a statutory accounting period, means a currency loss realised by the company in the statutory accounting period, to the extent to which it is attributable to currency exchange rate fluctuations.

de facto relationship means:

- (a) a relationship between 2 persons (whether of the same sex or different sexes) that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b) a relationship between 2 persons (whether of the same sex or different sexes) who, although not legally married to each other, live with each other on a genuine domestic basis in a relationship as a couple.

depreciation provision means:

- (a) any of former sections 54 to 62 of Division 3 of Part III of this Act, any provision of former Divisions 10, 10AAA, 10AA, 10A, 10C and 10D of that Part; or
- (b) any provision of Division 40 of the *Income Tax Assessment Act 1997* (other than Subdivision 40-E) or of Division 43 of that Act; or
- (c) any provision of the former Division 42 of that Act (other than Subdivisions 42-L and 42-M), or the former Subdivisions 330-A, 330-C, 330-H and 387-G of that Act.

designated concession income, in relation to a listed country, means:

- (a) income or profits of a kind specified in the regulations if:
 - (i) foreign tax imposed by a tax law of the country is not payable in respect of the income or profits because of a particular feature; or
 - (ii) foreign tax imposed by a tax law of the country is payable in respect of the income or profits but there is a feature in relation to that tax;
and the feature is of a kind specified in the regulations; or
- (b) capital gains that would be made because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) applied.

Note 1: CGT event J1 is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

direct attribution account interest has the meaning given by section 366.

direct attribution interest has the meaning given by section 356.

direct control interest:

- (a) in relation to a company—has the meaning given by section 350;
- (b) in relation to a trust—has the meaning given by section 351.

discretionary trust means a trust where:

- (a) both of the following conditions are satisfied:
 - (i) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a

condition) to exercise any power of appointment or other discretion;

- (ii) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (A) the identities of those who may benefit under the trust;
 - (B) how beneficiaries are to benefit, as between themselves, under the trust; or
- (b) one or more of the beneficiaries under the trust have a contingent or defeasible interest in some or all of the corpus or income of the trust; or
- (c) the trustee of another trust, being a trust where both of the conditions in paragraph (a) are satisfied, benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the first-mentioned trust.

disposal of an asset includes:

- (a) redemption; and
- (b) CGT event J1 happening in relation to the asset (about companies ceasing to be related after a roll-over) if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

distributable profits, in relation to a company, means the amount, whether of an income or capital nature, that, having regard to the accounts of the company and such other matters as may reasonably be regarded as relevant, constitutes profits of the company that would be available for distribution by the company by way of dividends if there were disregarded any requirement of the constituent document, or of any resolution or decision, of the company restricting the availability of the profits for distribution in that way, other than any requirement providing for an eligible provision or reserve.

double tax agreement, in relation to a foreign country, means:

- (a) if there is only one agreement (within the meaning of the *International Tax Agreements Act 1953*) in force in respect of the foreign country—that agreement; or

- (b) if there are 2 or more agreements (within the meaning of that Act) in force in respect of the foreign country—the agreement that is expressed to be:
 - (i) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; or;
 - (ia) concerning the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; or
 - (ii) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital; or
 - (iii) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital; or
 - (iv) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains; or
 - (v) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes.

eligible designated concession income, in relation to a listed country, in relation to a particular period (in this definition called the ***income period***), means designated concession income in relation to the listed country:

- (a) that is not subject to tax in another listed country in a tax accounting period:
 - (i) ending before the end of the income period; or
 - (ii) commencing during the income period; or
- (b) that is:
 - (i) subject to tax in another listed country in a tax accounting period:
 - (A) ending before the end of the income period; or
 - (B) commencing during the income period; and
 - (ii) designated concession income in relation to that other listed country.

eligible finance share has the meaning given by section 327.

eligible finance share dividend means a dividend in respect of an eligible finance share.

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eligible provision or reserve means:

- (a) a provision or reserve required to be maintained by law; or
- (b) a provision for any liability in respect of foreign tax or Australian tax; or
- (c) a reserve maintained for the purpose of qualifying for relief from foreign tax; or
- (d) a provision or reserve for depreciation, bad or doubtful debts or leave payments; or
- (e) any other provision or reserve of a kind prescribed by regulations for the purposes of this paragraph.

eligible transferor has the meaning given by sections 347 and 348.

entitled to acquire has the meaning given by section 322.

entity means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in the capacity of trustee;
- (d) any other person.

factoring income means income derived from carrying on a business of factoring.

FIF attribution account entity has the meaning given by section 601.

FIF attribution account payment has the meaning given by section 603.

FIF attribution debit has the meaning given by section 606.

financial intermediary business means:

- (a) banking business; or
- (b) a business whose income is principally derived from the lending of money.

general insurance company means a company whose sole or principal business is insurance business within the meaning of subsection 3(1) of the *Insurance Act 1973*, but does not include a life assurance company.

goods includes:

- (a) ships, aircraft and other vehicles; and
- (b) animals, including fish; and
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity.

grossed-up amount:

- (a) in relation to an attribution debit—has the meaning given by section 373; and
- (b) in relation to a FIF attribution debit—has the meaning given by section 607A.

gross tainted turnover has the meaning given by section 435.

gross turnover has the meaning given by section 434.

group includes:

- (a) one entity alone; and
- (b) a number of entities the members of which are not in any way associated with each other nor acting together.

income interest in a partnership means an interest in the profits of the partnership.

income interest in a trust means an interest in the income of the trust.

indirect attribution account interest has the meaning given by section 369.

indirect attribution interest has the meaning given by section 357.

indirect control interest has the meaning given by section 352.

IP time means 7.30 p.m., by standard time in the Australian Capital Territory, on 12 April 1989.

law, in relation to a listed country or an unlisted country, means a law of that listed country or unlisted country, or of any part of, or place in, that listed country or unlisted country.

lease includes a sublease and, in relation to a company title interest in land, includes an agreement similar to a lease or sublease.

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leased includes let on hire (including a letting on hire that is described in the relevant agreement as a lease) under an agreement other than a hire-purchase agreement.

listed country has the meaning given by section 320.

net tainted commodity gains has the meaning given by section 443.

net tainted currency exchange gains has the meaning given by section 444.

non-attributable income period, in relation to a taxpayer in relation to a company in relation to the application of a provision of this Act in accordance with Division 7, means a statutory accounting period of the company for which:

- (a) there is no requirement to calculate under Division 7 the attributable income of the company in relation to the taxpayer; or
- (b) there is a requirement to calculate under Division 7 the attributable income of the company in relation to the taxpayer, but the particular provision is not relevant to that calculation.

non-discretionary trust means a trust other than a discretionary trust.

non-portfolio dividend means a dividend (other than an eligible finance share dividend or a widely distributed finance share dividend) paid to a company where that company has a voting interest, within the meaning of section 334A, amounting to at least 10% of the voting power, within the meaning of that section, in the company paying the dividend.

non-resident family trust has the meaning given by section 328.

non-share forward contract means a forward contract that is not in respect of shares or a share price index.

non-share futures contract means a futures contract that is not in respect of shares or a share price index.

notional allowable deduction has the meaning given by subsection 382(2).

notional assessable income has the meaning given by subsection 382(2).

notional exempt income has the meaning given by subsection 382(2).

Part X Australian resident means a resident within the meaning of section 6, but does not include an entity where:

- (a) there is a double tax agreement in force in respect of a foreign country; and
- (b) that agreement contains a provision that is expressed to apply where, apart from the provision, the entity would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and
- (c) that provision has the effect that the entity is, for the purposes of the agreement, a resident solely of the foreign country.

passive income has the meaning given by section 446.

premium income means:

- (a) premiums in respect of insurance or reinsurance; or
- (b) life assurance premiums.

profits includes gains, whether of an income or capital nature.

property management services includes any of the following services:

- (a) cleaning;
- (b) secretarial;
- (c) catering.

provide, in relation to services, includes allow, confer, give, grant or perform.

public unit trust has the meaning given by section 329.

recognised accounts:

- (a) in relation to a company, in relation to a statutory accounting period, means the accounts referred to in subparagraph 432(1)(c) that are prepared by the company for the statutory accounting period; or
- (b) in relation to a partnership in which a company is a partner at any time during a statutory accounting period, means the

accounts referred to in paragraph 437(1)(b) that are prepared by the partnership for the statutory accounting period.

rent means any consideration (in this definition called a **rental consideration**) paid or given by a lessee under a lease and includes consideration (whether paid or given by a lessee or another person) in the nature of a rental consideration.

residency assumption, in relation to a CFC, means the assumption about the residence of the CFC that is made in paragraph 383(a).

retention period, in relation to a statutory accounting period, means the period of 5 years commencing at the end of the statutory accounting period.

sale, in relation to goods, includes exchange or hire-purchase and **purchase**, when used in relation to goods, has a corresponding meaning.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

ship means a vessel or boat of any description, and includes:

- (a) an air-cushion vehicle; and
- (b) any floating structure.

special excluded rental income, in relation to a company, in relation to a statutory accounting period, means income derived by

the company in the statutory accounting period by way of rent, where:

- (a) the income was derived by the company from a CFC; and
- (b) at all times during the statutory accounting period when the income accrued:
 - (i) the CFC was an associate of the company; and
 - (ii) the company was a resident of a particular listed country or a particular unlisted country; and
 - (iii) the CFC was also a resident of that listed country or that unlisted country, as the case may be; and
- (c) the income was taxed in that listed country or that unlisted country, as the case may be, at the country's normal company tax rate (see section 325); and
- (d) the income would not have been, in whole or in part, a notional allowable deduction of the CFC if it were assumed that the CFC had failed to pass the active income test in relation to any statutory accounting period of the CFC.

statutory accounting period has the meaning given by section 319.

subject to tax has the meaning given by section 324.

tainted asset, in relation to a company, means:

- (a) any of the following:
 - (i) loans (including deposits with a bank or other financial institution);
 - (ii) debenture stock, bonds, debentures, certificates of entitlement, bills of exchange, promissory notes or other securities;
 - (iii) shares in a company;
 - (iv) an interest in a trust or partnership;
 - (v) futures contracts;
 - (vi) forward contracts;
 - (vii) interest rate swap contracts;
 - (viii) currency swap contracts;
 - (ix) forward exchange rate contracts;
 - (x) forward interest rate contracts;
 - (xi) life assurance policies;
 - (xii) a right or option in respect of such a loan, security, share, interest, contract or policy;

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- (xiii) any similar financial instrument; or
- (b) an asset that was held by the company solely or principally for the purpose of deriving tainted rental income; or
- (c) an asset other than:
 - (i) trading stock; or
 - (ii) any other asset used solely in carrying on a business;but does not include a commodity investment.

tainted commodity gain, in relation to a company, in relation to a statutory accounting period, means:

- (a) a gain realised by the company in the statutory accounting period from disposing of a tainted commodity investment; or
- (b) a capital gain that the company would have made in the statutory accounting period because CGT event J1 would have happened in relation to a tainted commodity investment, if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

tainted commodity investment, in relation to a company, means:

- (a) either of the following contracts:
 - (i) a forward contract in respect of a commodity;
 - (ii) a futures contract in respect of a commodity; or
 - (b) a right or option in respect of such a contract;
- except where either of the following conditions is satisfied:
- (c) both of the following subparagraphs apply:
 - (i) the company carries on:
 - (A) a business of producing or processing the commodity; or
 - (B) a business that involves the use of the commodity as a raw material in a production process;
 - (ii) the contract, right or option relates to the carrying on of that business;
 - (d) both of the following subparagraphs apply in relation to the contract:
 - (i) the contract was entered into by the company for the sole purpose of eliminating or reducing the risk of adverse financial consequences that might result for the

company, under another contract, from fluctuations in the price of the commodity;

- (ii) the company does not and will not derive tainted sales income from a transaction under that other contract.

tainted commodity loss, in relation to a company, in relation to a statutory accounting period, means:

- (a) a loss realised by the company in the statutory accounting period from disposing of a tainted commodity investment; or
- (b) a capital loss that the company would have made in the statutory accounting period because CGT event J1 would have happened in relation to a tainted commodity investment, if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

tainted currency exchange gain, in relation to a company, in relation to a statutory accounting period, means a currency exchange gain realised by the company in the statutory accounting period except where the gain related to an active income transaction (within the meaning of section 439).

tainted currency exchange loss, in relation to a company, in relation to a statutory accounting period, means a currency exchange loss realised by the company during the statutory accounting period except where the loss related to an active income transaction (within the meaning of section 439).

tainted income ratio has the meaning given by section 433.

tainted interest income, in relation to a company, means:

- (a) interest or a payment in the nature of interest; or
- (b) an amount that, if the company were a resident within the meaning of section 6, would be included in assessable income under Division 16E of Part III; or
- (c) factoring income;

but does not include:

- (d) income (being interest, fees, commission or other amounts) derived by a person in respect of offshore banking transfers of the person; or

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- (e) income consisting of dividends or non-share dividends paid to a person by a company out of profits derived from the making of offshore banking transfers.

tainted rental income (other than special excluded rental income), in relation to a company, in relation to a statutory accounting period, means income derived by the company in the statutory accounting period by way of rent in respect of any of the following:

- (a) a lease to which an associate of the company was a party at the time the income was derived;
- (b) a lease where any or all of the rent was paid or given by an associate of the company;
- (c) a lease of land, except where the following conditions are satisfied:
 - (i) the land is situated in a listed country or in an unlisted country;
 - (ii) at all times during the period when the income accrued, the company was a resident of that country;
- (d) a lease of land where the following conditions are satisfied:
 - (i) the land is situated in a listed country or in an unlisted country;
 - (ii) at all times during the period when the income accrued, the company was a resident of that country;
 - (iii) it is not the case that a substantial part of the income is attributable to the provision of labour-intensive property management services in connection with the land, being services provided by directors or employees of the company;
- (e) a lease of either of the following:
 - (i) a ship;
 - (ii) an aircraft;except where a substantial part of the income is attributable to the provision by the directors or employees of the company of any of the following in relation to the ship or aircraft concerned:
 - (iii) operating crew services;
 - (iv) maintenance services;
 - (v) management services;
- (f) a lease of either of the following:

(i) a cargo container designed or intended for use on ships or aircraft as part of a containerised cargo handling system;

(ii) plant or equipment designed or intended for use on board ships;

except where a substantial part of the income is attributable to the provision by the directors or employees of the company of either of the following in relation to the container, plant or equipment concerned:

(iii) maintenance services;

(iv) management services.

tainted royalty income, in relation to a company, means royalties derived by the company except where all of the following conditions are satisfied:

(a) the royalties are derived in the course of a business carried on by the company;

(b) at the time the royalties were derived, the entity liable to pay the royalties was not an associate of the company;

(c) either of the following subparagraphs applies:

(i) the matter or thing in respect of which the royalty is consideration originated with the company;

(ii) the company has substantially developed, altered or improved that matter or thing with the result that its market value was substantially enhanced.

tainted sales income has the meaning given by section 447.

tainted services income has the meaning given by section 448.

tax accounting period, in relation to an entity, in relation to a foreign tax imposed by a tax law of a listed country, means the accounting period used by the entity for the purposes of determining the tax base under that law.

tax detriment has the meaning given by section 330.

tax law, in relation to a listed country or an unlisted country, means:

(a) if the listed country or the unlisted country has federal foreign tax and either or both of the following:

(i) State foreign tax;

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- (ii) municipal foreign tax;
the law of the listed country or the unlisted country that imposes the federal foreign tax; or
- (b) in any other case—the law of the listed country or the unlisted country that imposes foreign tax.

trust means:

- (a) an entity in the capacity of trustee (including an entity that manages a trust if there is no trustee); or
- (b) as the case requires, a trust or trust estate.

transitional finance share has the meaning given by section 327B.

transitional finance share dividend means a dividend in respect of a transitional finance share.

unlisted country has the meaning given by section 320.

widely distributed finance share has the meaning given by section 327A.

widely distributed finance share dividend means a dividend in respect of a widely distributed finance share.

- (2) Where, if all offshore borrowings made by persons when they were offshore banking units were taken to be tax exempt loan money of the persons for the purposes of Division 11A of Part III, an offshore loan, or other transfer, of an amount by a person would, for the purposes of that Division, be an offshore loan, or other transfer, of tax exempt loan money of the person, the offshore loan, or other transfer, of the amount is an offshore banking transfer of the person for the purposes of the definition of *tainted interest income*.

318 Associates

- (1) For the purposes of this Part, the following are associates of an entity (in this subsection called the *primary entity*) that is a natural person (otherwise than in the capacity of trustee):
 - (a) a relative of the primary entity;
 - (b) a partner of the primary entity or a partnership in which the primary entity is a partner;

- (c) if a partner of the primary entity is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner;
 - (d) a trustee of a trust where the primary entity, or another entity that is an associate of the primary entity because of another paragraph of this subsection, benefits under the trust;
 - (e) a company where:
 - (i) the company is sufficiently influenced by:
 - (A) the primary entity; or
 - (B) another entity that is an associate of the primary entity because of another paragraph of this subsection; or
 - (C) another company that is an associate of the primary entity because of another application of this paragraph; or
 - (D) 2 or more entities covered by the preceding sub-subparagraphs; or
 - (ii) a majority voting interest in the company is held by:
 - (A) the primary entity; or
 - (B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the preceding paragraphs of this subsection; or
 - (C) the primary entity and the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and because of the preceding paragraphs of this subsection.
- (2) For the purposes of this Part, the following are associates of a company (in this subsection called the **primary entity**):
- (a) a partner of the primary entity or a partnership in which the primary entity is a partner;
 - (b) if a partner of the primary entity is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner;
 - (c) a trustee of a trust where the primary entity, or another entity that is an associate of the primary entity because of another paragraph of this subsection, benefits under the trust;
 - (d) another entity (in this paragraph called the **controlling entity**) where:

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- (i) the primary entity is sufficiently influenced by:
 - (A) the controlling entity; or
 - (B) the controlling entity and another entity or entities; or
- (ii) a majority voting interest in the primary entity is held by:
 - (A) the controlling entity; or
 - (B) the controlling entity and the entities that, if the controlling entity were the primary entity, would be associates of the controlling entity because of subsection (1), because of subparagraph (i) of this paragraph, because of another paragraph of this subsection or because of subsection (3);
- (e) another company (in this paragraph called the *controlled company*) where:
 - (i) the controlled company is sufficiently influenced by:
 - (A) the primary entity; or
 - (B) another entity that is an associate of the primary entity because of another paragraph of this subsection; or
 - (C) a company that is an associate of the primary entity because of another application of this paragraph; or
 - (D) 2 or more entities covered by the preceding sub-subparagraphs; or
 - (ii) a majority voting interest in the controlled company is held by:
 - (A) the primary entity; or
 - (B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the other paragraphs of this subsection; or
 - (C) the primary entity and the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the other paragraphs of this subsection;
- (f) any other entity that, if a third entity that is an associate of the primary entity because of paragraph (d) of this subsection

were the primary entity, would be an associate of that third entity because of subsection (1), because of another paragraph of this subsection or because of subsection (3).

- (3) For the purposes of this Part, the following are associates of a trustee (in this subsection called the **primary entity**):
- (a) any entity that benefits under the trust;
 - (b) if a natural person benefits under the trust—any entity that, if the natural person were the primary entity, would be an associate of that natural person because of subsection (1) or because of this subsection;
 - (c) if a company is an associate of the primary entity because of paragraph (a) or (b) of this subsection—any entity that, if the company were the primary entity, would be an associate of the company because of subsection (2) or because of this subsection.
- (4) For the purposes of this Part, the following are associates of a partnership (in this subsection called the **primary entity**):
- (a) a partner in the partnership;
 - (b) if a partner in the partnership is a natural person—any entity that, if that natural person were the primary entity, would be an associate of that natural person because of subsection (1) or (3);
 - (c) if a partner in the partnership is a company—any entity that, if the company were the primary entity, would be an associate of the company because of subsection (2) or (3).
- (5) In determining, for the purposes of this section, whether an entity is an associate of another entity at a particular time (in this subsection called the **test time**):
- (a) an entity (in this subsection called the **public unit trust entity**) that, apart from this subsection, is the trustee of a public unit trust at the test time is to be treated as if it were a company instead of a trustee; and
 - (b) the public unit trust entity is taken to be sufficiently influenced by another entity or other entities if the public unit trust entity is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other entity or other entities (whether those directions, instructions or wishes are, or might reasonably be expected to
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- be, communicated directly or through interposed companies, partnerships or trusts); and
- (c) another entity or other entities are taken to hold a majority voting interest in the public unit trust entity if either of the following percentages is not less than 50%:
- (i) the percentage of the income of the trust represented by the share of the income to which the other entity or other entities are entitled, or that the other entity or other entities are entitled to acquire;
 - (ii) the percentage of the corpus of the trust represented by the share of the corpus to which the other entity or other entities are entitled, or that the other entity or other entities are entitled to acquire.
- (6) For the purposes of this section:
- (a) a reference to an entity benefiting under a trust is a reference to the entity benefiting, or being capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts; and
 - (b) a company is sufficiently influenced by an entity or entities if the company, or its directors, are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and
 - (c) an entity or entities hold a majority voting interest in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.
- (7) In this section and any other provision of this Act that has effect for the purposes of this section, a reference to the spouse of a person does not include:
- (a) a spouse who is legally married to the person but living separately and apart from the person on a permanent basis; or
 - (b) a spouse within the meaning of paragraph (a) of the definition of *spouse* in subsection 995-1(1) of the *Income*

Tax Assessment Act 1997 who is living separately and apart from the person on a permanent basis.

319 Statutory accounting period of a company

- (1) Subject to this section, each period of 12 months finishing at the end of 30 June is a statutory accounting period of a company.
- (2) A company may, by notice in writing to the Commissioner, elect that a day (in this section called the *new day*) is to be the last day of its statutory accounting period instead of the day (in this section called the *old day*) that would otherwise apply under this section.
- (3) The new day must be:
 - (a) if:
 - (i) the company has not previously given a notice under this section; and
 - (ii) the company regularly uses:
 - (A) an accounting period of 12 months finishing at the end of a day other than 30 June for the purposes of complying with the requirements of a tax law of any country; or
 - (B) an accounting period of 12 months finishing at the end of a day other than 30 June for the purposes of reporting to its shareholders;
 - (b) if the company has previously given a notice under this section—30 June or either of the days that, but for the giving of the notice, would be applicable under paragraph (a).
- (4) Subject to any further application of subsection (2) and to subsections (4A) and (5):
 - (a) the first statutory accounting period using the new day is the period that begins immediately after the end of the statutory accounting period (using the old day) during which the election was made; and
 - (b) later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day.
- (4A) Subject to subsection (5), if:
 - (a) the election is made in the company's statutory accounting period in which the company first became a CFC; and

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- (b) the new day occurs after the election is made but before the old day;
- then, subject to any further application of subsection (2):
 - (c) that statutory accounting period finishes at the end of the new day; and
 - (d) later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day.
- (5) Where, when it makes the election, it is less than 12 months since the company was incorporated or otherwise established:
 - (a) the reference in subparagraph (3)(a)(ii) to the company regularly using an accounting period is instead a reference to the company proposing to use the accounting period; and
 - (b) subject to any further application of subsection (2):
 - (i) the first statutory accounting period of the company is the period beginning at the time of incorporation or establishment and ending at the end of the new day; and
 - (ii) later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day.
- (6) If:
 - (a) the company is a CFC at the beginning of what is, disregarding this subsection, a statutory accounting period; and
 - (b) the company ceases to exist before the end of the statutory accounting period;the statutory accounting period ends immediately before the company ceases to exist.
- (7) For the purposes of applying this section to a company, if:
 - (a) the company is a CFC at a particular time; and
 - (b) an entity is the only attributable taxpayer in relation to the company at that time; and
 - (c) the entity's attribution percentage in relation to the company is 100% at that time;then, instead of a notice being given under subsection (2) by the company at that time, the notice may be given at that time by the entity.

320 Listed countries and unlisted countries

(1) In this Part:

listed country means a foreign country, or a part of a foreign country, that is declared by the regulations to be a listed country for the purposes of this Part.

section 404 country means a foreign country, or a part of a foreign country, that is declared by the regulations to be a section 404 country for the purposes of this Part.

unlisted country means:

- (a) a foreign country that does not (either in whole or in part) consist of a listed country or listed countries; or
 - (b) if one or more parts of a foreign country are listed countries—the remainder of that foreign country.
- (2) Subject to this section, for the purposes of this section, if, apart from this section:
- (a) a colony, overseas territory or protectorate of a foreign country; or
 - (b) an overseas territory for the international relations of which a foreign country is responsible;
- is not a foreign country in its own right, the colony, territory or protectorate is taken to be a foreign country in its own right.
- (3) Subject to subsection (4), for the purposes of this section, if, apart from this subsection and subsection (4), there are 2 or more foreign countries with a common income tax system, those countries are to be treated as the same country.
- (4) For the purposes of this section, if, apart from this subsection, one or more parts of a particular foreign country are excluded (either expressly or by implication) from the operation of a double tax agreement in force in relation to the foreign country, the part or parts so excluded are to be taken to constitute a separate foreign country.

321 Each listed country and each unlisted country to be treated as a separate foreign country

For the purposes of the application of section 6AB to this Part, each listed country and each unlisted country is to be treated as a separate foreign country.

322 Meaning of *entitled to acquire*

For the purposes of this Part, an entity is entitled to acquire anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

323 State foreign taxes may be treated as federal foreign taxes

If, apart from this section, a listed country or an unlisted country has both:

- (a) federal foreign tax; and
- (b) State foreign tax;

the regulations may provide that a specified State foreign tax is to be treated, for the purposes of this Part, as if it were an additional federal foreign tax of the listed country or the unlisted country.

324 When income or profits subject to tax in a listed country

- (1) Subject to this section, for the purposes of this Part, a particular item of income or profits derived by an entity is taken to be subject to tax in a listed country in a particular tax accounting period if, and only if, foreign tax (other than a withholding-type tax) is payable under a tax law of the listed country in respect of the item because the item is included in the tax base of that law for the tax accounting period.
- (2) If:
 - (a) apart from this subsection and subsections (3) and (4), a particular item of income or profits derived by an entity is not subject to tax in a listed country in a particular tax accounting period; and

- (b) apart from a feature of a kind specified in the regulations, the item would have been subject to tax in the listed country in the tax accounting period;

the regulations may provide that the item is to be treated, for the purposes of this Part or one or more specified provisions of this Part, as if it were subject to tax in the listed country in the tax accounting period.

- (3) Where:

- (a) an entity becomes a resident of a particular listed country (in this section called the *current listed country*) at a particular time (in this section called the *residence-change time*); and
- (b) the entity owns an asset at the residence-change time; and
- (c) the entity disposes of the asset while a resident of the current listed country;

then, for the purposes of this Part:

- (d) if, apart from this paragraph, the only part of a capital gain on the disposal of the asset that is subject to tax in the listed country is the part that relates to the period after the residence-change time—the whole of the capital gain, whether it relates to the period before or after the residence-change time, is, subject to subsection (4), taken to be subject to tax in the current listed country; and
- (e) subsection (4) applies.

- (4) Where:

- (a) a capital gain on the disposal of the asset would, apart from this subsection and whether or not paragraph (3)(d) applies, be subject to tax in the current listed country; and
- (b) at a time or times when it owned the asset before the residence-change time (but disregarding any time or times before a change of residence from an unlisted country to a listed country), the entity was a resident of one or more listed countries (each of which is in this subsection called a *previous listed country*); and
- (c) if the entity had disposed of the asset when it ceased to be a resident of a particular previous listed country (in this subsection called the *non-taxing listed country*), any capital gain on the disposal would not have been subject to tax in that country; and

(d) if the entity had disposed of the asset when it ceased to be a resident of another previous listed country after the non-taxing listed country, any capital gain on the disposal would not have been subject to tax in that other previous listed country to the extent that it relates to the period of residence by the entity in the non-taxing listed country; then, for the purposes of this Part, so much of the gain as relates to the period of residence in the non-taxing listed country is taken not to be subject to tax in the current listed country.

Note: Section 830-75 of the *Income Tax Assessment Act 1997* sets out additional circumstances, relating to entities that are foreign hybrids, in which a gain or profit is subject to tax in a listed country.

325 When dividends etc. taxed in a country at normal company tax rate

- (1) For the purposes of this Part, a dividend or other amount of a particular kind is to be taken to be taxed in a listed country at the country's normal company tax rate if, and only if:
 - (a) foreign tax is payable under a tax law of the listed country in respect of the dividend or the other amount of a particular kind at the same rate as, or a higher rate than, is payable under the tax law in respect of non-dividend income, or non-dividend amounts not of that particular kind, as the case may be, included in the tax base of a company that is a resident of the listed country; and
 - (b) the tax law of the listed country does not provide for any credit, rebate or other tax concession in respect of the dividend or the other amount of a particular kind, other than for foreign tax payable under a tax law of a different listed or an unlisted country.
- (2) For the purposes of this Part, a dividend or other amount of a particular kind is taken to be taxed in an unlisted country at the country's normal tax rate if, and only if:
 - (a) foreign tax is payable under a tax law of the unlisted country in respect of the dividend or the other amount of a particular kind at the same rate as, or a higher rate than, is payable under the tax law in respect of non-dividend income, or non-dividend amounts not of that particular kind, as the case may be, included in the tax base of a company that is a resident of the unlisted country; and

- (b) the tax law of the unlisted country does not provide for any credit, rebate or other tax concession in respect of the dividend or the other amount of a particular kind, other than for foreign tax payable under a tax law of a different unlisted or a listed country.

326 AFI subsidiary

- (1) For the purposes of this Part, a company is an AFI subsidiary (or an Australian financial institution subsidiary) at a particular time if either of the following paragraphs applies:
 - (a) at that time, there is a group of 5 or fewer AFI entities the aggregate of whose direct control interests and indirect control interests in the company is not less than 50%;
 - (b) both of the following subparagraphs apply:
 - (i) at that time, there is a single AFI entity (in this paragraph called the *assumed controller*) the aggregate of whose direct control interests and indirect control interests in the company is not less than 40%;
 - (ii) at that time, the company is not controlled by a group of entities not being or including the assumed controller or any of its associates.
- (2) A reference in this section to an AFI entity is a reference to:
 - (a) a company that is an AFI; or
 - (b) a 100% subsidiary of such a company.
- (3) For the purposes of this section, a company (in this subsection called the *subsidiary company*) is taken to be the 100% subsidiary of another company (in this subsection called the *holding company*) at a particular time if:
 - (a) at that time, all the shares in the subsidiary company were beneficially owned by:
 - (i) the holding company; or
 - (ii) a company that is, or 2 or more companies each of which is, a 100% subsidiary of the holding company; or
 - (iii) the holding company and a company that is, or 2 or more companies each of which is, a 100% subsidiary of the holding company; and
 - (b) there was no agreement, arrangement or understanding in force at that time by virtue of which any person was in a

position, or would be in a position after that time, to affect rights of the holding company or of a 100% subsidiary of the holding company in relation to the subsidiary company.

- (4) For the purposes of this section, where a company is a 100% subsidiary of another company (including a company that is such a 100% subsidiary by virtue of another application or other applications of this subsection), every company that is a 100% subsidiary of the first-mentioned company is taken to be a 100% subsidiary of that other company.
- (5) For the purposes of subsection (3), a person is taken to be in a position at a particular time to affect any rights of a company in relation to another company if, at that time, that person has a right, power or option (whether by virtue of any provision of the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

327 Eligible finance shares

For the purposes of this Part, a share in a company is an eligible finance share if all the following conditions are satisfied:

- (a) the shareholder is an AFI or an AFI subsidiary;
- (b) the share was issued to the shareholder by the company in the ordinary course of business carried on by the shareholder;
- (c) the shareholder is not an associate of the company;
- (d) having regard to:
 - (i) the manner in which the amount of dividends in respect of the share are to be calculated; and
 - (ii) the conditions applicable to the payment of dividends in respect of the share; and
 - (iii) any other relevant matters;

the payment of the dividends in respect of the share may reasonably be regarded as equivalent to the payment of interest on a loan where the interest accrues at intervals not exceeding 12 months and is paid not later than 12 months after it accrues.

327A Widely distributed finance shares

Meaning of widely distributed finance shares

- (1) For the purposes of this Part, a share in a company is a widely distributed finance share if both:
 - (a) either:
 - (i) the company is an eligible listed company; or
 - (ii) the aggregate of the eligible share interests in the company held by an eligible listed company is 90% or more; and
 - (b) the share is a recognised finance share.

Extended meaning of widely distributed finance shares—funding of transitional finance shares

- (1A) For the purposes of this Part, if:
 - (a) apart from this subsection, shares (in this subsection called the *test shares*) in a company are not widely distributed finance shares; and
 - (b) as a result of the operation of subsection 327B(3) in relation to the shares:
 - (i) the shares are taken to be widely distributed finance shares for the purposes of section 327B; and
 - (ii) shares in another company are transitional finance shares;

the test shares are taken to be, and to have been, widely distributed finance shares.

Meaning of eligible listed company

- (2) For the purposes of this section, a company is an eligible listed company at a particular time during a statutory accounting period of the company if:
 - (a) shares in the company (other than shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) are listed for quotation in the official list of a stock exchange in Australia or elsewhere; and
 - (b) none of the following subparagraphs apply:
 - (i) at any time during the statutory accounting period, a single entity, or less than 21 entities, held, or were

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- entitled to acquire, 75% or more of the paid-up share capital of the company (other than capital represented by shares entitled to a fixed rate of dividend only);
- (ii) at any time during the statutory accounting period, a single entity, or less than 21 entities held, or were entitled to acquire, 75% or more of the total rights (other than rights arising in respect of shares entitled to a fixed rate of dividend only) of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (A) the making of distributions of capital or profits of the company to its shareholders;
 - (B) the constituent document of the company;
 - (C) any variation of the share capital of the company;
 - (iii) 75% or more of the total amount of all of the dividends paid by the company (other than dividends paid in respect of shares entitled to a fixed rate of dividend only) during the statutory accounting period was paid to a single entity or to less than 21 entities;
 - (iv) dividends (other than dividends paid in respect of shares entitled to a fixed rate of dividend only) were not paid by the company during the statutory accounting period but it would be concluded that, if such dividends had been paid by the company during the statutory accounting period, 75% or more of those dividends would have been paid to a single entity or to less than 21 entities.

Meaning of recognised finance shares

- (3) For the purposes of this section, shares in a company are recognised finance shares if all the following conditions are satisfied:
 - (a) the shareholder is not an associate of the company;
 - (b) having regard to:
 - (i) the manner in which the amount of dividends in respect of the shares are to be calculated; and
 - (ii) the conditions applicable to the payment of dividends in respect of the shares; and

- (iii) any other relevant matters;
the payment of the dividends in respect of the shares may reasonably be regarded as equivalent to the payment of interest on a loan;
- (c) having regard to:
- (i) the arrangements under which the shares were offered for subscription; and
 - (ii) the ordinary business practices of brokers, agents, underwriters or other persons who took part in the arrangements for the issue of the shares; and
 - (iii) the arrangements that were made for dealing with applications that were made for subscription of the shares; and
 - (iv) any circumstances indicating the existence, at the time of the issue of the shares, of any arrangement for any of the shares to be offered for subscription, or purchased after subscription, by entities connected:
 - (A) with each other; or
 - (B) with the company issuing the shares; or
 - (C) with a person by whom the amounts raised by the subscription, or amounts derived directly or indirectly from those amounts, were intended to be used;

it is reasonable to regard the shares as having been issued with a view to public subscription or purchase or other wide distribution among investors.

Meaning of eligible share interest

- (4) For the purposes of this section, a person holds an eligible share interest in a company at a particular time equal to the percentage of the company's total paid-up share capital (excluding recognised finance shares) beneficially owned by the person at that time.

Extended meaning of eligible share interest: tiers of companies

- (5) For the purposes of this section, if:
- (a) a person holds an eligible share interest (including an eligible share interest that is taken to be held because of one or more previous applications of this subsection) in a company (in this subsection called the **first level company**); and

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- (b) the first level company holds an eligible share interest in another company (in this subsection called the *second level company*);

the person is taken to hold an eligible share interest in the second level company equal to the percentage calculated using the formula:

First level percentage \times Second level percentage

where:

First level percentage means the percentage of the eligible share interest held by the person in the first level company.

Second level percentage means the percentage of the eligible share interest held by the first level company in the second level company.

Definitions

- (6) In this section:

eligible listed company has the meaning given by subsection (2).

eligible share interest has the meaning given by subsections (4) and (5).

recognised finance share has the meaning given by subsection (3).

327B Transitional finance shares

Meaning of transitional finance shares

- (1) For the purposes of this Part, shares (in this subsection called the *test shares*) in a company (in this subsection called the *second company*) are transitional finance shares at a particular time (in this subsection called the *test time*) if all of the following conditions are satisfied:
- (a) the test time is before 1 July 1998;
 - (b) the test shares are finance shares;
 - (c) during a period (in this subsection called the *primary issue period*) ending before the IP time, another company (in this subsection called the *first company*) issued widely distributed finance shares;

- (d) the issue of the widely distributed finance shares comprised the whole of a common issue of shares by the first company;
- (e) the issue of the test shares comprised the whole of a common issue of shares by the second company;
- (f) the test shares were simultaneously issued to the first company by the second company at, or within a reasonable time after, the end of the primary issue period;
- (g) the widely distributed finance shares were issued by the first company for the sole purpose of funding the first company's acquisition of the test shares;
- (h) assuming that the test shares had been issued at the end of the primary issue period, the following conditions would have been satisfied at all times during the period commencing at the end of the primary issue period and ending at the test time:
 - (i) the rights and obligations relating to the widely distributed finance shares are substantially similar to the rights and obligations relating to the test shares;
 - (ii) the first company and the second company are under common ownership;
- (i) if, on the assumption that the dividends in respect of the test shares were instead payments of the interest, referred to in subsection (2), to which they may reasonably be regarded as equivalent, the following conditions would have been satisfied in relation to that interest:
 - (i) the interest that accrued during the 24-month period ending at the test time accrued at intervals not exceeding 12 months;
 - (ii) the interest that accrued during the 12-month period commencing 24 months before the test time was paid not later than 12 months after it accrued;
 - (iii) the dividends paid in respect of the widely distributed finance shares during the 12-month period ending at the test time are wholly attributable to the interest that accrued during the 12-month period ending at the time the dividends were paid;
 - (iv) the total amount of dividends paid in respect of the widely distributed finance shares during the 12-month period ending at the test time is equal to, or

approximately equal to, the total amount of interest to which the dividends are attributable.

Meaning of finance shares

- (2) For the purposes of this section, shares in a company are finance shares if, and only if, having regard to:

- (a) the manner in which the amount of dividends in respect of the shares was to be calculated; and
- (b) the conditions applicable to the payment of dividends in respect of the shares; and
- (c) any other relevant matters;

the payment of the dividends in respect of the shares may reasonably be regarded as equivalent to the payment of interest on a loan.

Modification of widely distributed finance shares

- (3) For the purposes of this section, in determining whether shares are widely distributed finance shares, if an asset is held by an entity as trustee for another entity who is absolutely entitled to the asset against the trustee, paragraph 327A(2)(b) has effect as if:

- (a) the asset were vested in the other entity instead of the trustee; and
- (b) if the asset is a share—any dividends paid in respect of the share were paid to the other entity instead of to the trustee.

Meaning of under common ownership

- (4) For the purposes of this section, 2 companies are under common ownership at a particular time if, and only if:

- (a) another company (in this subsection called the *third company*) holds eligible share interests in each of the companies; and
- (b) the aggregate of the eligible share interests in each company held by the third company is 90% or more.

Meaning of eligible share interest

- (5) For the purposes of this section, a person holds an eligible share interest in a company at a particular time equal to the percentage of

the company's total paid-up share capital (excluding finance shares) beneficially owned by the person at that time.

Extended meaning of eligible share interest: tiers of companies

- (6) For the purposes of this section, if:
- (a) a person holds an eligible share interest (including an eligible share interest that is taken to be held because of one or more previous applications of this subsection) in a company (in this subsection called the **first level company**); and
 - (b) the first level company holds an eligible share interest in another company (in this subsection called the **second level company**);

the person is taken to hold an eligible share interest in the second level company equal to the percentage calculated using the formula:

First level percentage \times Second level percentage

where:

First level percentage means the percentage of the eligible share interest held by the person in the first level company.

Second level percentage means the percentage of the eligible share interest held by the first level company in the second level company.

Definitions

- (7) In this section:

eligible share interest has the meaning given by subsections (5) and (6).

finance share has the meaning given by subsection (2).

under common ownership has the meaning given by subsection (4).

widely distributed finance share has a meaning affected by subsection (3).

328 Non-resident family trusts

- (1) Subject to subsections (4) and (5), for the purposes of this Part, a trust is a non-resident family trust in relation to a natural person at a particular time if, and only if, at that time:
 - (a) the trust is either:
 - (i) a post-marital or post-relationship family trust in relation to the natural person; or
 - (ii) a family relief trust in relation to the natural person; and
 - (b) the trust is constituted by:
 - (i) a deed of trust or other instrument; or
 - (ii) an order or declaration of a court.
- (2) For the purposes of this section, a trust is a post-marital or post-relationship family trust in relation to a natural person at a particular time if:
 - (a) either of the following conditions is satisfied:
 - (i) the trust was created pursuant to:
 - (A) a decree or order of dissolution or annulment of marriage, being a dissolution or annulment that, because of the *Family Law Act 1975*, has effect, or continues to have effect in Australia or is recognised as valid in Australia; or
 - (B) a decree or order of judicial separation or a similar decree or order;
 - (ii) the trust was created in consequence of the break-down of a de facto relationship; and
 - (b) at that time, the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the ***primary potential beneficiaries***) are natural persons who:
 - (i) are not Part X Australian residents at that time; and
 - (ii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a child of the natural person;
 - (C) a child of the former spouse of the natural person, being a child who was such a child at a

time when the former spouse was the spouse of the natural person;

(D) a child of the spouse of the natural person.

(3) For the purposes of this section, a trust is a family relief trust in relation to a natural person at a particular time (in this subsection called the *test time*) if:

(a) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the *primary potential beneficiaries*) are natural persons who:

(i) are identified by name in the trust deed or instrument, or in the court order or declaration, constituting the trust; and

(ii) are not Part X Australian residents at that time; and

(iii) are covered by any of the following categories:

(A) the spouse or former spouse of the natural person;

(B) a parent of the natural person or of the natural person's spouse or former spouse;

(C) a child of the natural person or of the natural person's spouse or former spouse;

(D) a grandparent of the natural person;

(E) a grandchild of the natural person;

(F) a brother or sister of the natural person or of the natural person's spouse or former spouse;

(G) a child of a brother or sister mentioned in sub-subparagraph (F); and

(b) the trust was established, and is operated, for the relief of persons who are in necessitous circumstances; and

(c) any of the following conditions is satisfied:

(i) at the test time, the assets of the trust are not excessive having regard to the requirements, or likely requirements, of the primary potential beneficiaries;

(ii) no transfers of property or services to the trust were made during the period (in this paragraph called the *test period*) commencing at the IP time and ending at the test time;

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- (iii) immediately after each transfer of property or services to the trust made during the test period, the assets of the trust were not excessive having regard to the requirements, or likely requirements, of the beneficiaries at the time of the transfer.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining relationships for the purposes of subparagraph (3)(a)(iii).

- (4) Subsection (1) does not prevent a trust from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of a particular primary potential beneficiary at that time, one or more natural persons (which persons are in subsection (5) called the *secondary potential beneficiaries*) who:
 - (a) are not Part X Australian residents at that time; and
 - (b) are children of the primary potential beneficiary;would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.
- (5) Subsections (1) and (4) do not prevent a trust from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of all of the primary potential beneficiaries and all of the secondary potential beneficiaries at that time, there are one or more funds, authorities or institutions in Australia covered by an item in any of the tables in Subdivision 30-B of the *Income Tax Assessment Act 1997*, or item 2 of the table in section 30-15 of that Act, that would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.
- (6) For the purposes of this section, if, at a particular time, an entity holds an interest in, or right to benefit under, a trust that is dependent on the death of one or more natural persons, then, the entity is taken to be an entity who, in the event of the death of that natural person or those natural persons immediately after that time, would benefit under the trust.
- (7) A reference in this section to a natural person does not include a reference to a natural person in the capacity of a trustee.

329 Public unit trusts

For the purposes of this Part, a unit trust is a public unit trust at a particular time if, assuming that the 12 month period ending at that time had been a year of income, the unit trust would have been a public unit trust at all times during the year of income for the purposes of Division 6AAA of Part III.

330 Tax detriment

- (1) For the purposes of this Part, each of the following is a tax detriment to a partner in a partnership:
 - (a) an increase in an amount included under section 92 in the partner's assessable income in respect of an interest in the net income of the partnership;
 - (b) a reduction in an amount allowable under section 92 as a deduction to the partner in respect of the partner's interest in a partnership loss of the partnership;
 - (c) a combination of such a reduction to nil and such an increase.
- (2) For the purposes of this Part, an increase in an amount included under section 97, 98A or 100 in the assessable income of a beneficiary in respect of a share of the net income of a trust is a tax detriment to the beneficiary.
- (3) For the purposes of this Part, an increase (including from nil) in an amount assessable to a trustee under section 98 in respect of a beneficiary's share of, or under section 99 or 99A in respect of the whole or a part of, the net income of a trust is a tax detriment to the trustee.
- (4) The amount of the tax detriment is equal to the amount of the increase or reduction or, where paragraph (1)(c) applies, the sum of the amounts of the reduction and increase.

331 Company deemed to be treated as a resident of a listed country or an unlisted country for the purposes of the tax law of that country

If the tax law of a listed country or an unlisted country adopts some criterion other than treatment as a resident as the criterion for applying a worldwide source tax base to a company, then, sections 332, 332A and 333 have effect, in relation to that tax law,

as if that criterion were the same as treatment as a resident of the listed country or the unlisted country for the purposes of that tax law.

332 Companies that are residents of listed countries

- (1) For the purposes of this Part, a company is a resident of a listed country at a particular time if, and only if, the company is, in accordance with subsection (2), a resident of a particular listed country at that time.
- (2) For the purposes of this Part, a company is a resident of a particular listed country at a particular time if, and only if, both of the following conditions are satisfied at that time:
 - (a) the company is not a Part X Australian resident;
 - (b) the company is treated as a resident of the listed country for the purposes of the tax law of the listed country.

332A Companies that are residents of section 404 countries

- (1) For the purposes of this Part, a company is a resident of a section 404 country at a particular time if, and only if, the company is, in accordance with subsection (2), a resident of a particular section 404 country at that time.
- (2) For the purposes of this Part, a company is a resident of a particular section 404 country at a particular time if, and only if, all of the following conditions are satisfied at that time:
 - (a) the company is not a Part X Australian resident;
 - (b) the company is treated as a resident of the section 404 country for the purposes of the tax law of the section 404 country;
 - (c) the company is not treated as a resident of a listed country at that time for the purposes of the tax law of the listed country.

333 Companies that are residents of unlisted countries

- (1) For the purposes of this Part, a company is a resident of an unlisted country at a particular time if, and only if:
 - (a) the company is, in accordance with subsection (2), a resident of a particular unlisted country at that time; or

- (b) paragraph (a) does not apply and the company is at that time neither:
 - (i) a Part X Australian resident; nor
 - (ii) a resident of a particular listed country.
- (2) For the purposes of this Part, a company is a resident of a particular unlisted country (in this section called the *unlisted country of residence*) at a particular time if, and only if:
 - (a) the company is not a Part X Australian resident at that time; and
 - (b) the company is not treated as a resident of a listed country at that time for the purposes of the tax law of the listed country; and
 - (c) any of the following subparagraphs applies:
 - (i) both of the following conditions are satisfied at that time:
 - (A) the company is treated as a resident of the unlisted country of residence for the purposes of the tax law of the unlisted country of residence;
 - (B) the company is not treated as a resident of any other unlisted country for the purposes of the tax law of the unlisted country;
 - (ii) both of the following conditions are satisfied at that time:
 - (A) the company is treated as a resident of the unlisted country of residence and at least one other unlisted country for the purposes of the tax laws of each of those unlisted countries;
 - (B) the company is incorporated in the unlisted country of residence;
 - (iii) both of the following conditions are satisfied at that time:
 - (A) the company is not treated as a resident of any unlisted country for the purposes of the tax law of the unlisted country;
 - (B) the company's management and control is solely or principally located in the unlisted country of residence.
 - (iv) all of the following conditions are satisfied at that time:

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- (A) the company is not treated as a resident of any unlisted country for the purposes of the tax law of the unlisted country;
- (B) the company's management and control is not solely or principally located in the unlisted country of residence;
- (C) the company is incorporated in the unlisted country of residence.

334A Voting interests in companies

- (1) For the purposes of this section, a company is taken to have a voting interest in another company if:
 - (a) the first-mentioned company is the beneficial owner of shares (other than eligible finance shares or widely distributed finance shares) in the other company that carry the right to exercise any of the voting power in the other company; and
 - (b) there is no arrangement in force at the relevant time by virtue of which any person is in a position, or may become in a position, to affect that right;and the extent of the voting interest is taken to be the total number of votes that, by virtue of that right, can be cast on a poll at, or arising out of, a general meeting of the other company as regards all questions that could be submitted to such a poll.
- (2) For the purposes of paragraph (1)(b), a person is taken to be in a position to affect a right of a company if that person has a right, power or option (whether by virtue of any provision in the constituent document of any company or by virtue of any agreement or instrument or otherwise) to acquire that right or do an act or thing that would prevent the first-mentioned company from exercising that right or receiving any benefits accruing by reason of that right.
- (3) Despite paragraph (1)(b) and subsection (2), in determining for the purposes of this section:
 - (a) whether a company has a voting interest in another company; and
 - (b) the extent of that interest;any appointment of a liquidator in respect of the other company is to be disregarded.

- (4) For the purposes of this section, the voting power in a company is the maximum number of votes that can be cast on a poll at, or arising out of, a general meeting of a company as regards all questions that can be submitted to such a poll.
- (5) In this section, *arrangement* includes:
 - (a) any agreement, arrangement, understanding, promise or undertaking, whether expressed or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

335 References extend to pre-commencement matters and things

Unless otherwise expressly provided, references in this Part are to matters and things whether occurring before or after the commencement of this Part.

Division 2—Types of entity

Subdivision A—Australian entities

336 Australian entity

For the purposes of this Part, each of the following is an Australian entity:

- (a) an Australian partnership;
- (b) an Australian trust;
- (c) an entity (other than a partnership or trust) that is a Part X Australian resident.

337 Australian partnership

For the purposes of this Part, a partnership is an Australian partnership at a particular time if at least one of the partners is an Australian entity at that time.

338 Australian trust

For the purposes of this Part, a trust is an Australian trust at a particular time (in this section called the *test time*) if:

- (a) at any time in the period of 12 months immediately before the test time:
 - (i) any trustee of the trust was a Part X Australian resident; or
 - (ii) the central management and control of the trust was in Australia; or
- (b) the trust is a corporate unit trust for the purposes of Division 6B of Part III, or a public trading trust for the purposes of Division 6C of Part III, in relation to the year of income of the trust in which the test time occurs.

Subdivision B—Controlled foreign entities (CFEs)

339 Controlled foreign entity (CFE)

Each of the following is a CFE (or controlled foreign entity):

- (a) a CFC (or controlled foreign company);
- (b) a CFP (or controlled foreign partnership);
- (c) a CFT (or controlled foreign trust).

340 Controlled foreign company (CFC)

A company is a CFC at a particular time if, at that time, the company is a resident of a listed country or of an unlisted country and any of the following paragraphs applies:

- (a) at that time, there is a group of 5 or fewer Australian 1% entities the aggregate of whose associate-inclusive control interests in the company is not less than 50%;
- (b) both of the following subparagraphs apply:
 - (i) at that time, there is a single Australian entity (in this paragraph called the *assumed controller*) whose associate-inclusive control interest in the company is not less than 40%;
 - (ii) at that time, the company is not controlled by a group of entities not being or including the assumed controller or any of its associates;
- (c) at that time, the company is controlled by a group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity).

341 Controlled foreign partnership (CFP)

A partnership is a CFP at a particular time if:

- (a) the partnership is not an Australian partnership at that time; and
- (b) at least one of the partners is a CFE at that time.

342 Controlled foreign trust (CFT)

A trust is a CFT at a particular time if, at that time, the trust is not an Australian trust and:

- (a) there is an eligible transferor in respect of the trust; or
- (b) there is a group of 5 or fewer Australian 1% entities the aggregate of whose associate-inclusive control interests in the trust is not less than 50%.

Subdivision C—Eligible transferors in relation to trusts

343 Interpretation

In this Subdivision, unless the contrary intention appears:

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 345(1), (2), (5), (6), (8), (10) or (11).

property includes money.

scheme has the same meaning as in Division 6AAA of Part III.

services has the same meaning as in Division 6AAA of Part III.

transfer has the same meaning as in Division 6AAA of Part III.

underlying transfer, in relation to a transfer of property or services to a trust, means:

- (a) if that transfer was an actual transfer—the actual transfer; or
- (b) if that transfer was taken to have been made because of subsection 345(1)—the actual transfer referred to in that subsection; or
- (c) if that transfer was taken to have been made because of subsection 345(2)—the actual transfer referred to in paragraph 345(2)(d); or
- (d) if that transfer was taken to have been made because of subsection 345(5)—the actual transfer referred to in paragraph 345(5)(b); or
- (e) if that transfer was taken to have been made because of the application of subsection 345(6) or (8) to an actual transfer—the actual transfer; or
- (f) if that transfer was taken to have been made because of the application of subsection 345(6) or (8) to a transfer that was taken to have been made because of subsection 345(1)—the actual transfer referred to in subsection 345(1); or
- (g) if that transfer was taken to have been made because of the application of subsection 345(6) or (8) to a transfer that was taken to have been made because of subsection 345(5)—the actual transfer referred to in paragraph 345(5)(b); or

- (h) if that transfer was taken to have been made because of subsection 345(10)—the actual transfer referred to in paragraph 345(10)(b); or
- (j) if that transfer was taken to have been made because of one or more applications of subsection 345(11) to an actual transfer—the actual transfer; or
- (k) if that transfer was taken to have been made because of one or more applications of subsection 345(11) to a transfer (in this paragraph called the *deemed transfer*) that was taken to have been made because of subsection 345(1), (2), (5), (6), (8) or (10)—the actual transfer that, under a preceding paragraph of this definition, is the underlying transfer in relation to the deemed transfer.

344 References to transfer of property or services

- (1) A reference in this Subdivision to the transfer of property or services to a trust includes a reference to the transfer of property or services by way of the creation of the trust.
- (2) For the purposes of this Subdivision, where an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been acquired from the entity who created the property.
- (3) For the purposes of this Subdivision, property or services are to be taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.
- (4) Without limiting the generality of subsection (3), a reference in that subsection to the application of property or services for the benefit of an entity includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.
- (5) A reference in this Subdivision to a transfer of property or services to an entity includes a reference to a transfer made before the commencement of this Subdivision.
- (6) A reference in this Subdivision to the transfer of property or services to a trust does not include a reference to a transfer made by the trustee of the estate of a deceased person under:

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- (a) the terms of the deceased person's will or codicil; or
- (b) an order of a court that varied or modified the provisions of a deceased person's will or codicil;

unless:

- (c) the transfer was made in or as a result of the exercise (by the trustee or any other person) of a power of appointment or any other discretion; or
- (d) under subsection 345(1), the property or services are taken to have been transferred by an entity other than the trustee, instead of by the trustee; or
- (e) under subsection 345(5), the Commissioner treats the property or services as having been (to any extent) transferred by an entity other than the trustee, instead of by the trustee.

345 Deemed transfers of property or services

- (1) For the purposes of this Subdivision, where an entity (in this subsection called the *prime entity*) causes another entity to actually transfer property or services to a trust, the prime entity (instead of the other entity) is to be taken to have transferred the property or services to the trust.
- (2) For the purposes of this Subdivision, where:
 - (a) the trustee of a trust issues units in the trust to an entity (in this subsection called the *first entity*) in the first entity's capacity as a manager, underwriter or dealer in relation to the marketing or placement of the units; and
 - (b) in the course of the marketing or placement of the units, the units are disposed of by the first entity to another entity (in this subsection called the *second entity*); and
 - (c) at a particular time (in this subsection called the *second entity's transfer time*), the second entity transfers property or services to the first entity as consideration for the acquisition of the units; and

- (d) the first entity has actually transferred, or actually transfers, property or services (in this subsection called the ***original property or services***) to the trust for the sole purpose of acquiring the units;
the second entity is taken to have transferred the original property or services (instead of the first entity) at the second entity's transfer time.
- (3) A reference in subsection (2) to a unit in a trust is a reference to an interest (however described) in any of the income or property of the trust.
- (4) Subsections (1) and (2) do not limit the operation of subsection (5).
- (5) Where, under a scheme:
- (a) an entity (in this subsection called the ***scheme entity***) actually transfers property or services to another entity; and
 - (b) property or services are actually transferred to a trust at a particular time otherwise than by the scheme entity;
- the Commissioner may, for the purposes of this Subdivision, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity (instead of by any other entity) to the trust at that time.
- (6) Where:
- (a) apart from subsections (8), (10) and (11), a partnership transfers property or services to a trust at a particular time (in this subsection called the ***transfer time***); and
 - (b) at a later time (in this subsection called the ***cessation time***), the partnership ceases to exist for the purposes of this Act;
- then, for the purpose of determining whether an entity that was a partner in the partnership immediately before the cessation time is an eligible transferor in relation to the trust at a time after the cessation time, each such partner is to be taken to have transferred the original property or services to the trust at the transfer time.
- (7) Nothing in subsection (6) affects the application of this Subdivision to the transfer made by the partnership concerned.
- (8) For the purposes of this Subdivision, if:
- (a) apart from this subsection and subsections (6), (10) and (11), a discretionary trust (in this subsection called the ***transferor***

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trust) transfers property or services (in this subsection called the *original property or services*) to another trust (in this subsection called the *transferee trust*) at a particular time (in this subsection called the *transfer time*); and

- (b) at a later time (in this subsection called the *cessation time*), the transferor trust commences to be wound up or ceases to exist for the purposes of this Act; and
- (c) apart from this subsection and subsections (6), (10) and (11), one or more other entities transferred property or services to the transferor trust at or before the transfer time;

each of those other entities is to be taken to have transferred the original property or services to the transferee trust at the transfer time.

- (9) Nothing in subsection (8) affects the application of this Subdivision to the transfer mentioned in paragraph (8)(a).
- (10) For the purposes of this Subdivision, where:
 - (a) any of the following subparagraphs applies:
 - (i) any of the following events occurs in relation to a company (which company is in this subsection called the *transferor*):
 - (A) the company passes a resolution for its winding-up;
 - (B) an order is made for the winding-up of the company;
 - (C) any similar event;
 - (ii) a partnership (in this subsection also called the *transferor*) ceases to exist for the purposes of this Act;
 - (iii) either of the following sub-subparagraphs applies in relation to the trustee of a trust (in this subsection also called the *transferor*):
 - (A) the trust commences to be wound-up;
 - (B) the trust estate ceases to exist for the purposes of this Act; and
 - (b) an actual transfer of property or services is made to a trust (in this subsection called the *transferee*) as a consequence of the transferor being wound-up or ceasing to exist;
the transferor is taken to have transferred to the transferee the property or services concerned.

(11) Where:

- (a) the following subparagraphs apply to an entity (in this subsection called the *defunct entity*):
 - (i) the defunct entity is a company, partnership or trust;
 - (ii) the defunct entity transferred property or services (in this subsection called the *original property or services*) to a trust (including a transfer that was taken to have been made because of another application or applications of this subsection) at a particular time (in this subsection called the *transfer time*);
 - (iii) if the defunct entity is a company—the company passes a resolution for its winding-up, an order is made for the winding-up of the company or a similar event occurs;
 - (iv) if the defunct entity is a partnership—the partnership ceases to exist for the purposes of this Act;
 - (v) if the defunct entity is a trust—the trust commences to be wound up or ceases to exist for the purposes of this Act; and
- (b) the Commissioner is satisfied that an entity (in this subsection called the *successor entity*) has benefited or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting (either directly or indirectly through one or more interposed companies, partnerships or trusts) as a result of a transfer of property or services made by the defunct entity or a transfer of property or services made as a consequence of the defunct entity being wound up or ceasing to exist; and
- (c) the Commissioner is of the opinion that it is appropriate to apply this subsection to the successor entity;

then, for the purpose of determining whether the successor entity is an eligible transferor in relation to the trust referred to in subparagraph (a)(ii) at a time after the transfer time, the successor entity is to be taken to have transferred the original property or services to that trust.

346 Circumstances in which a transfer of property or services is an eligible business transaction

An underlying transfer of property or services to a trust is an eligible business transaction if, and only if, at or about the time of the transfer, identical or similar property or services were

transferred by the transferor in the ordinary course of business to ordinary clients or customers under arm's length transactions in similar circumstances and subject to identical or similar terms and conditions as those that applied in relation to the underlying transfer of the property or services concerned.

347 Eligible transferor in relation to a discretionary trust

(1) An entity (in this section called the *transferor entity*) is an eligible transferor in relation to a discretionary trust at a particular time (in this section called the *test time*) if the trust is not a public unit trust at the test time and:

(a) all of the following subparagraphs apply:

- (i) the transferor entity transferred property or services to the trust at a time (in this subparagraph called the *transfer time*) at or after the IP time and before the test time;
- (ii) if the underlying transfer was made in the course of carrying on a business—the underlying transfer was not an eligible business transaction;
- (iii) if the underlying transfer was made under an arm's length transaction otherwise than in the course of carrying on a business—the transferor entity was in a position, at any time after the transfer time and before the test time, to control the trust; or

(b) all of the following subparagraphs apply:

- (i) the transferor entity transferred property or services to the trust at any time before the IP time;
- (ii) the underlying transfer was not an eligible business transaction;
- (iii) at any time after the IP time and before the test time, the entity was in a position to control the trust;

and, at the test time, the transferor entity is an Australian entity or a CFE.

(2) For the purposes of this section, an entity is taken to be in a position to control a trust if, and only if:

- (a) a group in relation to the entity had the power by means of the exercise by the group of any power of appointment or revocation or otherwise, to obtain, with or without the

- consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or
- (b) a group in relation to the entity was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or
 - (c) a group in relation to the entity was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (a) or (b); or
 - (d) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or
 - (e) a group in relation to the entity was able to remove or appoint the trustee, or any of the trustees, of the trust.
- (3) A reference in subsection (2) to a group in relation to an entity is a reference to any of the following:
- (a) the entity acting alone;
 - (b) an associate of the entity acting alone;
 - (c) the entity and one or more associates of the entity acting together;
 - (d) 2 or more associates of the entity acting together.

348 Eligible transferor in relation to a non-discretionary trust or a public unit trust

- (1) An entity is an eligible transferor in relation to a non-discretionary trust or a public unit trust at a particular time (in this section called the *test time*) if:
- (a) the transferor entity transferred property or services to the trust at or after the IP time and before the test time; and
 - (b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer; and

- (c) it is not the case that the sole purpose of the underlying transfer was the acquisition of units in the trust where the parties to the underlying transfer were at arm's length with each other in relation to the underlying transfer and the trust was a public unit trust at the test time;
and, at the test time, the transferor entity is an Australian entity or a CFE.
- (2) For the purposes of subsection (1), the arm's length amount in relation to a transfer of property or services to a trust is the amount that the trustee could reasonably be expected to have been required to pay to obtain the property or services concerned from the transferor under a transaction where the parties were dealing with each other at arm's length in relation to the transaction.

Division 3—Control interests, attribution interests, attributable taxpayers and attribution percentages

Subdivision A—Control interests

349 Associate-inclusive control interest in a company or trust

- (1) Subject to this section, the associate-inclusive control interest that an entity (in this section called the *lower entity*) holds in a company or trust at a particular time is the aggregate of:
 - (a) the direct control interest in the company or trust that the lower entity holds at that time; and
 - (b) the indirect control interests in the company or trust that the lower entity holds at that time; and
 - (c) the direct control interests in the company or trust held at that time by associates of the lower entity; and
 - (d) the indirect control interests in the company or trust held at that time by associates of the lower entity.
- (2) In calculating the associate-inclusive control interest that the lower entity holds in the company or trust:
 - (a) an indirect control interest of the lower entity is not to be counted under paragraph (1)(b) to the extent to which it is calculated by reference to:
 - (i) a direct control interest in the company or trust that is taken into account under paragraph (1)(c); or
 - (ii) an indirect control interest in the company or trust that is taken into account under paragraph (1)(d); and
 - (b) an indirect control interest of an associate of the lower entity is not to be counted under paragraph (1)(d) to the extent to which it is calculated by reference to:
 - (i) a direct control interest in the company or trust that is taken into account under paragraph (1)(a) or (c); or
 - (ii) an indirect control interest in the company or trust that is taken into account under paragraph (1)(b) or (d).

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- (3) If, apart from this subsection, both of the following things would be counted in calculating the associate-inclusive control interest that the lower entity holds in the company or trust:
- (a) the holding of a direct control interest by the lower entity or any other entity;
 - (b) an entitlement to acquire that direct control interest;
- only one of those things is to be taken into account.
- (4) For the purpose of determining any of the following matters:
- (a) whether the aggregate of the associate-inclusive control interests that a group of entities holds in a company is not less than 50%;
 - (b) whether a single Australian entity has an associate-inclusive control interest in a company of not less than 40%;
 - (c) whether the aggregate of the associate-inclusive control interests that a group of entities holds in a trust is not less than 50%;
 - (d) whether the associate-inclusive control interest that an Australian entity holds in a CFC is not less than 10%;
 - (e) whether the associate-inclusive control interest that an Australian entity holds in a company is not less than 1%;
- if, apart from this subsection, an entity, or each of 2 or more entities, would hold a direct control interest, or control tracing interest, in another entity (in this subsection called the *higher entity*) equal to 100%:
- (f) only one of those entities is to be taken to hold a direct control interest, or control tracing interest, as the case may be, in the higher entity equal to 100%; and
 - (g) no other entity (whether or not the entity would, apart from this subsection hold a direct control interest, or control tracing interest, of 100%) is to be taken to hold any direct control interest, or control tracing interest, as the case may be, in the higher entity.
- (5) For the purpose of calculating the aggregate of the associate-inclusive control interests that a group of entities holds in a company or trust:

- (a) if a particular direct control interest or indirect control interest that an entity holds in another entity would be counted more than once because the entity is an associate of one or more other entities in the group, that interest is to be counted only once; and
 - (b) if both of the following things would, but for this subsection, be counted in calculating the aggregate of the associate-inclusive control interests that a group of entities holds in a company or trust:
 - (i) the holding of a direct control interest by an entity;
 - (ii) an entitlement to acquire that direct control interest;only one of those things is to be counted.
- (6) If it is necessary for the purposes of this section to decide:
- (a) which one of 2 things is to be taken into account for the purposes of subsection (3) or (5); or
 - (b) which one of 2 or more entities is to be chosen for the purposes of paragraph (4)(f);
- the Commissioner may make that decision.

350 Direct control interest in a company

- (1) Subject to subsection (7), an entity holds a direct control interest in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:
- (a) the total paid-up share capital of the company; or
 - (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the company to its shareholders;
 - (ii) the constituent document of the company;
 - (iii) any variation of the share capital of the company; or
 - (c) the total rights to distributions of capital or profits of the company to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up;
- or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.

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- (2) If the percentage of total rights to vote or participate in decision-making differs as between differing types of decision-making, the highest of those percentages applies for the purposes of paragraph (1)(b).
- (3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:
 - (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
 - (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.
- (4) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:
 - (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and

- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.
- (5) Eligible finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.
- (6) If, at a particular time, a company is controlled by a group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity), each Australian entity in that group of 5 or fewer holds a direct control interest in the company equal to 100%.
- (7) An entity that holds a direct control interest in a company at a particular time because of subsection (6) is not to be taken to hold any direct control interest in the company at that time because of subsection (1).

351 Direct control interest in a trust

- (1) An entity that is a beneficiary in a trust holds a direct control interest in the trust at a particular time equal to:
 - (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
 - (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;or, if those percentages differ, the greater of those percentages.
- (2) For the purposes of the application of subsection (1) to a trust:
 - (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
 - (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;at a particular time (in this subsection called the *test time*) in a year of income of the trust, is to be worked out by:

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- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the year of income;
 - (ii) the corpus of the trust as at the end of the year of income; and
 - (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the year of income; and
 - (e) ascertaining the percentage concerned:
 - (i) at the end of the year of income instead of at the test time; and
 - (ii) on that assumption.
- (3) Each entity that is an eligible transferor in relation to a trust at a particular time holds a direct control interest in the trust at that time equal to 100%.
- (4) An entity that holds a direct control interest in a trust at a particular time because of subsection (3) is not to be taken to hold any direct control interest in the trust at that time because of subsection (1).

352 Indirect control interest in a company or trust

- (1) An indirect control interest that an entity (in this section called the *bottom entity*) holds in a company or trust at a particular time is calculated in accordance with this section.
- (2) An interposed entity is not to be taken into account in calculating an indirect control interest unless the entity is a CFE.
- (3) If there is only one entity interposed between the bottom entity and the company or trust, the indirect control interest is calculated by multiplying the control tracing interest that the bottom entity holds in the interposed entity by the control tracing interest that the interposed entity holds in the company or trust.
- (4) If there are 2 entities interposed between the bottom entity and the company or trust, the indirect control interest is calculated:
 - (a) by multiplying the control tracing interest that the bottom entity holds in the first interposed entity by the control tracing interest that the first interposed entity holds in the second interposed entity; and

- (b) by multiplying the result of the calculation referred to in paragraph (a) by the control tracing interest that the second interposed entity holds in the company or trust.
- (5) If there are 3 or more entities interposed between the bottom entity and the company or trust, the indirect control interest is calculated:
 - (a) by multiplying the control tracing interest that the bottom entity holds in the first interposed entity by the control tracing interest that the first interposed entity holds in the second interposed entity; and
 - (b) by multiplying the result of the calculation referred to in paragraph (a) by the control tracing interest that the second interposed entity holds in the third interposed entity;and so on, ending with a multiplication by the control tracing interest that the last interposed entity holds in the company or trust.
- (6) For the purposes of this section, an entity (in this subsection called the *second entity*) is interposed between 2 other entities (in this subsection called the *first entity* and the *third entity* respectively) if, and only if:
 - (a) the first entity has a control tracing interest in the second entity; and
 - (b) the second entity has a control tracing interest in the third entity.

353 Control tracing interest in a company

- (1) Subject to this section, an entity (in this subsection called the *lower entity*) holds a control tracing interest in a company at a particular time equal to the direct control interest in the company that the lower entity holds at that time.
- (2) An entity (in this subsection called the *lower entity*) holds a control tracing interest in a company at a particular time equal to 100% if:
 - (a) the aggregate of the direct control interests in the company held at that time by the lower entity and its associates is not less than 50%; or
 - (b) both of the following conditions are satisfied:
 - (i) the aggregate of the direct control interests in the company held at that time by the lower entity and its associates is not less than 40%;

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- (ii) at that time, the company is not controlled by a group of entities not being or including the lower entity or any of its associates; or
- (c) at that time, the company is controlled by the lower entity, either alone or together with associates.

354 Control tracing interest in a CFP

Each partner in a CFP holds a control tracing interest in the CFP equal to 100%.

355 Control tracing interest in a CFT

- (1) An entity that is an eligible transferor at a particular time in relation to a CFT holds a control tracing interest in the CFT at that time equal to 100%.
- (2) Subject to subsection (4), an entity (in this subsection called the **lower entity**) that is a beneficiary in a CFT holds a control tracing interest in the trust at a particular time equal to:
 - (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
 - (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;or, if those percentages differ, the greater of those percentages.
- (3) For the purposes of the application of subsection (2) to a trust:
 - (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
 - (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;at a particular time (in this subsection called the **test time**) in a year of income of the trust, is to be worked out by:
 - (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the year of income;
 - (ii) the corpus of the trust as at the end of the year of income; and

- (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the year of income; and
 - (e) ascertaining the percentage concerned:
 - (i) at the end of the year of income instead of at the test time; and
 - (ii) on that assumption.
- (4) If the percentage calculated under subsection (2) is not less than 50%, the lower entity holds a control tracing interest in the CFT equal to 100%.
- (5) An entity that holds a control tracing interest in a CFT at a particular time because of subsection (1) is not to be taken to hold any control tracing interest in the CFT at that time because of subsection (2) or (4).

Subdivision B—Attribution interests

356 Direct attribution interest in a CFC or CFT

- (1) An entity holds a direct attribution interest in a CFC at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:
- (a) the total paid-up share capital of the CFC; or
 - (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the CFC to its shareholders;
 - (ii) the constituent document of the CFC;
 - (iii) any variation of the share capital of the CFC; or
 - (c) the total rights to distributions of capital or profits of the CFC to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the CFC to its shareholders, otherwise than on winding-up;
- or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.
- (2) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory

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accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
 - (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.
- (3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:
- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
 - (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.
- (4) Eligible finance shares, widely distributed finance shares and transitional finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.

- (4A) Shares in a company that is treated as a real estate investment trust for the purposes of the Internal Revenue Code 1986 of the United States of America are to be ignored for the purposes of the application of subsection (1) to the company if the conditions in subsection (4B) or (4C) are satisfied.
- (4B) The condition in this subsection is that the taxpayer who holds the shares satisfies the Commissioner that:
- (a) the shares that the taxpayer holds at the end of the entity's statutory accounting period are held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:
 - (i) a business conducted in the United States of America; or
 - (ii) real property located in the United States of America; and
 - (b) the company does not directly, or indirectly through one or more interposed entities:
 - (i) have an interest in income or gains derived from sources outside the United States of America; or
 - (ii) hold an interest in a FIF that is not resident in the United States of America; or
 - (iii) hold real property that is not located in the United States of America.
- (4C) The condition in this subsection is that the taxpayer who holds the shares satisfies the Commissioner that:
- (a) the shares that the taxpayer holds at the end of the entity's statutory accounting period are held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:
 - (i) a business conducted in the United States of America; or
 - (ii) real property located in the United States of America; and
 - (b) throughout the entity's statutory accounting period, the total value of:
 - (i) any interests that the company has in income or gains derived from sources outside the United States of America; and

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- (ii) any interests that the company has in FIFs that are not resident in the United States of America; and
 - (iii) any real property held by the company that is not located in the United States of America;does not exceed 5% of the total value of all interests held by the company in other entities; and
 - (c) throughout the entity's statutory accounting period, the total value of assets held by the company that:
 - (i) produce income from sources outside the United States of America; or
 - (ii) if disposed of would give rise to a gain from a source outside the United States of America;does not exceed 5% of the total value of all the assets held by the company.
- (4D) For the purposes of subsection (4C), the value of interests and the value of assets is to be determined using the accounting records of the company.
- (5) An entity that is an eligible transferor at a particular time in relation to a CFT holds a direct attribution interest in the CFT at that time equal to 100%.
- (6) Subsection (5) does not apply if:
- (a) the eligible transferor is a natural person (other than a natural person in the capacity of a trustee); and
 - (b) the CFT is a non-resident family trust in relation to the natural person.
- (7) An entity (in this subsection called the *lower entity*) that is a beneficiary in a CFT holds a direct attribution interest in the CFT at a particular time equal to:
- (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
 - (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;
- or, if those percentages differ, the greater of those percentages.

- (8) An entity that holds a direct attribution interest in a CFT at a particular time because of subsection (5) is not to be taken to hold any direct attribution interest in the CFT at that time because of subsection (7).

357 Indirect attribution interest in a CFC or CFT

- (1) An indirect attribution interest that an entity (in this section called the *bottom entity*) holds in a CFC or CFT (in this section called the *top entity*) at a particular time is calculated in accordance with this section.
- (2) An interposed entity is not to be taken into account in calculating an indirect attribution interest unless the entity is a CFE.
- (3) If there is only one entity interposed between the bottom entity and the top entity, the indirect attribution interest is calculated by multiplying the attribution tracing interest that the bottom entity holds in the interposed entity by the attribution tracing interest that the interposed entity holds in the top entity.
- (4) If there are 2 entities interposed between the bottom entity and the top entity, the indirect attribution interest is calculated:
- (a) by multiplying the attribution tracing interest that the bottom entity holds in the first interposed entity by the attribution tracing interest that the first interposed entity holds in the second interposed entity; and
 - (b) by multiplying the result of the calculation referred to in paragraph (a) by the attribution tracing interest that the second interposed entity holds in the top entity.
- (5) If there are 3 or more entities interposed between the bottom entity and the top entity, the indirect attribution interest is calculated:
- (a) by multiplying the attribution tracing interest that the bottom entity holds in the first interposed entity by the attribution tracing interest that the first interposed entity holds in the second interposed entity; and
 - (b) by multiplying the result of the calculation referred to in paragraph (a) by the attribution tracing interest that the second interposed entity holds in the third interposed entity; and so on, ending with a multiplication by the attribution tracing interest that the last interposed entity holds in the top entity.
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- (6) For the purposes of this section, an entity (in this subsection called the *second entity*) is interposed between 2 other entities (in this subsection called the *first entity* and the *third entity* respectively) if, and only if:
- (a) the first entity has an attribution tracing interest in the second entity; and
 - (b) the second entity has an attribution tracing interest in the third entity.

358 Attribution tracing interest in a CFC

An entity holds an attribution tracing interest in a CFC at a particular time equal to the direct attribution interest in the CFC that the entity holds at that time.

359 Attribution tracing interest in a CFP

An entity that is a partner in a CFP holds an attribution tracing interest in the CFP at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:

- (a) the total interests in the profits of the CFP; or
 - (b) the total interests in the CFP property;
- or, if those percentages differ, the greater of those percentages.

360 Attribution tracing interest in a CFT

- (1) An entity that is an eligible transferor at a particular time in relation to a CFT holds an attribution tracing interest in the CFT at that time equal to 100%.
- (2) Subsection (1) does not apply if:
 - (a) the eligible transferor is a natural person (other than a natural person in the capacity of a trustee); and
 - (b) the CFT is a non-resident family trust in relation to the natural person.
- (3) An entity (in this subsection called the *lower entity*) that is a beneficiary in a CFT holds an attribution tracing interest in the CFT at a particular time equal to:

- (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
 - (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;
- or, if those percentages differ, the greater of those percentages.
- (4) An entity that holds an attribution tracing interest in a CFT at a particular time because of subsection (1) is not to be taken to hold any attribution tracing interest in the CFT at that time because of subsection (3).

Subdivision C—Attributable taxpayers and attribution percentages

361 Attributable taxpayer in relation to a CFC or a CFT

- (1) An entity (in this subsection called the *test entity*) is an attributable taxpayer in relation to a CFC at a particular time if, at that time:
- (a) the test entity is an Australian entity whose associate-inclusive control interest in the CFC is at least 10%; or
 - (b) all of the following subparagraphs apply:
 - (i) the CFC is a CFC at that time only because of paragraph 340(c);
 - (ii) the CFC is controlled by any group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity);
 - (iii) the test entity is an Australian 1% entity and is included in that group of 5 or fewer Australian entities.
- (2) An entity (in this subsection called the *test entity*) is an attributable taxpayer in relation to a CFT at a particular time if, at that time, the test entity is an Australian entity whose associate-inclusive control interest in the CFT is at least 10%.
- (3) Subsections (1) and (2) have effect subject to section 768-960 of the *Income Tax Assessment Act 1997*.

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362 Attribution percentage of an attributable taxpayer

- (1) Subject to this section, the attribution percentage of an attributable taxpayer in relation to a CFC or CFT at a particular time is the sum of:
 - (a) the direct attribution interest in the CFC or CFT held by the taxpayer at that time; and
 - (b) the aggregate of the indirect attribution interests in the CFC or CFT held by the taxpayer at that time.
- (2) If, apart from this subsection, both of the following things would be counted in calculating the attribution percentage of an attributable taxpayer in relation to a CFC or CFT at a particular time:
 - (a) the holding of a direct attribution interest in an entity by any other entity;
 - (b) an entitlement to acquire that direct attribution interest;only one of those things is to be taken into account.
- (3) If:
 - (a) in calculating the percentage that would be the attribution percentage of an attributable taxpayer (apart from this subsection and subsection (5)) in relation to a CFC at a particular time (in this subsection called the *test time*) regard was had to an attribution tracing interest of an eligible transferor in relation to a CFT, being an attribution tracing interest determined under subsection 360(1); and
 - (b) the attribution percentage referred to in paragraph (a) is greater than it would have been apart from subsection 360(1); and
 - (c) there are other eligible transferors in relation to the CFT at the test time; and
 - (d) the attributable taxpayer gives to the Commissioner, in accordance with a form approved, in writing, by the Commissioner, such information as is required by the form to be given;the Commissioner may reduce the attribution percentage referred to in paragraph (a) by such amount as the Commissioner considers reasonable in the circumstances.

- (4) If:
- (a) in calculating the percentage that would be the attribution percentage of an attributable taxpayer (apart from this subsection and subsection (5)) in relation to a CFT (in this subsection called the *attributing CFT*) at a particular time (in this subsection called the *test time*) regard was had to:
 - (i) a direct attribution interest of the attributable taxpayer in relation to the attributing CFT, being direct attribution interest determined under subsection 356(2); or
 - (ii) an attribution tracing interest of an eligible transferor in relation to another CFT (in this subsection called the *interposed CFT*); and
 - (b) the attribution percentage referred to in paragraph (a) is greater than it would have been apart from subsection 356(2) or 360(1), as the case may be; and
 - (c) at the test time, there are other eligible transferors in relation to the attributing CFT or the interposed CFT, as the case may be; and
 - (d) the attributable taxpayer gives to the Commissioner such information, and produces to the Commissioner such documents, as the Commissioner requires in connection with the operation of this subsection;

the Commissioner may reduce the attribution percentage referred to in paragraph (a) by such amount as the Commissioner considers reasonable in the circumstances.

- (5) If, apart from this subsection, the aggregate of the attribution percentages of all the attributable taxpayers in relation to a CFC or CFT at a particular time would exceed 100%, the attribution percentage of each of those attributable taxpayers is the percentage calculated using the formula:

$$\frac{\text{Individual percentage}}{\text{Total percentage}} \times 100$$

where:

Individual percentage means the percentage that would, apart from this subsection, be the attribution percentage of the attributable taxpayer concerned.

Part X Attribution of income in respect of controlled foreign companies

Division 3 Control interests, attribution interests, attributable taxpayers and attribution percentages

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Total percentage means the aggregate of the percentages that would, apart from this subsection, be the attribution percentages of all the attributable taxpayers.

Division 4—Attribution accounts

363 Attribution account entity

- (1) Each of the following is an attribution account entity:
 - (a) a company that is not a Part X Australian resident;
 - (b) a partnership;
 - (c) a trust.
- (2) If:
 - (a) a company ceases to be resident in an unlisted country and becomes a Part X Australian resident; and
 - (b) a taxpayer is an attributable taxpayer in relation to the company immediately before the time of the change of residence;in determining whether an attribution debit arises for the company in relation to the taxpayer in respect of an attribution account payment made to the taxpayer or another attribution account entity, the company is taken to be an attribution account entity.

364 Attribution account percentage

The attribution account percentage of a taxpayer in relation to an entity is the sum of the taxpayer's direct attribution account interest and indirect attribution account interest or interests in the entity.

365 Attribution account payment

- (1) Each of the following is an attribution account payment:
 - (a) a dividend paid by a company to a shareholder;
 - (b) the individual interest of a partner in the net income (within the meaning of section 90) of a partnership of a year of income;
 - (c) where a beneficiary of a trust is presently entitled to a share of the income of the trust—that share of the net income (within the meaning of section 95) of the trust of a year of income;

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- (d) the whole or part of the net income of a trust of a year of income that is assessable to the trustee under section 99 or 99A;
 - (e) an amount of trust property that would be included in the assessable income of a beneficiary of a year of income under section 99B if:
 - (i) the beneficiary were a resident, within the meaning of section 6, at a time during the year of income; and
 - (ii) paragraph 99B(2)(c) were replaced by a paragraph referring to any attribution account payment under paragraph (c) or (d) of this subsection.
- (2) The attribution account payment is taken to be made:
- (a) in a paragraph (1)(b) case—by the partnership to the partner; and
 - (b) in a paragraph (1)(c) or (e) case—by the trust to the beneficiary; and
 - (c) in a paragraph (1)(d) case—by the trust to the trustee; and, in any such case, to be made at the end of the year of income.
- (3) Where:
- (a) an attribution credit arises for a company in relation to a taxpayer under paragraph 371(1)(b) as a result of a change of residence whereby the company becomes a Part X Australian resident; and
 - (b) the company makes an attribution account payment consisting of a frankable distribution that has been franked in accordance with section 202-5 of the *Income Tax Assessment Act 1997*, or that has been franked with an exempting credit in accordance with section 208-60 of that Act; and
 - (c) immediately before the attribution account payment is made, there is an attribution surplus for the company in relation to the taxpayer that is attributable to the attribution credit;
- then, for the purposes of applying section 23AI and Divisions 4 and 5 of this Part in relation to the taxpayer, the attribution account payment is taken to be reduced to the extent that it is franked.

366 Direct attribution account interest in a company

- (1) An entity holds a direct attribution account interest in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:
 - (a) the total paid-up share capital of the company; or
 - (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the company to its shareholders;
 - (ii) the constituent document of the company;
 - (iii) any variation of the share capital of the company; or
 - (c) the total rights to distributions of capital or profits of the company to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up;or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.
- (2) If the percentage of total rights to vote or participate in decision-making differs as between differing types of decision-making, the highest of those percentages applies for the purposes of paragraph (1)(b).
- (3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:
 - (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
 - (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and

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- (ii) on that assumption.
- (4) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the *test time*) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:
 - (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
 - (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
 - (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.
- (5) Eligible finance shares, widely distributed finance shares and transitional finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.

367 Direct attribution account interest in a partnership

- (1) An entity that is a partner in a partnership holds a direct attribution account interest in the partnership at a particular time equal to the percentage that the partner holds, or is entitled to acquire, of:
 - (a) the total interests in the profits of the partnership; or
 - (b) the total interests in the property of the partnership;or, if those percentages differ, the greater of those percentages.
- (2) For the purposes of the application of subsection (1) to a partnership:
 - (a) the percentage that the partner holds, or is entitled to acquire, of the total interests in the profits of the partnership; or

- (b) the percentage that the partner holds, or is entitled to acquire, of the total interests in the property of the partnership;
at a particular time (in this subsection called the *test time*) in an accounting period of the partnership is to be worked out by:
 - (c) ascertaining whichever of the following is applicable:
 - (i) the profits of the partnership for the accounting period;
 - (ii) the property of the partnership as at the end of the accounting period; and
 - (d) assuming that the percentage that the partner holds, or that the partner is entitled to acquire, at the test time was the same at all other times during the accounting period; and
 - (e) ascertaining the percentage concerned:
 - (i) at the end of the accounting period instead of at the test time; and
 - (ii) on that assumption.

368 Direct attribution account interest in a trust

- (1) A beneficiary in a trust holds a direct attribution account interest in the trust at a particular time equal to:
 - (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
 - (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;or, if those percentages differ, the greater of those percentages.
- (2) For the purposes of the application of subsection (1) to a trust:
 - (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
 - (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;at a particular time (in this subsection called the *test time*) in an accounting period of the trust, is to be worked out by:
 - (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the accounting period;

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- (ii) the corpus of the trust as at the end of the accounting period; and
- (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the accounting period; and
- (e) ascertaining the percentage concerned:
 - (i) at the end of the accounting period instead of at the test time; and
 - (ii) on that assumption.
- (3) Each entity that is an eligible transferor in relation to a trust at a particular time holds a direct attribution account interest in the trust at that time equal to:
 - (a) if paragraph (b) does not apply—100%; or
 - (b) if, because there are 2 or more eligible transferors in relation to the trust, the Commissioner reduces an attribution percentage under subsection 362(3) or (4) or subsection 362(5) applies—such lower percentage as the Commissioner considers reasonable in the circumstances.
- (4) An entity that holds a direct attribution account interest in a trust at a particular time because of subsection (3) is not taken to hold any direct attribution account interest in the trust at that particular time because of subsection (1).

369 Indirect attribution account interest in an entity

- (1) The indirect attribution account interest that an entity (in this section called the *bottom entity*) holds in another entity (in this section called the *top entity*) is calculated in accordance with this section.
- (2) An interposed entity is not to be taken into account in calculating the indirect attribution account interest unless the entity is an attribution account entity.
- (3) If there is only one entity interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated by multiplying the direct attribution account interest that the bottom entity holds in the interposed entity by the direct attribution account interest that the interposed entity holds in the top entity.

- (4) If there are 2 entities interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated:
- (a) by multiplying the direct attribution account interest that the bottom entity holds in the first interposed entity by the direct attribution account interest that the first interposed entity holds in the second interposed entity; and
 - (b) by multiplying the result of the calculation in paragraph (a) by the direct attribution account interest that the second interposed entity holds in the top entity.
- (5) If there are 3 or more entities interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated:
- (a) by multiplying the direct attribution account interest that the bottom entity holds in the first interposed entity by the direct attribution account interest that the first interposed entity holds in the second interposed entity; and
 - (b) by multiplying the result of the multiplication referred to in paragraph (a) by the direct attribution account interest that the second interposed entity holds in the third interposed entity;
- and so on, ending with a multiplication by the direct attribution account interest that the last interposed entity holds in the top entity.
- (6) For the purposes of this section, an entity (in this subsection called the *second entity*) is interposed between 2 other entities (in this subsection called the *first entity* and the *third entity* respectively) if, and only if:
- (a) the first entity has a direct attribution account interest in the second entity; and
 - (b) the second entity has a direct attribution account interest in the third entity.

370 Attribution surplus

An attribution surplus for an attribution account entity in relation to a taxpayer exists at a particular time if the entity's total attribution credits arising before that time in relation to the taxpayer exceed its total attribution debits arising before that time in relation to the taxpayer.

371 Attribution credit

- (1) An attribution credit arises for an attribution account entity (in this section called the *eligible entity*) in relation to a taxpayer if:
- (a) an amount is included in the taxpayer's assessable income under section 456 in respect of the attributable income of the eligible entity for a statutory accounting period; or
 - (aa) both the following conditions apply:
 - (i) an amount is included in the taxpayer's assessable income under section 456 in respect of the attributable income of another attribution account entity (*the other entity*) for a statutory accounting period of the other entity;
 - (ii) that amount was calculated by reference to another amount (*the Part XI amount*) that under Part XI was included in the attributable income of the other entity because the other entity had an interest in the eligible entity; or
 - (ab) each of the following conditions applies:
 - (i) an amount is included in the taxpayer's assessable income under section 456 in respect of the attributable income of another attribution account entity (*the other entity*) for a statutory accounting period of the other entity;
 - (ii) the amount so included was calculated by reference to another amount that under Part XI was included in the attributable income of the other entity because the other entity had an interest in another attribution account entity (*the interposed entity*);
 - (iii) the other amount referred to in subparagraph (ii) of this paragraph was calculated by reference to an amount (*the section 576 amount*) that under section 576 was included in the notional income of the interposed entity because the interposed entity had an interest in the eligible entity; or
 - (b) an amount is included in the taxpayer's assessable income under section 457 as a result of a change of residence by the eligible entity; or
 - (d) an attribution account payment that requires an attribution debit for another entity in relation to the taxpayer is made to the eligible entity.
-

- (2) Subject to subsections (2A), (2B), (3) and (4), the amount of the attribution credit is equal to the amount included in assessable income or to the amount of the attribution debit, as the case may be.
- (2A) If an attribution credit arises under paragraph (1)(aa) for an eligible entity, the amount of the attribution credit is to be worked out using the formula:

$$\frac{\text{FIF income} \times \text{Section 456 amount}}{\text{Notional assessable income}}$$

In the formula:

FIF income means the amount of the foreign investment fund income included, in relation to the eligible entity, under Part XI in the notional assessable income of the other entity for the statutory accounting period of the other entity referred to in paragraph (1)(aa).

Section 456 amount means the amount included in the taxpayer's assessable income under section 456 in respect of the statutory accounting period referred to in paragraph (1)(aa) of the other entity.

Notional assessable income means the notional assessable income of the other entity under Part X for the statutory accounting period referred to in paragraph (1)(aa).

- (2B) If an attribution credit arises under paragraph (1)(ab) for an eligible entity, the amount of the attribution credit is to be worked out using the formula:

$$\frac{\text{FIF income} \times \text{Section 456 amount}}{\text{Notional assessable income}}$$

For the purposes of this subsection:

FIF income means the amount worked out using the formula:

$$\frac{\text{FIF income of the eligible entity} \times \text{Section 529 amount}}{\text{Notional income of the interposed entity}}$$

FIF income of the eligible entity means the amount of the foreign investment fund income included, in relation to the eligible entity, under section 576 in the notional income of the interposed entity referred to in subparagraph (1)(ab)(ii) for the notional accounting period of the interposed entity that ends during the statutory accounting period of the other entity referred to in subparagraph (1)(ab)(i).

Section 529 amount means the amount included in the notional assessable income of the other entity referred to in subparagraph (1)(ab)(i) under section 529 in respect of the statutory accounting period referred to in that subparagraph because of an interest that that other entity holds in the interposed entity.

Notional income of the interposed entity means the notional income of the interposed entity referred to in subparagraph (1)(ab)(ii) under Part XI for the notional accounting period of that entity that ends during the statutory accounting period of the other entity referred to in subparagraph (1)(ab)(ii).

Section 456 amount means the amount included in the taxpayer's assessable income under section 456 in respect of the statutory accounting period referred to in subparagraph (1)(ab)(i) of the other entity referred to in that subparagraph.

Notional assessable income means the notional assessable income of the other entity referred to in subparagraph (1)(ab)(i) under Part X for the statutory accounting period referred to in that subparagraph.

- (2C) If subsection (2A) applies to a taxpayer in respect of one or more eligible entities in respect of a particular section 456 amount, the amount of the attribution credit arising under paragraph (1)(a) for the other entity referred to in paragraph (1)(aa) is reduced by the attribution credit or the sum of the attribution credits that, except for subsection (2D), would arise for the eligible entity or eligible entities under subsection (2A).
- (2D) If subsection (2B) applies to a taxpayer in respect of one or more eligible entities in respect of a particular amount included in the notional income of the interposed entity referred to in subparagraph (1)(ab)(ii), the amount of the attribution credit arising under paragraph (1)(aa) for the interposed entity is to be

reduced by the attribution credit or the sum of the attribution credits arising for the eligible entity or eligible entities under subsection (2B).

(4) Where:

- (a) the attribution credit arises under paragraph (1)(d) in relation to an attribution account payment consisting of a non-portfolio dividend paid to the eligible entity, where the eligible entity is a company; and
- (b) the eligible entity is or will be liable to pay an amount of foreign tax on the attribution account payment or on amounts that include the attribution account payment;

then the amount of the attribution credit is reduced by the amount calculated using the formula:

Attribution account percentage \times Foreign tax

where:

Attribution account percentage means the taxpayer's attribution account percentage for the attribution account entity.

Foreign tax means the amount of foreign tax, to the extent that it is attributable to the attribution account payment.

(5) The attribution credit arises:

- (a) in a paragraph (1)(a) case where subsection 319(6) does not apply to the statutory accounting period referred to in that paragraph—at the end of the statutory accounting period; or
- (aaa) in a paragraph (1)(a) case where subsection 319(6) applies to the statutory accounting period referred to in that paragraph—at the beginning of the statutory accounting period; or
- (ab) in a paragraph (1)(ab) case—at the end of the notional accounting period of the eligible entity that gave rise to the section 576 amount referred to in subparagraph (1)(ab)(iii); or
- (b) in a paragraph (1)(b) case—subject to subsection (8), at the time of the change of residence referred to in that paragraph; or
- (d) in a paragraph (1)(d) case—when the attribution account payment referred to in that paragraph is made.

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- (6) Where, apart from this subsection, an attribution credit would arise in relation to an attribution account entity for an Australian partnership or an Australian trust in respect of an amount included in the assessable income of the partnership or trust of a year of income under section 456 or 457, then, subject to subsection (7):
- (a) the attribution credit does not arise for the partnership or trust; and
 - (b) an attribution credit arises in relation to the attribution account entity for:
 - (i) any taxpayer for whom, as a result of the amount being so included, a tax detriment would arise in circumstances referred to in paragraphs 460(2)(a) and (b) or paragraphs 460(3)(a) and (b); and
 - (ii) any taxpayer where, as a result of the amount being so included, a tax detriment would arise for the trustee of a trust in which the taxpayer is a beneficiary, in respect of an amount assessable to the trustee under section 98 in respect of the taxpayer's share of the net income of the trust, in circumstances referred to in paragraph 460(4)(a); and
 - (iii) any taxpayer in the capacity of trustee of a trust, where, as a result of the amount being so included, a tax detriment would arise for the taxpayer in respect of an amount assessable to the taxpayer under section 99 or 99A, in circumstances referred to in paragraph 460(4)(a); and
 - (c) the amount of the attribution credit referred to in paragraph (b) equals the amount of the tax detriment, as reduced by any application of section 460; and
 - (d) the attribution credit referred to in paragraph (b) arises at the time when the attribution credit referred to in paragraph (a) would, but for this subsection, have arisen.
- (7) Subsection (6) does not apply to an Australian trust that is, in relation to the year of income referred to in that subsection:
- (a) a corporate unit trust within the meaning of Division 6B of Part III; or
 - (b) a public trading trust within the meaning of Division 6C of that Part; or
 - (c) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a

non-complying approved deposit fund or a pooled superannuation trust.

- (8) If:
- (a) a company ceases to be resident in an unlisted country and becomes a resident of a listed country; and
 - (b) an amount (in this subsection called the *section 457 amount*) is included in a taxpayer's assessable income under section 457 as a result of the change of residence; and
 - (c) a particular part (in this subsection called the *eligible part*) of the section 457 amount is attributable to a hypothetical disposal of a particular asset of the company at the residence change time; and
 - (d) it might reasonably be expected that, if and when the company actually disposes of the asset, so much of the gain derived by the company on the actual disposal of the asset that accrued before the residence change time will be subject to tax in the listed country;

the taxpayer may elect to defer the timing of so much of the paragraph (1)(b) attribution credit as is attributable to the eligible part from the time of the change of residence referred to in that paragraph until immediately before the payment by the company of a dividend out of the gain derived by the company on the actual disposal of the asset.

- (9) An election for the purposes of subsection (8):
- (b) is irrevocable; and
 - (c) has no effect unless it is made:
 - (i) within 6 months after the end of the later of the following years of income:
 - (A) the year of income in which the residence change time took place;
 - (B) the year of income in which this subsection commenced; or
 - (ii) within such further period as the Commissioner allows.

372 Attribution debit

- (1) An attribution debit arises for an attribution account entity (in this section called the *eligible entity*) in relation to a taxpayer if:

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- (a) the eligible entity makes an attribution account payment to the taxpayer or to another attribution account entity; and
 - (b) immediately before the eligible entity makes the attribution account payment, there is an attribution surplus for the eligible entity in relation to the taxpayer.
- (2) Subject to subsection (4), the amount of the debit is the lesser of:
- (a) the attribution surplus; and
 - (b) whichever of the following is applicable:
 - (i) if the attribution account payment is made to the taxpayer—the attribution account payment;
 - (ii) in any other case—the taxpayer’s attribution account percentage (for the attribution account entity to which the payment is made) of the attribution account payment.
- (4) Where:
- (a) the attribution account payment is made to an attribution account entity that is a trust; and
 - (b) the attribution surplus, for the eligible entity, is in relation to the taxpayer in the capacity of trustee of the trust (because it is a surplus that resulted from an attribution credit or credits that arose under subparagraph 371(6)(b)(iii));
- then the amount of the attribution debit is the lesser of:
- (c) the attribution surplus; and
 - (d) any amount assessable to the taxpayer under section 99 or 99A in relation to the net income of the trust of the year of income in which the attribution account payment is made.
- (5) The attribution debit arises when the attribution account payment is made.

373 Grossed-up amount of an attribution debit

The grossed-up amount in relation to an attribution debit is:

- (a) where subparagraph 372(2)(b)(i) applied in relation to the debit—the amount of the debit; or
- (b) where subparagraph 372(2)(b)(ii) applied in relation to the debit—the amount of the debit, divided by the attribution account percentage referred to in that subparagraph.

Division 7—Calculation of attributable income of CFC

Subdivision A—Basic principles

381 Separate attributable income for each attributable taxpayer

Where, at the end of a statutory accounting period (in this Division called the *eligible period*) of a company:

- (a) the company is a CFC; and
- (b) there are one or more attributable taxpayers in relation to the company;

the attributable income of the company (in this Division called the *eligible CFC*) for the eligible period is calculated separately for each such attributable taxpayer (in this Division called the *eligible taxpayer*) in accordance with this Division.

382 Attributable income is taxable income calculated on certain assumptions

- (1) The attributable income is the amount that would be the eligible CFC's taxable income for the eligible period if certain assumptions were made.
- (2) For the purposes of describing those assumptions, amounts of assessable income, allowable deductions and exempt income that are to be taken into account in calculating the taxable income are referred to respectively as notional assessable income, notional allowable deductions and notional exempt income.

383 Basic assumptions

The assumptions are:

- (a) that the eligible CFC is a taxpayer and a resident, within the meaning of section 6, during the whole of the eligible period; and
- (b) that the eligible period is a year of income, being the year of income of the eligible taxpayer in which the eligible period ends; and

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- (c) that this Act is modified in accordance with Subdivisions B to E; and
- (d) whichever of the assumptions in section 384 or 385 applies.

384 Additional assumption for unlisted country CFC

- (1) Where the eligible CFC is a resident of an unlisted country at the end of the eligible period, it is to be assumed:
 - (a) that the only amounts of notional assessable income are those to which subsection (2) applies; and
 - (b) that all other income is notional exempt income.
- (2) The amounts of notional assessable income are:
 - (a) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included in its notional assessable income for the eligible period under this Act as modified in accordance with Subdivisions B to E if the only income or other amounts derived by it during the eligible period, and any earlier statutory accounting period, were adjusted tainted income (within the meaning of section 386); and
 - (b) amounts included in the notional assessable income of the eligible CFC for the eligible period under section 102AAZD of this Act as modified in accordance with Subdivisions B to E; and
 - (c) amounts included in the notional assessable income of the eligible CFC for the eligible period under Division 6 of Part III of this Act as so modified; and
 - (ca) amounts included in the notional assessable income of the eligible CFC for the eligible period under Part XI as so modified; and
 - (d) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under Division 5 of Part III of this Act, as modified in accordance with Subdivisions B to E of this Division, in relation to any partnership if its net income included only:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included if the partnership derived only adjusted tainted income (within the meaning of section 386); and

- (ii) amounts included under section 102AAZD of this Act as modified in accordance with Subdivisions B to E of this Division; and
- (iii) amounts included under Division 6 of Part III of this Act as so modified; and
- (iv) amounts included under Part XI as so modified.

385 Additional assumption for listed country CFC

- (1) Where the eligible CFC is a resident of a listed country at the end of the eligible period, it is to be assumed:
 - (a) that the only amounts of notional assessable income are those to which subsection (2) applies; and
 - (b) that all other income is notional exempt income.
- (2) Subject to subsection (4), the amounts of notional assessable income are:
 - (a) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under this Act as modified in accordance with Subdivisions B to E if the only income or other amounts derived during the eligible period, and any earlier statutory accounting period, by the eligible CFC were:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—adjusted tainted income (within the meaning of section 386) that is eligible designated concession income in relation to the listed country or any other listed country; and
 - (ii) income or other amounts, of a kind specified in the regulations, that:
 - (A) are not eligible designated concession income of the eligible CFC in relation to the listed country or any other listed country; and
 - (B) are not treated as derived from sources in the listed country for the purposes of the tax law of the listed country; and
 - (C) pass the test set out in subsection (2A); and
 - (b) amounts included in the notional assessable income of the eligible CFC for the eligible period under section 102AAZD

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of this Act as modified in accordance with Subdivisions B to E; and

- (c) amounts included in the notional assessable income of the eligible CFC for the eligible period under Division 6 of Part III of this Act as so modified, where either of the following conditions (but not necessarily the same condition) is satisfied in relation to the listed country and each other listed country:
 - (i) the amounts are not subject to tax in that listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period;
 - (ii) the amounts are subject to tax in that listed country in such a tax accounting period and are designated concession income in relation to the listed country; and
- (ca) amounts included in the notional assessable income of the eligible CFC for the eligible period under Part XI as so modified; and
- (d) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under Division 5 of Part III of this Act, as modified in accordance with Subdivisions B to E of this Division, in relation to any partnership if its net income included only:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included if the partnership derived only adjusted tainted income (within the meaning of section 386) that is eligible designated concession income in relation to the listed country or any other listed country; and
 - (ii) amounts that would be included if the partnership derived only income or other amounts, of a kind specified in the regulations, that:
 - (A) are not eligible designated concession income of the partnership in relation to the listed country or any other listed country; and
 - (B) are not treated as derived from sources in the listed country for the purposes of the tax law of the listed country; and
 - (C) pass the test set out in subsection (2A); and

- (iii) amounts included under section 102AAZD of this Act as modified in accordance with Subdivisions B to E of this Division; and
 - (iv) amounts included under Division 6 of Part III of this Act as so modified, where either of the following conditions (but not necessarily the same condition) is satisfied in relation to the listed country and each other listed country:
 - (A) the amounts are not subject to tax in that listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period;
 - (B) the amounts are subject to tax in that listed country in such a tax accounting period and are designated concession income in relation to the listed country; and
 - (v) amounts included under Part XI as so modified.
- (2A) For the purposes of sub-subparagraphs (2)(a)(ii)(C) and (2)(d)(ii)(C), income or other amounts pass the test set out in this subsection if both:
- (a) the income or other amounts are adjusted tainted income (within the meaning of section 386); and
 - (b) the income or other amounts are not subject to tax in the listed country or in any other listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period.
- (3) For the purposes of paragraph (2)(c) or (d), a reference in that paragraph to an amount being not subject to tax or subject to tax, as the case may be, includes a reference to another amount included in the net income of a partnership or trust, to which the first-mentioned amount is attributable, being not subject to tax or subject to tax.
- (4) Where the sum of the amounts to which paragraphs (2)(a) and (ca) would otherwise apply does not exceed the lesser of:
- (a) \$50,000; and
 - (b) 5% of the gross turnover of the eligible CFC for the eligible period;
- then that paragraph does not apply to those amounts.

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- (5) In determining for the purposes of paragraph (4)(b) the gross turnover of the eligible CFC for the eligible period, section 434 has effect as if:
- (a) subparagraph 434(1)(a)(i) were omitted; and
 - (b) the words “, but not including amounts that are shown in those recognised accounts as amounts covered by section 436” were omitted from paragraphs 434(1)(b), (c) and (d); and
 - (c) the words “(other than an exclusion of amounts shown in those recognised accounts as amounts covered by section 436)” were omitted from subsection 434(2).

386 Adjusted tainted income

- (1) The references in sections 384, 385 and 457 to adjusted tainted income are references to amounts that would be passive income, tainted sales income or tainted services income if certain modifications were made to the provisions of Division 8.
- (2) The modifications are:
- (a) that paragraphs 446(1)(k), (m) and (n) are replaced with the following:
 - “(k) amounts derived from the disposal of tainted assets;
 - (m) amounts derived from the disposal of tainted commodity investments;
 - (n) amounts derived that are attributable to currency exchange rate fluctuations, except where under section 439 the amounts would, if they were currency exchange gains, relate to an active income transaction;”;and
 - (b) that paragraph 446(1)(k) as so replaced does not apply to an amount derived from the disposal of a tainted asset in the circumstances referred to in paragraphs 450(2)(a) to (c) or (5)(a) to (c); and
 - (c) that paragraph 446(1)(n) as so replaced does not apply to an amount derived where, if it were a currency exchange gain, paragraphs 450(3)(a) and (b) would apply to it; and
 - (d) that the reference in subsection 450(7) to net gains that accrued to the company in respect of the disposal of tainted assets is replaced with a reference to amounts derived by the company from the disposal of tainted assets.

387 Reduction of attributable income because of interim dividends

(1) Where:

- (a) during the eligible period, the eligible CFC pays a dividend to the eligible taxpayer or to another entity; and
- (b) if the dividend is paid to the eligible taxpayer—the whole or part of the dividend is included in the assessable income of the eligible taxpayer of a year of income; and
- (d) the whole or part of the grossed-up assessable component of the dividend may reasonably be regarded as having been paid out of the attributable income of the eligible CFC for the eligible period;

then, for the purposes of this Part, the attributable income of the eligible CFC for the eligible period in relation to the eligible taxpayer is reduced by an amount equal to the whole or the part of the grossed-up assessable component of the dividend.

(2) In this section:

grossed-up assessable component, in relation to a dividend the whole or part of which is included in the assessable income of the eligible taxpayer, means the amount of the whole or the part divided by the eligible taxpayer's attribution percentage for the eligible CFC at the time of payment of the dividend.

Subdivision B—General modifications of Australian tax law

388 Double tax agreements to be disregarded

In calculating the attributable income of the eligible CFC, the *International Tax Agreements Act 1953* is to be disregarded, except for the purpose of references in this Act to that Act.

389 Certain provisions to be disregarded in calculating attributable income

For the purpose of applying this Act in calculating the attributable income of the eligible CFC, the following provisions are to be disregarded:

- (a) except for the purposes of a reference in any other provision of this Part—sections 23AH, 23AI, 23AK and 128D, subsection 136AF(1A), Division 15 of Part III (other than

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subsection 148(1)) and sections 456, 457, 459A, 461 and 605;

- (b) except for the purposes of a reference in Division 6AAA of Part III or in any other provision of this Part—Part 3-6 of the *Income Tax Assessment Act 1997*;
- (c) Division 820 of the *Income Tax Assessment Act 1997*.

389A Other provisions to be disregarded in calculating attributable income

For the purpose of applying this Act in calculating the attributable income of the eligible CFC, the following provisions are to be disregarded:

- (a) Division 974 of the *Income Tax Assessment Act 1997*; and
- (b) any provision of this Act to the extent to which the operation of the provision depends on an expression whose meaning is given by Division 974 of the *Income Tax Assessment Act 1997*.

390 Elections to be made by eligible taxpayer

- (1) For the purpose of applying this Act in calculating the attributable income of the eligible CFC, any declaration, election, choice or selection that may be made, any notice that may be given or any option that may be exercised, under this Act by the eligible CFC apart from this section is not to be made, given or exercised by the eligible CFC but instead may be made, given or exercised by the eligible taxpayer.
- (2) The eligible taxpayer may make the declaration, election or selection, give the notice or exercise the option in the eligible taxpayer's return of income of the year of income in which the eligible period ends or within such further period after the lodgment of the return as the Commissioner allows.
- (3) Subsection (1) does not apply to an election under the CGT roll-over provisions.

392 Notional assessable amounts are to be pre-tax

- (1) An amount included in the notional assessable income of the eligible CFC is an amount before the payment of any foreign tax or Australian tax in respect of the amount.

393 Notional allowable deduction for taxes paid

- (1) Foreign tax or Australian tax paid by the eligible CFC in respect of amounts included in the notional assessable income of the eligible CFC for the eligible period, whether paid before, during or after that period, is a notional allowable deduction from the notional assessable income of the eligible CFC for the eligible period.
- (4) Where a person pays an amount of tax that the person is liable to pay under subsection 148(3) of this Act, in its application apart from this Part, in respect of premiums paid or credited to the eligible CFC, then, for the purposes of subsection (1), the amount is taken to be Australian tax paid by the eligible CFC in respect of the premiums.

394 Notional allowable deduction for eligible finance share dividends, widely distributed finance share dividends and transitional finance share dividends

Where:

- (a) the eligible CFC pays an eligible finance share dividend, a widely distributed finance share dividend or a transitional finance share dividend during or after the eligible period; and
- (b) if, on the assumption that the dividend were instead a payment of the interest, referred to in paragraph 327(d) or 327A(3)(b) or subsection 327B(2), as the case requires, to which it may reasonably be regarded as equivalent, an amount (in this section called the *interest equivalent*) of that interest accruing during the eligible period would be a notional allowable deduction for the eligible period;

then the interest equivalent is a notional allowable deduction for the eligible period.

395 Expenditure incurred to produce income or profits in later statutory accounting periods

In determining whether expenditure incurred by the eligible CFC during the eligible period for the purpose of gaining or producing income or profits in a later statutory accounting period is a notional allowable deduction under a particular provision, it is to be assumed that:

- (a) there will be a requirement under this Division to calculate the attributable income of the eligible CFC for that later statutory accounting period; and
- (b) for that purpose, the eligible CFC will always be a resident of the listed country or unlisted country, as the case may be.

396 Modified application of sections 25A and 52

- (1) For the purpose of applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of an eligible CFC, sections 25A and 52 of this Act and sections 15-15 and 25-40 of the *Income Tax Assessment Act 1997* do not apply in respect of the disposal of a non-taxable Australian asset of the eligible CFC.
- (2) A reference in subsection (1) to a non-taxable Australian asset is a reference to a CGT asset other than one that has the necessary connection with Australia (within the meaning of the *Income Tax Assessment Act 1997*).
- (3) The residency assumption is to be ignored in determining whether an asset is a taxable Australian asset for the purposes of this section.

397 Modified application of trading stock provisions

When applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of the eligible CFC:

- (a) Subdivision B of Division 2 of Part III of this Act has effect as if the value of any article of trading stock to be taken into account at the beginning or end of a year of income were its cost price; and
- (b) Division 70 of the *Income Tax Assessment Act 1997* has effect as if the value of any item of trading stock to be taken

into account at the beginning or end of an income year were its cost.

398 Modified application of depreciation provisions

- (1) Where property has been held by the eligible CFC in a non-attributable income period in relation to the application of a depreciation provision to the property (in relation to the eligible CFC and the eligible taxpayer) prior to the eligible period, subsection (2) applies.
- (2) Such amount as the Commissioner considers appropriate to take account of the holding of the property as mentioned in subsection (1) is, under the depreciation provision:
 - (a) a notional allowable deduction to the eligible CFC; or
 - (b) included in the notional assessable income of the eligible CFC;as the case requires, for the eligible period in relation to the eligible taxpayer, in substitution for any amount that would otherwise be so included or allowable.
- (3) For the purpose of exercising his or her power under subsection (2) to determine a notional allowable deduction in relation to:
 - (a) former sections 54 to 62 of this Act; or
 - (b) the former Division 42 (Depreciation) of the *Income Tax Assessment Act 1997* (other than Subdivisions 42-L and 42-M); or
 - (c) Division 40 of that Act (other than Subdivision 40-E);the Commissioner must assume that the property was used by the eligible CFC during any non-attributable income period wholly and exclusively for the purpose of producing notional assessable income.

398A Application of Division 3A of Part III

- (1) Subject to subsection (2), Division 3A of Part III applies in calculating the attributable income of the eligible CFC.
- (2) Section 82R does not apply, subject to subsection (3), to outgoings during the eligible period under a convertible note if:
 - (a) the note was issued by the eligible CFC (whether or not the company concerned was a CFC at the time):

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- (i) before 1 July 1990; or
 - (ii) on or after 1 July 1990 and before 1 July 1992, where:
 - (A) the terms of the issue of the note were publicly announced by the eligible CFC before 1 July 1990; or
 - (B) the eligible CFC was, under a contract entered into before 1 July 1990, obliged to issue the note; and
 - (b) at the end of each statutory accounting period of the eligible CFC preceding the eligible period and ending after 30 June 1990, the eligible taxpayer was an attributable taxpayer in relation to the eligible CFC; and
 - (c) the eligible period begins before 1 July 2000.
- (3) If:
- (a) the terms of a note to which subsection (2) would, apart from this subsection, apply are varied (otherwise than because of a compromise or arrangement approved by a court); and
 - (b) the Commissioner considers that the variation is substantial enough to represent a new loan;
- subsection (2) does not apply to outgoings under the note after the time at which the variation takes place.

399 Modifications of net income of partnerships and trusts

- (1) If, in calculating the attributable income of the eligible CFC, it is necessary to determine the net income of a partnership or trust under section 90 or 95, it is to be assumed that:
 - (a) the modifications of this Act in this Division (other than excluded modifications) apply to the partnership or the trust in the same way as they apply to the eligible CFC (except where a provision modified only applies to companies); and
 - (b) for the purpose of applying those modifications, the partnership or trust is taken to be a resident of the same listed or unlisted country as the eligible CFC; and
 - (c) the *Income Tax Assessment Act 1997* is further modified by disregarding section 855-50; and
 - (d) for the purposes of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* in accordance with the preceding paragraphs, the trust is a resident trust for CGT purposes.

(2) In this section:

excluded modifications means modifications made by sections 404 and 411 to 418 (inclusive).

399A Modified application of bad debt etc. provisions

(1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC for the eligible period:

- (b) section 63D of this Act is to be disregarded; and
- (c) subsection (2) of this section has effect.

(2) Where:

- (a) apart from this subsection, an amount would be a notional allowable deduction to the eligible CFC under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of a debt as bad; and
- (b) the debt was created or acquired in the ordinary course of a money-lending business of the eligible CFC that carries on that business; and
- (c) assuming that income:
 - (i) that has been derived by the eligible CFC in respect of the debt; or
 - (ii) that would have been reasonably likely to have been derived by the eligible CFC in respect of the debt if it had not become bad;

were instead derived by the eligible CFC during periods to which it may reasonably be attributed, there would be a part or parts (which part or the total of which parts is in this subsection called the *notional exempt income period*) of the period (in this subsection called the *eligible debt holding period*) beginning when the debt was so created or acquired, and ending when it was written off, in respect of which some or all of that income would not be included in the notional assessable income of the eligible CFC for any statutory accounting period;

then only a proportion of the amount referred to in paragraph (a) is a notional allowable deduction, being the proportion calculated using the following formula:

$$\frac{\text{Eligible debt holding period} - \text{Notional exempt income period}}{\text{Eligible debt term}}$$

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where:

Eligible debt holding period means the number of days in the eligible debt holding period.

Notional exempt income period means the number of days in the notional exempt income period.

Eligible debt term means:

- (d) where the debt was acquired from a person other than an associate—the number of days in the eligible debt holding period; or
 - (e) in any other case—the number of days in the period beginning on the day on which the debt was created (whether by the eligible CFC or another person) and ending at the end of the day on which it was written off.
- (3) For the purposes of subsection (2):
- (a) where a debt that is written off was acquired from another person, the creation and any previous acquisition of the debt is to be disregarded, other than for the purposes of paragraph (2)(e); and
 - (b) if, on the assumption in paragraph (2)(c), income would be derived by the eligible CFC during a period before the first statutory accounting period of the eligible CFC beginning on or after 1 July 1990, then, in spite of anything in that paragraph, that income is taken not to be included in the notional assessable income of the eligible CFC for any statutory accounting period; and
 - (c) it is to be assumed that, for any statutory accounting period for which there is no requirement to calculate the attributable income of the eligible CFC in relation to the eligible taxpayer, there is such a requirement.
- (4) Where a part of a debt is written off as bad, the preceding provisions of this section apply as if the part were an entire debt that is written off as bad.
- (5) This section has the same effect in relation to an allowable deduction under section 63E in respect of the whole or part of a debt that is extinguished as it has in relation to an allowable deduction under section 8-1 or 25-35 of the *Income Tax*

Assessment Act 1997 in respect of the whole or part of a debt that is written off as bad.

400 Modified application of Division 13 of Part III

In calculating the attributable income of the eligible CFC:

- (a) for the purposes of section 136AC, the eligible CFC is to be treated as a resident or a non-resident, within the meaning of that section, without regard to the residency assumption; and
- (aa) for the purposes of Division 13 of Part III, an agreement is not an international agreement if, at all times when the agreement was in force, all of the parties to the agreement were CFCs and were residents of the same listed country; and
- (b) section 136AF applies as if:
 - (i) the reference in subsection 136AF(1) to the application of section 136AD in relation to a taxpayer were a reference both to:
 - (A) the application of that section in relation to any CFC in calculating its attributable income or in relation to any trust estate in calculating its attributable income under Division 6AAA of Part III; and
 - (B) the actual application of that section in relation to any taxpayer in calculating the taxable income of the taxpayer apart from this Part; and
 - (ii) the references in paragraphs 136AF(1)(a) and (b) to assessable income or allowable deductions in relation to the relevant taxpayer were references to notional assessable income or notional allowable deductions in relation to the eligible CFC.

401 Reduction of capital proceeds where attributed income not distributed

- (1) Where:
 - (a) it is necessary, for the purposes of applying a provision of this Act in calculating the attributable income of the eligible CFC in relation to the eligible taxpayer, to take into account the capital proceeds from a CGT event happening in relation to a CGT asset, being an interest in an attribution account entity (in this section called the *disposal entity*); and

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- (b) immediately before the CGT event takes place, either or both of the following conditions are satisfied:
 - (i) there is an attribution surplus for the disposal entity in relation to the eligible taxpayer;
 - (ii) there is an attribution surplus for one or more other attribution account entities in relation to the eligible taxpayer, where each such entity is one in which the eligible taxpayer has an indirect attribution account interest held through the disposal entity;

then:

- (c) for the purpose of calculating the attributable income, the capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the CGT event is, subject to subsection (3), taken to be reduced by the grossed-up amount of the attribution surplus, or the sum of the grossed-up amounts of the attribution surpluses, as the case requires; and
 - (d) for the purposes of this Act, attribution debits and credits arise in accordance with subsection (5).
- (3) For the purposes of paragraph (1)(c):
- (a) a reference to the grossed-up amount of an attribution surplus is a reference to the amount of the surplus divided by the eligible taxpayer's attribution account percentage for the eligible CFC; and
 - (b) where the CGT event causes the eligible taxpayer's attribution account percentage for an attribution account entity in relation to which there is an attribution surplus to be reduced by a proportion, then only that proportion of the attribution surplus is, subject to this subsection, to be taken into account under that paragraph; and
 - (c) where there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (b) of this subsection) its grossed-up amount exceeds the capital proceeds from the CGT event, then the surplus is only to be taken into account to the extent that its grossed-up amount equals those capital proceeds; and
 - (d) where there are 2 or more attribution surpluses referred to in paragraph (1)(c) and (after any application of paragraph (b) of this subsection) the sum of their grossed-up amounts exceeds the capital proceeds from the CGT event, then:
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- (i) if the taxpayer makes an election that for the purposes of this paragraph, a part of each surplus (after any application of paragraph (b)) such that the sum of the grossed-up amounts of the parts to which the election relates equals those capital proceeds—only the part to which the election relates of each surplus is to be taken into account under paragraph (1)(c); or
- (ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (b)) is to be taken into account under paragraph (1)(c), being the proportion calculated using the formula:

$$\frac{\text{Amount of capital proceeds}}{\text{Total grossed-up surplus}}$$

where:

total grossed-up surplus means the sum of the grossed-up amounts of the attribution surpluses (after any application of paragraph (b)).

- (4) An election for the purposes of paragraph (3)(d) must be made on or before the date of lodgment of the eligible taxpayer's return of income for the year of income in which the eligible period ends or within such further period after the lodgment of the return as the Commissioner allows.
- (5) For the purposes of this Act:
 - (a) an attribution debit is taken to arise at the time of the disposal under section 372, in relation to the eligible taxpayer, for each attribution account entity (in this section called a ***surplus entity***) in relation to which there is an attribution surplus to which paragraph (1)(c) applies; and
 - (b) the amount of the attribution debit is equal to so much of the surplus as is taken into account under paragraph (1)(c); and
 - (c) there is no grossed-up amount in relation to the attribution debit under section 373; and
 - (d) an attribution credit equal to the debit is taken to arise, at the time of the disposal or of the CGT event, under section 371 for the eligible CFC in relation to the eligible taxpayer.
- (6A) In determining, for the purposes of this section, whether there was an attribution surplus immediately before a CGT event, and the amount of such a surplus, also take into account any attribution

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credit that later arises because the CGT event caused section 104-175 of the *Income Tax Assessment Act 1997* (as it notionally applies to the CGT event entity under this Division) to operate.

(7) In this section:

interest, in relation to an attribution account entity, means:

- (a) if the entity is a company—an interest in shares in the company, or an entitlement to acquire such an interest; or
- (b) if the entity is a partnership—an interest of a partner in the profits or property of the partnership, or an entitlement of a partner to acquire such an interest; or
- (c) if the entity is a trust—an entitlement of a beneficiary to a share of the income or corpus of the trust, or an entitlement of a beneficiary to acquire such an entitlement.

402 Additional notional exempt income—unlisted or listed country CFC

- (1) This section applies where the eligible CFC is a resident of either a listed country or an unlisted country at the end of the eligible period.
- (2) Each of the following is notional exempt income of the eligible CFC in relation to the eligible period:
 - (a) income or other amounts derived by the eligible CFC in the eligible period that are included in the assessable income of the eligible CFC of any year of income for the purposes of this Act apart from this Part, other than amounts that are so included under section 143 (where the proviso to that section does not apply);
 - (b) so much of a frankable distribution, paid to the eligible CFC in the eligible period, as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;
 - (e) a premium paid or credited to the eligible CFC in the eligible period, where, because of the application of subsection 148(1) for the purposes of this Act apart from this Part, the premium is not, for those purposes, allowable as a deduction to the person referred to in subparagraph 148(1)(a)(i) and is not included in the assessable income of the eligible CFC.

(2A) If:

- (a) an amount would, apart from this subsection, be included in the notional assessable income of the eligible CFC for the eligible period under paragraph 384(2)(ca) or 385(2)(ca); and
- (b) at the end of the eligible period the CFC was authorised under the law of its place of residence to carry on life insurance business; and
- (c) at the end of that period the gross value of the CFC's assets for use in carrying on life insurance business was 50% or more of the gross value of all of the CFC's assets; and
- (d) during the eligible period a FIF within the meaning of Part XI managed funds of the CFC that were maintained by the CFC in a manner similar to the manner in which companies carrying on life insurance business in Australia maintain statutory funds under Part 4 of the *Life Insurance Act 1995*; and
- (e) the FIF was principally engaged during the eligible period in the management of funds of other persons by the investing of those funds at the discretion of the FIF;

then, so much of the amount referred to in paragraph (a) as relates to the FIF is notional exempt income of the eligible CFC in relation to the eligible period.

(2B) A reference in paragraph (2A)(c) to the gross value of an asset of the CFC at the end of the eligible period is a reference to that value as shown in a balance-sheet of the CFC that was prepared as at the end of that period.

(2C) If, at the end of the eligible period, any of the CFC's assets (*the relevant assets*) are for use partly in carrying on life insurance business and partly for other purposes, a reference in paragraph (2A)(c) to the gross value at the end of that period of the CFC's assets for use in carrying on life insurance business is a reference to so much only of the gross value at the end of that period of the relevant assets as is proportionate to the extent to which they are for use at the end of that period in carrying on life insurance business.

(3) If:

- (a) an attribution account entity makes an attribution account payment to the eligible CFC in the eligible period; and

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(b) apart from this subsection, the whole or part of the attribution account payment would be included in the notional assessable income of the eligible CFC in relation to the eligible taxpayer for the eligible period; and

(c) on the making of the attribution account payment, an attribution debit arises for the attribution account entity in relation to the eligible taxpayer;

then so much (if any) of the whole or the part of the attribution account payment as does not exceed the grossed-up amount of the attribution debit is notional exempt income of the eligible CFC for the eligible period.

(4) If:

(a) a FIF attribution account entity makes a FIF attribution account payment to the eligible CFC in the eligible period; and

(b) apart from this subsection, the whole or part of the FIF attribution account payment would be included in the notional assessable income of the eligible CFC in relation to the eligible taxpayer for the eligible period; and

(c) on the making of the FIF attribution account payment, a FIF attribution debit arises for the FIF attribution account entity in relation to the eligible taxpayer;

so much (if any) of the whole or the part of the FIF attribution account payment as does not exceed the grossed-up amount of the FIF attribution debit is notional exempt income of the eligible CFC for the eligible period.

403 Additional notional exempt income—unlisted country CFC

If the eligible CFC is a resident of an unlisted country at the end of the eligible period, the notional exempt income of the eligible CFC in relation to the eligible period includes income or profits derived by the eligible CFC in the eligible period in or in connection with carrying on business in a listed country at or through a permanent establishment of the eligible CFC in that listed country, where the income or profits are not eligible designated concession income in relation to any listed country in relation to the eligible period.

404 Additional notional exempt income—listed or section 404 country CFC

Where the eligible CFC is a resident of a listed country or a section 404 country at the end of the eligible period, a dividend paid to it in the eligible period by a company that is a resident of a listed country or a section 404 country is notional exempt income.

Subdivision C—Modifications relating to Australian capital gains tax

405 Interpretation

- (1) In this Subdivision:

commencing day has the meaning given by section 406.

commencing day asset has the meaning given by section 406.

- (3) Some provisions of this Subdivision say that a payment can include giving property. To the extent that one does, use the market value of the property in working out the amount of the payment.

406 Meaning of *commencing day* and *commencing day asset*

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the eligible CFC's *commencing day* is the later of:
- (a) the last day of the most recent period during which there was not an attributable taxpayer with an attribution percentage (greater than nil) in relation to the eligible CFC; and
 - (b) 30 June 1990.

Example: If a taxpayer became an attributable taxpayer with an attribution percentage (greater than nil) in relation to the eligible CFC at 3 pm on 20 October 2004 and there were no other such attributable taxpayers at that time, the commencing day is 20 October 2004.

- (2) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, a *commencing day asset* of the eligible CFC is a CGT asset (other than one that is taxable Australian property) owned by the eligible CFC at the end of its commencing day.

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- (3) In determining whether a CGT asset is taxable Australian property, disregard the residency assumption.

408 Certain capital gains and losses disregarded

If a CFC makes a capital gain or capital loss from a CGT event that is not disregarded under Subdivision 855-A of the *Income Tax Assessment Act 1997*, or would have made a capital gain from the event apart from indexation, disregard the CGT event in calculating the attributable income of the eligible CFC.

408A Certain events before commencing day ignored

For the purposes of applying this Act in calculating the attributable income of an eligible CFC, if the eligible CFC's commencing day is after 30 June 1995, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply to CGT events involving the eligible CFC before the end of the commencing day.

409 Losses before 30 June 1990 to be disregarded

For the purposes of applying this Act in calculating the attributable income of the eligible CFC, capital losses incurred before the end of 30 June 1990 are disregarded.

410 General modifications—CGT

For the purposes of applying this Act in calculating the attributable income of the eligible CFC, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply as if these provisions were disregarded:

- (a) section 116-85 (about section 47A of this Act applying to a rolled-over asset);
- (b) section 116-95 (about a company changing residence from an unlisted country);
- (c) section 118-12 (about assets used to produce exempt income etc.);
- (d) section 855-45 (about an individual or company becoming an Australian resident);
- (e) section 855-55 (about a CFC becoming an Australian resident);

- (f) Subdivision 170-B (about transfer of net capital losses within company groups).

411 Commencing day assets taken to have been acquired on commencing day

- (1) Subject to this section, for the purposes of applying this Act in calculating the attributable income of the eligible CFC, a commencing day asset of the eligible CFC is taken to have been acquired, for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), by it on its commencing day.
- (3) Subsection (1) does not apply for the purposes of determining the cost base to the eligible CFC of an asset.

412 Cost base of commencing day asset

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.
- (2) The first element of the cost base of each commencing day asset of the eligible CFC is the greater of the asset's market value (at the end of the eligible CFC's commencing day) and the asset's cost base (on that day).
- (3) The first element of the reduced cost base of each commencing day asset of the eligible CFC is the lesser of the asset's market value (at the end of the eligible CFC's commencing day) and the asset's cost base (on that day).

413 Adjustment of cost base as at commencing day—return of capital

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.
- (2) Where:
- (a) commencing day assets of the eligible CFC consist of shares in a company; and
 - (b) at any time during the period commencing at the time when the eligible CFC acquired the shares and ending at the end of the eligible CFC's commencing day, the company paid an

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amount that was not a dividend to the eligible CFC in respect of the shares;

the cost base to the eligible CFC of the shares as at the eligible CFC's commencing day is to be reduced by that amount.

(3) Where:

- (a) a commencing day asset of the eligible CFC consists of an interest or unit in a trust; and
- (b) at any time during the period commencing at the time when the eligible CFC acquired the interest or unit and ending at the end of the eligible CFC's commencing day, the trustee of the trust paid an amount to the eligible CFC in respect of the interest or unit, being an amount that would not have been notional assessable income of the eligible CFC;

the cost base to the eligible CFC of the interest or unit as at the eligible CFC's commencing day is to be reduced by so much of the amount as is not attributable to a deduction allowed under Division 43 of the *Income Tax Assessment Act 1997* or former Division 10C or 10D of Part III of this Act.

(4) The payment referred to in subsection (2) or (3) can include giving property: see subsection 405(3).

414 Exercise of rights

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.
- (2) Despite section 130-40 of the *Income Tax Assessment Act 1997*, the modifications in subsections (3) and (4) of this section apply if the eligible CFC exercises rights or options as mentioned in that section to acquire:
 - (a) shares in a company, or options to acquire shares in a company; or
 - (b) units in a unit trust, or options to acquire units in a unit trust; and those rights or options are commencing day assets of the eligible CFC.
- (3) The first element of the cost base of the shares, units or options is the sum of:
 - (a) the amount paid to exercise the rights or options; and

- (b) the greater of the market value of the rights or options (at the end of the eligible CFC's commencing day) and the cost base of the rights or options (on that day).
- (4) The first element of the reduced cost base of the shares, units or options is the sum of:
 - (a) the amount paid to exercise the rights or options; and
 - (b) the lesser of the market value of the rights or options (at the end of the eligible CFC's commencing day) and the cost base of the rights or options (on that day).
- (5) The payment referred to in subsection (3) or (4) can include giving property: see subsection 405(3).
- (6) For indexation purposes, the amount referred to in paragraph (3)(b) is taken to have been incurred on the eligible CFC's commencing day.

418 Options

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.
- (2) Subsection 104-30(5) of the *Income Tax Assessment Act 1997* applies to an option granted by the eligible CFC as if the reference in that subsection to 20 September 1985 were a reference to the day after the eligible CFC's commencing day.
- (3) Section 134-1 of the *Income Tax (Transitional Provisions) Act 1997* does not apply to an option granted to the eligible CFC.

418A Effect of change of residence from Australia to listed or unlisted country

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, where:
 - (a) disregarding the residency assumption, at any time (in this section called the *residence-change time*) during the eligible period or an earlier statutory accounting period beginning on or after the day following the eligible CFC's commencing day, the eligible CFC ceased to be a resident within the meaning of section 6 and became a resident of a listed country or an unlisted country; and

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(b) the eligible CFC owned a CGT asset at the residence-change time; and

(c) a CGT event happens in relation to the asset during the eligible period;

then sections 411 to 414 (inclusive) apply, in addition to any application apart from this section but subject to subsection (2) of this section, to the asset as if:

(d) any reference in those sections to a commencing day asset were a reference to the asset; and

(e) any reference in those sections relating to the eligible CFC's commencing day or the day following the eligible CFC's commencing day were a reference relating respectively to the residence-change time or a time immediately after the residence-change time; and

(f) if section 104-160 of the *Income Tax Assessment Act 1997* (CGT event I1) applied to the change of residence for the purposes of the application of this Act apart from this Part:

(i) section 412 applies as if subsections 412(2) and (3) referred only to the market value of the asset concerned; and

(ii) section 414 applies as if paragraphs 414(3)(b) and (4)(b) referred only to the market value of the asset concerned.

(2) Where the asset is a commencing day asset, sections 411 to 414 (inclusive) do not apply, in spite of anything contained in those sections, to the asset except in accordance with subsection (1) of this section.

419 Modified application of Subdivision 126-B of the *Income Tax Assessment Act 1997*

(1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, Subdivision 126-B of the *Income Tax Assessment Act 1997* has effect as if the table in subsection 126-50(5) of that Act were omitted and the following table were substituted:

Additional requirements			
Item	The originating CFC's residency status	The recipient company's residency status	This requirement must be satisfied
1	A resident of a listed country at the time of the trigger event	Either: (a) a resident of that listed country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is
2	A resident of a listed country at the time of the trigger event	A resident of a particular unlisted country at that time	The asset must have been used (just before that time) in connection with a permanent establishment of the originating CFC in any unlisted country at or through which the originating CFC carried on business just before that time
3	A resident of an unlisted country at the time of the trigger event	Either: (a) a resident of an unlisted country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is

- (2) The residency assumption is ignored for the purpose of applying the table in subsection (1).

421 Elections under CGT roll-over provisions

- (1) Subject to this section, for the purpose of applying this Act in calculating the attributable income of the eligible CFC for the eligible period, any election or choice that may be made, by the eligible CFC, or by the eligible CFC and another entity, apart from this section, under any of the CGT roll-over provisions:

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- (a) on or before the date of lodgment of a particular return of income; or
 - (b) within such further period as the Commissioner allows;
- is to be made instead:
- (c) if there is only one attributable taxpayer in relation to the eligible CFC at the end of the eligible period—on or before the date of lodgment of the taxpayer's return of income of the year of income in which the end of the eligible period occurs; or
 - (d) if there are 2 or more attributable taxpayers in relation to the eligible CFC at the end of the eligible period:
 - (i) if the taxpayers' returns of income of the year of income in which the end of the eligible period occurs are lodged on different dates—on or before the later or latest of those dates; or
 - (ii) if the taxpayers' returns of income of the year of income in which the end of the eligible period occurs are lodged on the same date—on or before that date; or
 - (e) in any case—within such further period as the Commissioner allows.
- (1A) For the purposes of applying subsection (1) to an eligible CFC in relation to an eligible period, if:
- (a) an entity (the *designated entity*) is the only attributable taxpayer in relation to the eligible CFC at the end of the eligible period; and
 - (b) the designated entity's attribution percentage in relation to the company is 100% at the end of the eligible period;
- then, instead of the election or choice being given by the eligible CFC, or by the eligible CFC and another entity (which other entity may be the designated entity), the election or choice may be given by:
- (c) the designated entity; or
 - (d) if the designated entity is not the same as the other entity—the designated entity and the other entity;
- as the case requires.
- (2) Except in accordance with subsection (3), subsection (1) does not apply to an election or choice in respect of the disposal of an asset if the disposal is, or apart from an election or choice in accordance

with subsection 438(3A) would be, taken into account in determining under Division 8 whether the eligible CFC passes the active income test in relation to the eligible period.

- (3) If an election or choice is made under a CGT roll-over provision in accordance with subsection 438(3A), that election or choice also has effect as if it were made under the CGT roll-over provision in accordance with subsection (1) of this section.

422 Adjustment of capital proceeds where change of residence by eligible CFC from unlisted to listed country

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, in relation to the eligible period in relation to the eligible taxpayer, the following provisions have effect.
- (2) This section sets out what happens if:
 - (a) the eligible CFC ceases at a time (the *residency change time*), during the eligible period or an earlier statutory accounting period, to be a resident of an unlisted country and becomes a resident of a listed country; and
 - (b) subsection 457(3) does not apply to the change of residence; and
 - (c) because of the change in its residency status, an amount is included in the eligible taxpayer's assessable income under section 457 (including because of paragraph 58(1)(d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and
 - (d) a CGT event happens during the eligible period in relation to a CGT asset (the *CFC asset*) that the eligible CFC owned since the residency change time.
- (3) If the conditions in subsection (4) are satisfied, the capital proceeds from the CGT event are reduced by the amount worked out under subsection (5). If the conditions in subsection (6) are satisfied, those capital proceeds are increased by the amount worked out under subsection (7).

Reduction of capital proceeds

- (4) If all the eligible CFC's assets were disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(ii):
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- (a) distributable profits of the eligible CFC of a particular amount (the *distributable profit amount*) would be created, or its distributable profits would be increased by an amount (also the *distributable profit amount*); and
 - (b) the eligible CFC would have made a profit (the *CFC asset profit*) on the disposal of the CFC asset.
- (5) The capital proceeds are reduced by:
- $$\text{Distributable profit amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

total asset profits is the sum of the profits that the eligible CFC would have made if all its assets were disposed of at the residency change time for their market values (ignoring disposals that would not result in a profit).

Increase in capital proceeds

- (6) If all the eligible CFC's assets were disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(ii):
- (a) the distributable profits of the eligible CFC would be reduced by an amount (the *distributable profit reduction amount*); and
 - (b) the eligible CFC would have made a loss (the *CFC asset loss*) on the disposal of the CFC asset.
- (7) The capital proceeds are increased by:
- $$\text{Distributable profit reduction amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

total asset losses is the sum of the losses that the eligible CFC would have made if all its assets were disposed of at the residency change time for their market values (ignoring disposals that would not result in a loss).

423 Adjustment of capital proceeds where section 47A applies to rolled-over assets

- (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, in relation to the eligible period in relation to the eligible taxpayer, the following provision has effect.
- (2) The capital proceeds from a CGT event that happens in relation to a CGT asset of the eligible CFC during the eligible period are reduced if:
 - (a) either:
 - (i) because of Division 17 of former Part IIIA of this Act, that Part did not apply to the disposal of the asset to the eligible CFC by another CFC during the eligible period or an earlier statutory accounting period; or
 - (ii) there was a roll-over under Division 122, 124 or 126 of the *Income Tax Assessment Act 1997* (except under Subdivision 124-J, 124-K or 124-L of that Act) for a CGT event (the *earlier CGT event*) that happened during that period in relation to the asset and involving the eligible CFC and another CFC; and
 - (b) the eligible taxpayer was an attributable taxpayer in relation to both CFC's at the time of the disposal or the earlier CGT event; and
 - (c) the other CFC is taken, under section 47A of this Act, to have paid the eligible CFC a dividend in relation to the disposal or the earlier CGT event; and
 - (d) an amount is included in the attributable taxpayer's assessable income in respect of the dividend under section 456 of this Act.
- (3) The reduction is the lesser of:
 - (a) the amount of the dividend; and
 - (b) the amount of any capital gain that:
 - (i) apart from Division 17 of former Part IIIA of this Act, would have accrued to the other CFC in respect of the disposal if the consideration in respect of the disposal had been the market value of the asset at the time of the disposal; or

- (ii) the other CFC would have made from the earlier CGT event apart from the roll-over if the capital proceeds from that event had been the market value of the asset at the time of that event.

Subdivision D—Modifications relating to losses

425 Sometimes-exempt income etc.

- (1) Where an amount is not included in the eligible CFC's notional assessable income for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer because:
 - (a) the eligible CFC passes the active income test for the period in relation to the eligible taxpayer; or
 - (b) subsection 385 (4) applies;then the amount is sometimes-exempt income of the eligible CFC for the period in relation to the eligible taxpayer.
- (2) Where an amount would, disregarding section 431, only be a notional allowable deduction of the eligible CFC for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer if the eligible CFC's sometimes-exempt income for the period in relation to the eligible taxpayer were instead notional assessable income, then the amount is a sometimes-exempt deduction of the eligible CFC for the period in relation to the eligible taxpayer.
- (3) Where the eligible CFC's sometimes-exempt deductions for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer exceed its sometimes-exempt income for the period in relation to the taxpayer, the excess is a (sometimes-exempt income) loss of the eligible CFC for the period in relation to the eligible taxpayer.
- (4) Where an eligible CFC's sometimes-exempt income for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer exceeds its sometimes-exempt deductions for the period in relation to the taxpayer, the excess is a (sometimes-exempt income) gain of the eligible CFC for the period in relation to the eligible taxpayer.

426 Creation of loss

For the purposes of this Subdivision, if:

- (a) the amount of the eligible CFC's notional allowable deductions (other than under section 431) for a statutory accounting period (being the eligible period or an earlier period) are applied as follows:
 - (i) they are applied first against any notional assessable income of the eligible CFC class for the period;
 - (ii) any excess is then applied against any (sometimes-exempt income) gain for the period; and
- (b) there is any amount remaining;

then the amount remaining is a loss of the eligible CFC for the period.

427 Certain provisions to be disregarded

For the purposes of applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of an eligible CFC, disregard the following:

- (b) Division 36, section 165-120 and Subdivisions 170-A, 709-D and 719-I of the *Income Tax Assessment Act 1997* (except for the purpose of a reference to any of those provisions in any other provision of this Act, as applied in accordance with this Division);
- (ba) Subdivisions 165-CC and 165-CD of the *Income Tax Assessment Act 1997*.

428 Subdivision to apply as if there were always a requirement to calculate attributable income

For the purposes of applying this Subdivision in calculating the attributable income of the eligible CFC for the eligible period, it is to be assumed that, for any earlier statutory accounting period (when the eligible CFC existed) for which there was no requirement to calculate its attributable income in relation to the eligible taxpayer, there were such a requirement (except for the purpose of applying section 398).

429 Notional allowable deduction for (sometimes-exempt income) loss

The amount of any (sometimes-exempt income) loss of the eligible CFC for the eligible period class is a notional allowable deduction for the period from the notional assessable income of the eligible CFC.

431 Deduction etc. for previous period loss

- (1) Where there are one or more losses of the eligible CFC of any statutory accounting period before the eligible period, the losses, to the extent they have not been previously taken into account under this section in respect of any such period, are to be taken into account in accordance with this section.
- (2) The losses are to be taken into account as follows:
 - (a) they are to be applied first against any (sometimes-exempt income) gain for the eligible period, to the extent that the gain has not already been applied under section 426 in determining whether there is a loss for the eligible period;
 - (b) any excess is then a notional allowable deduction for the eligible period, but only to the extent that the deduction does not exceed the amount of the notional assessable income for the period as reduced by notional allowable deductions other than under this section;
 - (c) where there are 2 or more losses, they are to be taken into account in the order in which they arose.
- (3) A loss for a statutory accounting period is only to be taken into account under subsection (2) if the eligible CFC was a CFC at the end of that statutory accounting period and each following statutory accounting period before the eligible period.
- (4) A loss for a statutory accounting period is to be taken into account under subsection (2) only if:
 - (a) where the eligible CFC is a resident of a listed country at the end of the eligible period:
 - (i) the eligible CFC is a resident of a listed country at the end of that statutory accounting period; and
 - (ii) if there are any statutory accounting periods (the *intervening periods*) occurring between that statutory

accounting period and the eligible period—the eligible CFC was a resident of a listed country at the end of each of the intervening periods; or

- (b) where the eligible CFC is a resident of an unlisted country at the end of the eligible period:
 - (i) the eligible CFC is a resident of an unlisted country at the end of that statutory accounting period; and
 - (ii) if there are any statutory accounting periods (also the *intervening periods*) occurring between that statutory accounting period and the eligible period—the eligible CFC was a resident of an unlisted country at the end of each of the intervening periods.

(4A) If:

- (a) at the end of both the eligible period and of a prior statutory accounting period, the eligible CFC was a resident of the same country; and
- (b) the country was either:
 - (i) a listed country at the end of the eligible period and an unlisted country at the end of that statutory accounting period; or
 - (ii) an unlisted country at the end of the eligible period and a listed country at the end of that statutory accounting period;

subsection (4) does not prevent a loss for that statutory accounting period, or an earlier statutory accounting period, from being taken into account under subsection (2).

(4B) If:

- (a) the eligible CFC is a resident of an unlisted country at the end of the eligible period; and
- (b) that country emerged from the dissolution of another country; and
- (c) the other country was in existence at the end of a prior statutory accounting period; and
- (d) at the end of that statutory accounting period, the CFC was a resident of the other country; and
- (e) the other country was a listed country at the end of that statutory accounting period;

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subsection (4) does not prevent a loss for that statutory accounting period, or an earlier statutory accounting period, from being taken into account under subsection (2).

(4D) If:

- (a) as a result of the operation of subsection (4), a loss of a CFC for a statutory accounting period was not taken into account under subsection (2) in calculating the attributable income of the CFC for a later statutory accounting period (the *second statutory accounting period*); and
- (b) the eligible period is later than the second statutory accounting period;

then, despite anything in subsection (4), (4A) or (4B), the loss is not to be taken into account under subsection (2) in calculating the attributable income of the CFC for the eligible period.

- (5) A loss for a statutory accounting period is not to be taken into account under subsection (2) if, assuming that it were a tax loss (within the meaning of the *Income Tax Assessment Act 1997*) of the eligible CFC, it would not be taken into account or allowed as a deduction in relation to the eligible period.

Subdivision E—Modifications relating to application of Part XI

431A Exemption of attributable taxpayer from Part XI

- (1) For the purpose of applying this Act in calculating the attributable income of the eligible CFC, section 494 is to be disregarded and the following provisions have effect.
- (2) If:
 - (a) an amount of foreign investment fund income that accrued to the eligible CFC from a FIF in respect of a notional accounting period of the FIF would, apart from this subsection, be included in the eligible CFC's notional assessable income of the eligible period; and
 - (b) the statutory accounting period of the CFC coincides with that notional accounting period of the FIF; and

(c) section 456 applies to the eligible taxpayer at the end of the statutory accounting period of the FIF;
section 529 does not apply to the eligible CFC in relation to the FIF in respect of the notional accounting period of the FIF referred to in paragraph (a).

(3) If:

- (a) an amount of foreign investment fund income that accrued to the eligible CFC from a FIF in respect of a notional accounting period of the FIF would, apart from this subsection, be included in the eligible CFC's notional assessable income of the eligible period; and
- (b) each of 2 or more statutory accounting periods of the FIF occurs partly within that notional accounting period of the FIF; and
- (c) section 456 applies to the eligible taxpayer at the end of each of those statutory accounting periods of the FIF;
section 529 does not apply to the eligible CFC in relation to the FIF in respect of the notional accounting period of the FIF referred to in paragraph (a).

Division 8—Active income test

Subdivision A—Basic conditions for passing the active income test

432 Active income test

- (1) Subject to sections 437 and 453, for the purposes of this Part, a company is taken to pass the active income test in relation to a statutory accounting period if, and only if:
 - (a) the company was in existence at the end of the statutory accounting period; and
 - (b) there was no time during the statutory accounting period when the company was in existence when the company was neither a resident of a particular listed country nor of a particular unlisted country; and
 - (c) the company has kept accounts for the statutory accounting period and:
 - (i) the accounts are prepared in accordance with commercially accepted accounting principles; and
 - (ii) the accounts give a true and fair view of the financial position of the company; and
 - (d) the company has complied with the substantiation requirements set out in section 451 in relation to the statutory accounting period; and
 - (e) at all times during the statutory accounting period when the company was in existence and was a resident of a particular listed country, or of a particular unlisted country, the company carried on business in that country at or through a permanent establishment of the company in that country; and
 - (f) the tainted income ratio of the company for the statutory accounting period is less than 0.05.
- (3) For the purposes of this section, if a company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout a particular period (in this subsection called the **dormant period**) commencing on the day on which the company was incorporated, the company is to be taken not to have been in existence during the dormant period.

Subdivision B—Tainted income ratio

433 Tainted income ratio

- (1) For the purposes of this Part, if a company is a resident of a particular listed country or a particular unlisted country at the end of a statutory accounting period, the tainted income ratio of the company for the statutory accounting period is calculated using the formula:

$$\frac{\text{Gross tainted turnover}}{\text{Gross turnover}}$$

where:

Gross tainted turnover means the gross tainted turnover of the company of the statutory accounting period.

Gross turnover means the gross turnover of the company of the statutory accounting period.

- (3) For the purposes of this Part, the tainted income ratio of a company for a statutory accounting period is taken to be less than 0.05 if both the numerator and the denominator in the applicable fraction are 0.
- (4) For the purposes of this Part, the tainted income ratio of a company for a statutory accounting period is to be calculated in the currency in which the profit and loss accounts and the balance-sheet of the company for the statutory accounting period are prepared.

434 Gross turnover

- (1) Subject to section 437, for the purposes of this Part, the gross turnover of a company of a statutory accounting period is the sum of:
- (a) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the gross revenue derived by the company, but not including:
 - (i) amounts that are shown in those recognised accounts as amounts covered by section 436; or
 - (ii) amounts that are shown in those recognised accounts as revenue in respect of the disposal of assets (other than trading stock or commodity futures contracts,

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- commodity forward contracts or rights or options in respect of such contracts); or
- (iii) amounts that are shown in those recognised accounts as revenue from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts; or
 - (iv) amounts that are shown in those recognised accounts as revenue from currency exchange rate fluctuations; and
- (b) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the sum of the gains derived by the company in the statutory accounting period in respect of the disposal of assets (other than trading stock or commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts) exceeds the losses incurred by the company in the statutory accounting period in respect of the disposal of such assets, but not including amounts that are shown in those recognised accounts as amounts covered by section 436; and
- (c) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the gains derived by the company in the statutory accounting period from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts exceeds the losses incurred by the company in the statutory accounting period from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts, but not including amounts that are shown in those recognised accounts as amounts covered by section 436; and
- (d) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the sum of the gains derived by the company in the statutory accounting period from currency exchange rate fluctuations exceeds the losses incurred by the company in the statutory accounting period from currency exchange rate fluctuations, but not including amounts that are shown in those recognised accounts as amounts covered by section 436.

- (1A) In working out the gross turnover of a company of a statutory accounting period, assume that the amounts shown in the company's recognised accounts, as mentioned in paragraphs (1)(b) and (c), for that period had been worked out by also including:
- (a) as gains derived by the company in that period—capital gains the company would have made; and
 - (b) as losses incurred by the company in that period—capital losses the company would have made;
- in that period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) had applied.

Note 1: CGT event J1 is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

- (2) Subject only to sections 437, 438 and 440, for the purposes of this section, where a company has prepared recognised accounts for a statutory accounting period in accordance with commercially accepted accounting principles, then, in determining whether a particular amount shown in those accounts is covered by an expression used in subsection (1) (other than an exclusion of amounts shown in those recognised accounts as amounts covered by section 436), the expression concerned is taken to have the same meaning that it has under those accounting principles.
- (3) If the Commissioner considers that:
- (a) the consideration for the supply or acquisition of one or more items of property would have been taken into account in working out an amount described in any of the paragraphs of subsection (1) as being that shown in the recognised accounts of the company for the statutory accounting period; and
 - (b) assuming the company were an eligible CFC whose attributable income for the statutory accounting period were being calculated, the Commissioner would make a determination under section 136AD in relation to the supply or acquisition of the items; and
 - (c) as a result of the determination, the consideration for the supply or acquisition would have been different; and

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- (d) if that different consideration had instead been taken into account in working out the amount shown in the recognised accounts, the amount shown in the recognised accounts would also have been different;

then the different amount is substituted for the amount shown in the recognised accounts.

435 Gross tainted turnover

For the purposes of this Part, the gross tainted turnover of a company of a statutory accounting period is so much of the gross turnover of the company of the statutory accounting period as consists of:

- (a) passive income of the company of the statutory accounting period; or
- (b) tainted sales income of the company of the statutory accounting period; or
- (c) tainted services income of the company of the statutory accounting period.

436 Amounts excluded from active income test

- (1) For the purposes of the application of this Part to a company, the following amounts are, in accordance with subparagraph 434(1)(a)(i) and paragraphs 434(1)(b), (c) and (d), excluded from the active income test:

- (a) income or profits derived by the company that are included in the assessable income of the company of any year of income other than under section 143 (where the proviso to that section does not apply);
- (b) income or profits derived by the company during a statutory accounting period where all of the following conditions are satisfied:
 - (i) the income or profits are derived by the company in carrying on a business at or through a permanent establishment of the company in a listed country (other than a listed country of which the company is a resident);
 - (ii) the income or profits are not eligible designated concession income in relation to any listed country in relation to the statutory accounting period;

- (iii) the income or profits are subject to tax in a listed country in a tax accounting period:
 - (A) ending before the end of the statutory accounting period; or
 - (B) commencing during the statutory accounting period;
 - (c) an amount that, if the company were a resident within the meaning of section 6, would, or would apart from paragraphs 99B(2)(d) and (e), have been included in the assessable income of the company under Division 6 of Part III;
 - (d) so much of a frankable distribution as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;
 - (e) a non-portfolio dividend paid to the company by a company that is a resident of a listed country or unlisted country;
 - (g) a premium paid or credited to the company where, because of the application of subsection 148(1), the premium is not allowable as a deduction to the person referred to in subparagraph 148(1)(a)(i) and is not included in the assessable income of the company.
- (2) Where:
- (a) the company receives an attribution account payment, being a dividend, from another entity; and
 - (b) the whole or part (in this subsection called the *eligible amount*) of the attribution account payment is not excluded from the active income test, in relation to the company in relation to the statutory accounting period, under subsection (1); and
 - (c) on the making of the attribution account payment by the other entity, an attribution debit arises for that entity in relation to a taxpayer;

then, for the purposes of this Part, so much of the eligible amount as does not exceed the grossed-up amount of the attribution debit is, in accordance with subparagraph 434(1)(a)(i), excluded (in addition to any other amount that is excluded under subsection (1)) from the active income test in relation to the company in relation to the taxpayer.

Subdivision C—Treatment of partnership income

437 Treatment of partnership income

- (1) For each partnership in which a company is a partner at any time during a statutory accounting period, the following modifications apply for the purposes of determining the effect of that partnership on the question whether the company is taken to pass the active income test in relation to the statutory accounting period:
- (a) the partnership is to be treated as an entity separate from the company;
 - (b) in spite of anything in section 432, the company is not taken to pass the active income test in relation to the statutory accounting period unless:
 - (i) the partnership has kept accounts for the statutory accounting period and:
 - (A) the accounts are prepared in accordance with commercially accepted accounting principles; and
 - (B) the accounts give a true and fair view of the financial position of the partnership; and
 - (ii) the partnership has complied with the substantiation requirements set out in section 452 in relation to the statutory accounting period;
 - (c) for the purposes of this Division, the notional gross tainted turnover of the partnership of the statutory accounting period, or the notional gross turnover of the partnership of the statutory accounting period, is the amount that would be the gross tainted turnover, or the gross turnover, as the case requires, of the partnership of the statutory accounting period if:
 - (i) except for the purposes of determining the associates of the partnership—the partnership were a company; and
 - (ii) a reference in this Division to the recognised accounts of the partnership were a reference to the accounts referred to in paragraph (b) of this subsection that are prepared by the partnership for the statutory accounting period; and

- (iii) the partnership were a resident of the same particular listed country or particular unlisted country, of which the company was a resident;
- (d) the gross tainted turnover of the company of the statutory accounting period is to be increased by the amount calculated using the formula:
Notional gross
tainted turnover \times Partner's interest
of partnership

where:

Notional gross tainted turnover of partnership means the notional gross tainted turnover of the partnership for the statutory accounting period.

Partner's interest means the company's percentage interest in the profits of the partnership for the statutory accounting period.

- (e) the gross turnover of the company of the statutory accounting period is to be increased by the amount calculated using the formula:
Notional gross
turnover \times Partner's interest
of partnership

where:

Notional gross turnover of partnership means the notional gross turnover of the partnership for the statutory accounting period.

Partner's interest means the company's percentage interest in the profits of the partnership for the statutory accounting period.

(2) If:

- (a) a company is a partner in one or more partnerships at any time during a statutory accounting period; and
- (b) apart from this subsection, paragraph 432(1)(e) does not apply in relation to the company in relation to the statutory accounting period; and
- (c) at all times during the statutory accounting period when:
 - (i) a particular one of those partnerships was in existence; and

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- (ii) the company was in existence and was a resident of a particular listed country, or of a particular unlisted country;

the partnership carried on business in that country at or through a permanent establishment of the partnership in that country;

subsection 432(1) has effect as if paragraph 432(1)(e) had applied in relation to the company in relation to the statutory accounting period.

Subdivision D—General interpretive provisions

438 Roll-overs—asset disposals

- (1) This section applies in determining the application of paragraph 434(1)(b) and section 445 in relation to a non-taxable Australian asset of a company.
- (2) If a CGT roll-over provision applies to:
 - (a) the disposal of the asset by an entity (in this section called the *transferor*) to the company (in this section called the *transferee*); or
 - (b) the disposal of the asset by the company (in this section also called the *transferor*) to another entity (in this section also called the *transferee*);

the following provisions have effect:

- (c) the transferee is taken to have paid, as consideration to acquire the asset, the sum of:
 - (i) the consideration (if any) paid or payable by the transferor to acquire the asset; and
 - (ii) the expenditure (if any) incurred by the transferor in making capital improvements to the asset; and
 - (d) the transferor is not taken to have:
 - (i) derived any gains; or
 - (ii) incurred any loss;in respect of the disposal of the asset.
- (2A) If:
- (a) a CGT roll-over provision applies to the disposal of the asset (in this subsection called the *original asset*) by the company; and

- (b) the disposal is not to another entity; and
 - (c) the company acquires another asset (in this subsection called the *replacement asset*) that is referred to in the CGT roll-over provision as being by way of replacement of, substitution for, or consideration for the disposal of, the original asset (whether or not exactly those expressions are used);
- the following provisions have effect:
- (d) the company is not taken to have:
 - (i) derived any gains; or
 - (ii) incurred any loss;in respect of the disposal of the original asset; and
 - (e) the company is taken to have paid, as consideration to acquire the replacement asset, the sum of:
 - (i) the consideration (if any) paid or payable by the company to acquire the original asset; and
 - (ii) the expenditure (if any) incurred by the company in making improvements to the original asset.
- (2B) For the purposes of subsections (2) and (2A), if an asset is disposed of by being cancelled, redeemed or consolidated into another asset, the disposal is taken not to be to another entity.
- (3) For the purposes of this section, in determining whether a CGT roll-over provision applies to the disposal of an asset, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* have the effect they would have if:
- (a) the company had failed the active income test in relation to the statutory accounting period concerned; and
 - (b) those Parts were being applied to calculate the attributable income of the company for the statutory accounting period in relation to any taxpayer.
- (3A) For the purposes of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* in relation to a statutory accounting period as mentioned in paragraph (3)(b), any election or choice that may be made by the company, or by the company and another entity, apart from this section under any of the CGT roll-over provisions:
- (a) on or before the date of lodgment of a particular return of income; or
 - (b) within such period as the Commissioner allows;
- is to be made instead:
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- (c) if there is only one attributable taxpayer in relation to the company at the end of the statutory accounting period—on or before the date of lodgment of the taxpayer's return of income of the year of income in which the end of the statutory accounting period occurs; or
 - (d) if there are 2 or more attributable taxpayers in relation to the company at the end of the statutory accounting period:
 - (i) if the taxpayers' returns of income of the year of income in which the end of the statutory accounting period occurs are lodged on different dates—on or before the later or latest of those dates; or
 - (ii) if the taxpayers' returns of income of the year of income in which the end of the statutory accounting period occurs are lodged on the same date—on or before that date; or
 - (e) in any case—within such further period as the Commissioner allows.
- (3B) For the purposes of applying subsection (3A) to a company in relation to a statutory accounting period, if:
- (a) the company is a CFC at the end of the statutory accounting period; and
 - (b) an entity (the *designated entity*) is the only attributable taxpayer in relation to the company at the end of the statutory accounting period; and
 - (c) the designated entity's attribution percentage in relation to the company is 100% at the end of the statutory accounting period;
- then, instead of the election being given or the choice being made by the company, or by the company and another entity (which other entity may be the designated entity), the election may be given or the choice may be made by:
- (d) the designated entity; or
 - (e) if the designated entity is not the same as the other entity—the designated entity and the other entity;
- as the case requires.
- (4) A reference in this section to a non-taxable Australian asset of a company is a reference to an asset of the company that is a CGT asset that is not taxable Australian property.

439 When currency exchange gains or losses relate to active income transactions

- (1) For the purposes of this Part, a currency exchange gain, or a currency exchange loss, of a company for a statutory accounting period is to be taken to relate to an active income transaction if, and only if:
- (a) the gain or loss was realised under any of the following transactions:
 - (i) a transaction that:
 - (A) gives rise to income, gains or a loss of the company; and
 - (B) is not taken into account in determining the passive income, tainted sales income or tainted services income of the company;
 - (ii) a transaction for the purchase of goods from an entity that, at the time the gain or loss was realised, was not an associate of the company;
 - (iii) a transaction for the purchase of a unit of property where:
 - (A) if the company were a resident within the meaning of section 6, depreciation would be allowable to the company under the former section 54 of this Act or the former Division 42 of the *Income Tax Assessment Act 1997*, or the company could deduct an amount for the decline in value of a depreciating asset under Division 40 of that Act, in respect of any year of income; and
 - (B) the unit of property is for use by the company exclusively or principally for the purpose of producing income other than passive income, tainted sales income or tainted services income;
 - (iv) if the company is an AFI subsidiary that carried on financial intermediary business at the time the gain or loss was realised—a transaction under which money was lent to the company;
 - (v) a transaction that was entered into by the company for the sole purpose of eliminating or reducing the risk of adverse financial consequences that might result for the

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company, under a transaction covered by any of the preceding subparagraphs, from currency exchange rate fluctuations; or

(b) both of the following subparagraphs apply:

(i) the gain or loss was realised in the course of carrying on a business of currency dealing;

(ii) the gain or loss was realised under a transaction and, at the time the gain or loss was realised, no other party to the transaction was:

(A) an associate of the company; or

(B) a Part X Australian resident.

(2) In determining whether an amount is passive income for the purposes of this section, paragraph 446(1)(n) is to be disregarded.

440 Asset disposals—revaluations and arm's length amounts

In determining, for the purposes of this Part, whether a company passes the active income test, the following provisions apply in relation to an asset of the company (other than trading stock):

(a) the effect of an asset revaluation is to be disregarded;

(b) subject to section 438, if:

(i) any consideration paid or payable by the company in respect of the acquisition of the asset; or

(ii) any consideration paid or payable to the company in respect of the disposal of the asset; or

(iii) any expenditure incurred by the company in making capital improvements to the asset; or

(iv) any other amount payable to or by the company that is relevant to determining the revenue, gains or losses concerned;

is not equal to the amount (in this paragraph called the *arm's length amount*) that the parties to the transaction concerned could have been reasonably expected to have paid if the parties had been acting at arm's length in relation to the transaction—the amount of the consideration or expenditure is to be taken to be equal to the arm's length amount.

441 Hire-purchase and other property financing transactions

- (1) For the purposes of this Part, in determining whether a company passes the active income test:
 - (a) a hire-purchase transaction or any other transaction for the financing of the acquisition of property is to be treated as a loan of money; and
 - (b) income derived under the transaction is to be treated as interest.
- (2) Nothing in subsection (1) limits the generality of the expressions “interest”, “loan” or “payment in the nature of interest”.

442 Assumption of rights of lender under a loan

In determining whether a company passes the active income test, if the company assumes the rights of a lender under a loan, this Part has effect, after that assumption, as if:

- (a) the company had provided the loan to the borrower; and
- (b) in a case where that assumption was made in the course of carrying on a particular business—interest, or a payment in the nature of interest, derived by the company from the loan had been derived from a loan made in the course of carrying on that business.

443 Net tainted commodity gains

For the purposes of this Part:

- (a) net tainted commodity gains are to be taken to have accrued to a company in a statutory accounting period if, and only if, the sum of the tainted commodity gains of the company for the statutory accounting period exceeds the sum of the tainted commodity losses of the company for the statutory accounting period; and
- (b) the amount of the net tainted commodity gains is equal to the amount of the excess.

444 Net tainted currency exchange gains

For the purposes of this Part:

- (a) net tainted currency exchange gains are to be taken to have accrued to a company in a statutory accounting period if, and

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only if, the sum of the tainted currency exchange gains of the company for the statutory accounting period exceeds the sum of any tainted currency exchange losses of the company for the statutory accounting period; and

- (b) the amount of the net tainted currency exchange gains is equal to the amount of the excess.

445 Net gains—disposal of tainted assets

- (1) For the purposes of this Part:

(a) net gains are to be taken to have accrued to a company in a statutory accounting period in relation to the disposal of tainted assets owned by the company if, and only if, the sum of the gains of the company in relation to the disposal of tainted assets during the statutory accounting period exceeds the sum of the losses (if any) of the company in relation to the disposal of tainted assets during the statutory accounting period; and

- (b) the amount of the net gains is equal to the amount of the excess.

- (2) In paragraph (1)(a):

gains includes capital gains the company would have made in the statutory accounting period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) applied.

losses includes capital losses the company would have made in the statutory accounting period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) applied.

Note 1: CGT event J1 is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

Subdivision E—Passive income, tainted sales income and tainted services income

446 Passive income

- (1) Subject to this Division, for the purposes of this Part, the following amounts are passive income of a company of a statutory accounting period:
 - (a) dividends (within the meaning of section 6) paid to the company in the statutory accounting period;
 - (b) unit trust dividends (within the meaning of Division 6B or 6C of Part III) paid to the company in the statutory accounting period;
 - (c) a distribution made to the company where the distribution is taken to be a dividend because of section 47;
 - (d) tainted interest income derived by the company in the statutory accounting period;
 - (e) annuities derived by the company in the statutory accounting period;
 - (f) tainted rental income derived by the company in the statutory accounting period;
 - (g) tainted royalty income derived by the company in the statutory accounting period;
 - (h) an amount derived by the company in the statutory accounting period as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right;
 - (j) income derived from carrying on a business of trading in tainted assets;
 - (k) net gains that accrued to the company in the statutory accounting period in respect of the disposal of tainted assets;
 - (m) net tainted commodity gains that accrued to the company during the statutory accounting period;
 - (n) net tainted currency exchange gains that accrued to the company during the statutory accounting period.
- (2) Despite anything in subsection (1), the passive income of a life assurance company of a statutory accounting period is calculated using the formula:

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$$\text{Adjusted passive income} \times \frac{\text{Total assets} - \text{Untainted policy liabilities}}{\text{Total assets}}$$

where:

adjusted passive income means the amount that, apart from this subsection, would be the passive income of the company of the statutory accounting period.

total assets means the average of the total assets of the company for the statutory accounting period.

untainted policy liabilities means so much of the company's policy liabilities, as defined in the Valuation Standard (within the meaning of the *Income Tax Assessment Act 1997*), as calculated by a Fellow or Accredited Member of the Institute of Actuaries of Australia, for the statutory accounting period as is referable to life assurance policies that do not give rise to tainted services income of the company of any statutory accounting period.

- (4) Despite anything in subsection (1), the passive income of a general insurance company of a statutory accounting period is worked out using the formula:

$$\text{Adjusted passive income} \times \frac{\text{Net assets} + \text{Tainted outstanding claims} - \text{Solvency amount}}{\text{Total assets}}$$

where:

adjusted passive income means the amount that, apart from this subsection, would be the passive income of the company of the statutory accounting period.

net assets means the excess at the end of the statutory accounting period of the total assets of the company over the total liabilities of the company.

outstanding claims means the amount that the company would, at the end of the statutory accounting period, based on proper and reasonable estimates, need to set aside and invest in order to meet liabilities of the company that have arisen or will arise:

- (a) under general insurance policies (including reinsurance policies, but not including life assurance policies); and
- (b) in respect of events that occurred during or before the period.

solvency amount is the amount worked out under subsection (5).

tainted outstanding claims means so much of the outstanding claims of the company at the end of the statutory accounting period as is referable to general insurance policies that give rise to tainted services income of the company of any statutory accounting period.

total assets means the total assets of the company at the end of the statutory accounting period.

(5) In subsection (4):

solvency amount is the amount worked out using the formula:

$$\left[\text{Minimum solvency} + \frac{\text{Maximum event retention}}{\text{retention}} \right] \times \left[1 - \frac{\text{Tainted outstanding claims}}{\text{Outstanding claims}} \right]$$

where:

maximum event retention means the amount that, at the end of the statutory accounting period, the company has determined is the maximum that would be payable to the owners of policies as a result of the happening of any one event. The amount must be worked out on the basis of a reasonable and proper estimate.

minimum solvency means the greater of:

- (a) 20% of the company's premium income (within the meaning of the *Insurance Act 1973*) during the statutory accounting period; and
- (b) 15% of the company's outstanding claims as at the end of the statutory accounting period.

outstanding claims means the amount that the company would, at the end of the statutory accounting period, based on proper and reasonable estimates, need to set aside and invest in order to meet liabilities of the company that have arisen or will arise:

- (a) under general insurance policies (including reinsurance policies, but not including life assurance policies); and
- (b) in respect of events that occurred during or before the period.

tainted outstanding claims means so much of the outstanding claims of the company at the end of the statutory accounting period

as is referable to general insurance policies that give rise to tainted services income of the company of any statutory accounting period.

447 Tainted sales income

- (1) Subject to this Division, for the purposes of this Part, the following amounts are tainted sales income of a company of a statutory accounting period:
 - (a) income from the sale of goods by the company where all of the following conditions are satisfied:
 - (i) the goods were sold to the company by another entity;
 - (ii) either of the following sub-subparagraphs applies at the time of the sale of the goods to the company:
 - (A) the seller of the goods to the company was an associate of the company and a Part X Australian resident;
 - (B) the goods were sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
 - (iii) if the goods were altered by the company—the income does not pass the substantial alteration test set out in subsection (4);
 - (b) income from the sale of goods by the company where all of the following conditions are satisfied:
 - (i) the goods were sold to the company by another entity;
 - (ii) either of the following sub-subparagraphs applies at the time of the purchase of the goods from the company:
 - (A) the purchaser of the goods from the company was an associate of the company and a Part X Australian resident;
 - (B) the purchaser of the goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;

- (iii) if the goods were altered by the company—the income does not pass the substantial alteration test set out in subsection (4);
- (c) income from the sale of goods (in this paragraph called the **manufactured goods**) by the company where all of the following conditions are satisfied:
 - (i) the manufactured goods were manufactured by the company;
 - (ii) any of the raw materials or goods from which the manufactured goods were manufactured were sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the sale to the company of the raw materials or goods from which the manufactured goods were manufactured:
 - (A) the entity who sold to the company the raw materials or goods from which the manufactured goods were manufactured was an associate of the company and a Part X Australian resident;
 - (B) the raw materials or goods from which the manufactured goods were manufactured were sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
 - (iv) the income does not pass the substantial manufacture test set out in subsection (4A);
- (d) income from the sale of goods (in this paragraph called the **manufactured goods**) by the company where all of the following conditions are satisfied:
 - (i) the manufactured goods were manufactured by the company;
 - (ii) any of the raw materials or goods from which the manufactured goods were manufactured were sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the purchase of the manufactured goods from the company:

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- (A) the purchaser of the manufactured goods from the company was an associate of the company and a Part X Australian resident;
- (B) the purchaser of the manufactured goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;
- (iv) the income does not pass the substantial manufacture test set out in subsection (4A);
- (e) income from the sale of goods (in this paragraph called the *primary production goods*) by the company where all of the following conditions are satisfied:
 - (i) the primary production goods were:
 - (A) primary products produced, raised or grown by the company; or
 - (B) goods manufactured by the company, in whole or in part, from primary products produced, raised or grown by the company;
 - (ii) any of the propagative material from which the primary products were produced, raised or grown was sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the sale to the company of the propagative material:
 - (A) the entity who sold the propagative material to the company was an associate of the company and a Part X Australian resident;
 - (B) the propagative material was sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
 - (iv) the income does not pass the substantial production test set out in subsection (4B);

- (f) income from the sale of goods (in this paragraph called the **primary production goods**) by the company where all of the following conditions are satisfied:
- (i) the primary production goods were:
 - (A) primary products produced, raised or grown by the company; or
 - (B) goods manufactured by the company, in whole or in part, from primary products produced, raised or grown by the company;
 - (ii) any of the propagative material from which the primary products were produced, raised or grown was sold to the company by another entity;
 - (iii) either of the following sub-subparagraphs applies at the time of the purchase of the primary production goods from the company:
 - (A) the purchaser of the primary production goods from the company was an associate of the company and a Part X Australian resident;
 - (B) the purchaser of the primary production goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia;
 - (iv) the income does not pass the substantial production test set out in subsection (4B).
- (2) Where:
- (a) a company provides any of the following services:
 - (i) drinks and meals;
 - (ii) accommodation in a hotel, motel, guest-house or similar place;
 - (iii) the provision of, or the use of facilities for, entertainment, recreation or instruction; and

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- (b) if subparagraph (a)(ii) or (iii) applies—the transaction for the provision of the services includes the sale of goods of a kind that are commonly supplied in connection with the services concerned;
the tainted sales income of the company does not include income from the sale of:
 - (c) if subparagraph (a)(i) applies—the drink or food concerned;
or
 - (d) if subparagraph (a)(ii) or (iii) applies—the goods referred to in paragraph (b).
- (3) The tainted sales income of a company of a statutory accounting period does not include passive income of the company of the statutory accounting period.
- (4) For the purposes of this section, income from the sale of goods by a company passes the substantial alteration test if:
 - (a) the company substantially altered the goods; and
 - (b) a substantial part of that alteration was carried out by the directors or employees of the company.
- (4A) For the purposes of this section, income from the sale of goods by a company passes the substantial manufacture test if a substantial part of the manufacture of the goods was carried out by the directors or employees of the company.
- (4B) For the purposes of this section, income from the sale of goods by a company passes the substantial production test if:
 - (a) if the goods are primary products—a substantial part of the production, raising or growing of the goods was carried out by the directors or employees of the company; or
 - (b) if the goods are manufactured by the company, in whole or in part, from primary products produced, raised or grown by the company—a substantial part of:
 - (i) the manufacture of the goods; and
 - (ii) those production, raising or growing activities; was carried out by the directors or employees of the company.
- (4C) For the purposes of subsections (4), (4A) and (4B), the effect of an activity on the market value of the goods concerned is to be ignored.

- (5) If, apart from this subsection, goods are purchased or sold by 2 or more entities acting jointly, subsection (1) is to be applied successively as if each such entity were the sole purchaser or seller, as the case may be.
- (6) In this section:
- animals* includes fish.
- primary products* means:
- (a) agricultural or horticultural produce; or
 - (b) trees or crops, whether on or attached to land or not; or
 - (c) timber; or
 - (d) animals (whether dead or alive); or
 - (e) the bodily produce (including natural increase) of animals.

448 Tainted services income

- (1) Subject to this Division, for the purposes of this Part, the following amounts are tainted services income of a company of a statutory accounting period:
- (a) income (other than premium income) from the provision of services by the company to an entity, if:
 - (i) the entity was a Part X Australian resident at the time the income was derived; and
 - (ii) the services were not provided in connection with a business carried on by the entity at that time at or through a permanent establishment of the entity in a listed or unlisted country;
 - (b) income (other than premium income) from the provision of services by the company to an entity who was not a Part X Australian resident at the time the income was derived, in connection with a business carried on by the entity at that time at or through a permanent establishment of the entity in Australia;
 - (c) income consisting of life assurance premiums in respect of a life assurance policy if, at the time the policy was entered into, the owner of the policy was a Part X Australian resident;
 - (d) income consisting of premiums (other than life assurance premiums) in respect of insurance (other than reinsurance)

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where any of the following conditions are satisfied at the time the policy was entered into:

- (i) any insured person was a Part X Australian resident, and the policy was not entered into in connection with a business carried on by the person at or through a permanent establishment of the person in a listed or unlisted country;
 - (ii) any insured property was situated in Australia;
 - (iii) any insured event was an event which could happen only in Australia;
- (e) income consisting of premiums in respect of reinsurance, if:
- (i) the insurer whose risks are directly covered by the reinsurance was a Part X Australian resident at the time the policy was entered into; and
 - (ii) the policy was not entered into in connection with a business carried on by the insurer at that time at or through a permanent establishment of the insurer in a listed or unlisted country;
- (f) income consisting of premiums in respect of reinsurance, if:
- (i) the insurer whose risks are directly covered by the reinsurance was not a Part X Australian resident at the time the policy was entered into; and
 - (ii) the policy was entered into in connection with a business carried on by the insurer at that time at or through a permanent establishment of the insurer in Australia;
- (g) income of the company covered by subsection (1A).
- (1A) Income of the company is covered by this subsection if:
- (a) it is income from the provision of services by the company to an entity under a scheme (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (b) the entity is an associate of the company; and
 - (c) those services are received by another entity; and
 - (d) the other entity satisfies either of these requirements:
 - (i) the other entity was a Part X Australian resident at the time the income was derived, and the services were not received in connection with a business carried on by the other entity at that time at or through a permanent

- establishment of the other entity in a listed or unlisted country;
- (ii) the other entity was not a Part X Australian resident at the time the income was derived, and the services were received in connection with a business carried on by the other entity at that time at or through a permanent establishment of the other entity in Australia; and
- (e) the income would be tainted services income if:
- (i) this section did not include paragraph (1)(g) or this subsection; and
 - (ii) the income were from the provision of those services by the company to the other entity; and
- (f) a reasonable person would conclude (having regard to all the circumstances) that the scheme was entered into or carried out for a purpose, other than an incidental purpose, of enabling entities satisfying the requirements of subparagraph (d)(i) or (ii) to receive those services.
- (2) The tainted services income of a company of a statutory accounting period does not include income from the sale of goods by the company.
- (3) Where:
- (a) a company provides services directly related to goods sold by the company; and
 - (b) either of the following conditions is satisfied:
 - (i) the company substantially altered the goods with the result that the market value of the goods was substantially enhanced;
 - (ii) the company did not acquire the goods from another entity;
- the tainted services income of the company does not include income from the provision of those services.
- (4) Where a company provides any of the following services:
- (a) drinks and meals;
 - (b) accommodation in a hotel, motel, guest-house or similar place;

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- (c) the provision of, or of the use of facilities for, entertainment, recreation or instruction;

the tainted services income of the company does not include income from the provision of those services.
- (5) The tainted services income of a company of a statutory accounting period does not include the passive income of the company of the statutory accounting period.
- (6) The tainted services income of a company of a statutory accounting period does not include income where:
 - (a) the income is not passive income of the company of the statutory accounting period; and
 - (b) the income is covered by any of the following subparagraphs:
 - (i) income derived by the company by way of rent in respect of a lease of land;
 - (ii) royalties derived by the company;
 - (iii) income derived from carrying on a business of trading in assets;
 - (iv) gains that accrued to the company in the statutory accounting period in respect of the disposal of assets;
 - (v) gains that accrued to the company in the statutory accounting period from disposing of commodity investments;
 - (vi) currency exchange gains that accrued to the company in the statutory accounting period;
 - (vii) in the case of a life assurance company—an amount that, apart from subsection 446(2), would be passive income of the company of the statutory accounting period;
 - (viii) in the case of a general insurance company—the amount that, apart from subsection 446(4), would be passive income of the company of the statutory accounting period.
- (7) If, apart from this subsection, services are provided to 2 or more entities acting jointly, this section is to be applied successively as if each such entity were the sole recipient.

**Subdivision F—Special rules relating to AFI subsidiaries
carrying on financial intermediary business**

449 AFI subsidiaries—interest income

- (1) The passive income of a company of a statutory accounting period does not include tainted interest income where, at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business.
- (2) The tainted services income of a company of a statutory accounting period does not include income where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a loan made in the course of carrying on that business;
 - (c) the loan was made to the Commonwealth.
- (3) The passive income, or the tainted services income, of a company of a statutory accounting period does not include income where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a deposit with a central bank.
- (4) In the application of subsection 448(1) to income derived by a company, where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a loan made in the course of carrying on that business;

a reference in that subsection to the time the income was derived is to be read as a reference to the time the loan was made.

450 AFI subsidiaries—asset disposals and currency transactions

- (1) The passive income, or the tainted services income, of a company of a statutory accounting period does not include income where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the income was derived from carrying on a business of trading in any or all of the following tainted assets:
 - (i) non-share futures contracts;
 - (ii) non-share forward contracts;
 - (iii) interest rates swap contracts;
 - (iv) currency swap contracts;
 - (v) forward exchange rate contracts;
 - (vi) forward interest rate contracts;
 - (vii) a right or option in respect of such a contract;
 - (viii) any similar financial instrument.
- (2) For the purposes of this Part, in determining the net gains that accrued to a company in a statutory accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied in relation to the disposal of a tainted asset:
 - (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the disposal was made in the course of carrying on that business;
 - (c) the tainted asset is covered by paragraph (1)(b);
the disposal of the tainted asset is to be disregarded.
- (3) For the purposes of this Part, in determining the net tainted currency exchange gains that accrued to a company during a statutory accounting period, where the following conditions are satisfied in relation to a particular currency exchange gain or a particular currency exchange loss:
 - (a) at the time the currency exchange gain or the currency exchange loss, as the case may be, was realised, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;

- (b) the currency exchange gain, or the currency exchange loss, as the case may be, was realised:
 - (i) in the course of carrying on that business; and
 - (ii) in the course of currency dealing;that currency exchange gain or that currency exchange loss, as the case requires, is to be disregarded.
- (4) The passive income of a company of a statutory accounting period does not include income where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the income was derived from carrying on a business of trading in either of the following tainted assets:
 - (i) loans (including deposits with a bank or other financial institution);
 - (ii) debenture stock, bonds, debentures, certificates of entitlement, bills of exchange, promissory notes or other securities.
- (5) For the purposes of this Part (other than subsection (7)), in determining the net gains that accrued to a company in a statutory accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied in relation to the disposal of a tainted asset:
 - (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the disposal was made in the course of carrying on that business;
 - (c) the tainted asset is covered by paragraph (4)(b);the disposal of the tainted asset is to be disregarded.
- (6) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes income from trading in assets where the following conditions are satisfied:
 - (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the assets are covered by paragraph (4)(b);

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- (c) the assets were acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business carried on by the entity at or through a permanent establishment of the entity in Australia.

- (7) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes net gains that accrued to the company in the statutory accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied:
 - (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the disposal was made in the course of carrying on that business;
 - (c) the tainted asset is covered by paragraph (4)(b);
 - (d) the tainted asset was acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business carried on by the entity at or through a permanent establishment of the entity in Australia.

- (8) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes factoring income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the debt to which the factoring income relates was acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business carried on by the entity at or through a permanent establishment of the entity in Australia.

Subdivision G—Substantiation requirements

451 Active income test—substantiation requirements for company

- (1) The substantiation requirements for a company in relation to a statutory accounting period are as follows:
 - (a) the company must keep (in Australia or elsewhere) such accounting records (in this section called the *general accounting records*) as correctly record and explain the matters, transactions, acts and operations that are relevant to the preparation of the recognised accounts of the company for the statutory accounting period;
 - (b) the general accounting records must be so kept as to enable the recognised accounts of the company for the statutory accounting period to be prepared;
 - (c) the company must retain, for the retention period in relation to the statutory accounting period:
 - (i) the recognised accounts of the company for the statutory accounting period; and
 - (ii) the general accounting records of the company for the statutory accounting period;
 - (d) the company must comply with a request made in a notice given to it under subsection (2) in relation to the statutory accounting period.

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- (2) An entity that is an attributable taxpayer in relation to a company, being a CFC, as at the end of a statutory accounting period of the company may, by notice in writing served on the company (in this section called the *taxpayer's notice*), request the company:
 - (a) to give to the taxpayer, within the period and in the manner specified in the taxpayer's notice, copies of such of the following documents as are specified in the notice:
 - (i) the recognised accounts of the company for the statutory accounting period;
 - (ii) the general accounting records of the company for the statutory accounting period; or
 - (b) to prepare a document containing particulars of the basis of the calculation of the tainted income ratio of the company for the statutory accounting period and to give to the taxpayer, within the period and in the manner specified in the taxpayer's notice, a copy of that document; or
 - (c) if the company was a partner in a partnership at any time during the statutory accounting period:
 - (i) to obtain from the partnership, in accordance with a request made in a notice given to the partnership by the company under subsection 452(2), copies of specified documents; and
 - (ii) to give those copies to the taxpayer, within the period and in the manner specified in the taxpayer's notice.
- (3) The period specified in the taxpayer's notice must end:
 - (a) later than 60 days after the date of service of the taxpayer's notice; and
 - (b) before the end of the retention period in relation to the statutory accounting period.
- (4) Upon written application made by the taxpayer within the period specified in the taxpayer's notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the taxpayer's notice.
- (5) Where:
 - (a) an application under subsection (4) is made before the end of the period specified in the taxpayer's notice; and

- (b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner's decision on the application;
- the following provisions have effect:
- (c) if the Commissioner's decision is not notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the retention period;
- (d) if the Commissioner's decision is notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the day (in this subsection called the *decision day*) on which the Commissioner's decision is notified to the taxpayer;
- (e) if the Commissioner decides to extend the period—subject to subsection (6), the extended period must end after the decision day.
- (6) The period as extended under subsection (4) must end before the end of the retention period in relation to the statutory accounting period.
- (7) A reference in this section to the period specified in the taxpayer's notice is a reference to the period as extended under subsection (4).
- (8) A refusal or failure to comply with the taxpayer's notice is not an offence.
- (9) Subsection 262A(4) does not apply to records kept or obtained under or for the purposes of this section.

452 Active income test—substantiation requirements for partnership

- (1) The substantiation requirements for a partnership in relation to a statutory accounting period are as follows:
- (a) the partnership must keep (in Australia or elsewhere) such accounting records (in this section called the *general accounting records*) as correctly record and explain the matters, transactions, acts and operations that are relevant to

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- the preparation of the recognised accounts of the partnership for the statutory accounting period;
- (b) the general accounting records must be so kept as to enable the recognised accounts of the partnership for the statutory accounting period to be prepared;
 - (c) the partnership must retain, for the retention period in relation to the statutory accounting period:
 - (i) the recognised accounts of the partnership for the statutory accounting period; and
 - (ii) the general accounting records of the partnership for the statutory accounting period;
 - (d) the partnership must comply with a request made in a notice given to it under subsection (2) in relation to the statutory accounting period.
- (2) A company that is a CFC at the end of a statutory accounting period of the company may, by notice in writing served on a partnership in which the company was a partner at any time during the statutory accounting period, request the partnership:
- (a) to give to the company, within the period and in the manner specified in the notice, copies of such of the following documents as are specified in the notice:
 - (i) the recognised accounts of the partnership for the statutory accounting period;
 - (ii) the general accounting records of the partnership for the statutory accounting period; or
 - (b) to prepare a document containing particulars of the basis of the calculation of:
 - (i) the notional gross tainted turnover of the partnership for the statutory accounting period; and
 - (ii) the notional gross turnover of the partnership for the statutory accounting period;and to give to the company, within the period and in the manner specified in the notice, a copy of that document.
- (3) The period specified in the notice must end:
- (a) later than 30 days after the date of service of the notice; and
 - (b) before the end of the retention period in relation to the statutory accounting period.

- (4) Upon written application made by the company within the period specified in the notice, the Commissioner may, by notice in writing served on the company, extend the period specified in the notice.
- (5) Where:
- (a) an application under subsection (4) is made before the end of the period specified in the notice; and
 - (b) at the end of the period, the Commissioner has not notified the company of the Commissioner's decision on the application;
- the following provisions have effect:
- (c) if the Commissioner's decision is not notified to the company before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the retention period;
 - (d) if the Commissioner's decision is notified to the company before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the day (in this subsection called the *decision day*) on which the Commissioner's decision is notified to the company;
 - (e) if the Commissioner decides to extend the period—subject to subsection (6), the extended period must end after the decision day.
- (6) The period as extended under subsection (4) must end before the end of the retention period in relation to the statutory accounting period.
- (7) A reference in this section to the period specified in the notice is a reference to the period as extended under subsection (4).
- (8) A refusal or failure to comply with the notice is not an offence.
- (9) Subsection 262A (4) does not apply to records kept or obtained under or for the purposes of this section.

453 Active income test—substantiation requirements for attributable taxpayer

- (1) Where:
- (a) the Commissioner has reason to believe that:
 - (i) a taxpayer is an attributable taxpayer in relation to a company, being a CFC, at the end of a statutory accounting period of the CFC; and
 - (ii) the application of a provision of this Division to the company may be relevant to the assessment of the taxpayer; and
 - (b) any of the following subparagraphs applies:
 - (i) the taxpayer has claimed (whether in a return of income or otherwise) that the company has passed the active income test in relation to the statutory accounting period;
 - (ii) the taxpayer's return of income of any year of income has been prepared on the basis that the company has passed the active income test in relation to the statutory accounting period;
 - (iii) the Commissioner has reason to believe that the company has passed the active income test in relation to the statutory accounting period;
- the Commissioner may, by notice in writing served on the taxpayer (in this section called the *Commissioner's notice*), request the taxpayer:
- (c) to obtain from the company, in accordance with a request made in a notice given to the company under subsection 451(2), copies of such documents as are specified in the Commissioner's notice; and
 - (d) if any of those copies are not in the English language—to make translations of those copies; and
 - (e) to produce to the Commissioner, within the period and in the manner specified in the Commissioner's notice:
 - (i) in all cases—those copies; and
 - (ii) if paragraph (d) applies—those translations.
- (2) The period specified in the Commissioner's notice must end:
- (a) later than 90 days after the date of service of the notice; and

- (b) before the end of the retention period in relation to the statutory accounting period.
- (3) Upon written application made by the taxpayer within the period specified in the Commissioner's notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the Commissioner's notice.
- (4) Where:
 - (a) an application under subsection (3) is made before the end of the period specified in the Commissioner's notice; and
 - (b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner's decision on the application;the following provisions have effect:
 - (c) if the Commissioner's decision is not notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (3) to the end of the retention period;
 - (d) if the Commissioner's decision is notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (3) to the end of the day (in this subsection called the *decision day*) on which the Commissioner's decision is notified to the taxpayer;
 - (e) if the Commissioner decides to extend the period—subject to subsection (5), the extended period must end after the decision day.
- (5) The period as extended under subsection (3) must end before the end of the retention period in relation to the statutory accounting period.
- (6) A reference in this section to the period specified in the Commissioner's notice is a reference to the period as extended under subsection (3).
- (7) A refusal or failure to comply with the notice is not an offence.
- (8) If the taxpayer refuses or fails to comply with the notice, then, for the purposes of the application of this Part (other than this

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Division) to the taxpayer, the company is taken not to have passed the active income test in relation to the statutory accounting period concerned.

454 Assessment on assumption—retention of accounts etc. and compliance with information notices

(1) Where:

- (a) a statutory accounting period of a company has ended; and
- (b) the retention period in relation to the statutory accounting period has not ended;

an assessment may be made of a taxpayer on the assumption that, after the assessment is made, the following requirements will be complied with in relation to the statutory accounting period:

- (c) the requirements set out in paragraphs 451(1)(c) and (d) that are applicable to the company;
- (d) the requirements set out in paragraphs 452(1)(c) and (d) that are applicable to a partnership in which the company was a partner at any time during the statutory accounting period.

(2) Where:

- (a) the assessment is made; and
- (b) after the making of the assessment, the Commissioner becomes aware that the requirements were not complied with in relation to the statutory accounting period;

then, in spite of anything in section 170, the Commissioner may amend the assessment at any time for the purpose of ensuring that the assessment is made as if subsection (1) of this section were disregarded.

455 Amendment of assessments

Where:

- (a) an assessment has been made in relation to a year of income; and
- (b) a provision of this Subdivision that is relevant to the assessment is dependent on a circumstance that occurs or may occur after the end of the year of income;

section 170 does not prevent the amendment of the assessment at any time for the purpose of giving effect to this Act in relation to

the occurrence of that circumstance after the end of the year of income.

Division 9—Attribution of attributable income and other amounts

456 Assessability in respect of CFC's attributable income

- (1) Subject to subsection (2), where a CFC has attributable income for a statutory accounting period in respect of an attributable taxpayer, the taxpayer's attribution percentage of the attributable income is included in the assessable income of the taxpayer of the year of income in which the end of the statutory accounting period occurs.
- (2) Where section 457 applies in relation to the attributable taxpayer in relation to one or more changes of residence by the CFC during the statutory accounting period, then only so much of the attributable income of the CFC as relates to:
 - (a) where the CFC is a resident of an unlisted country at the end of the period:
 - (i) any part of the period when the CFC was a resident of a listed country; or
 - (ii) the part of the period, since the change of residence or last change of residence, as the case requires, when the CFC was a resident of the unlisted country; or
 - (b) where the CFC is a resident of a listed country at the end of the period—any part of the period when the CFC was a resident of the listed country or any other listed country;is to be taken into account under subsection (1).

456A Reduction of section 456 assessability where item subject to foreign accruals tax

- (1) Where:
 - (a) apart from this section, an amount (in this section called the *otherwise assessable section 456 amount*) is included in the assessable income of a year of income of an attributable taxpayer in relation to a CFC under section 456, in relation to the attributable income of the CFC of a statutory accounting period; and
 - (b) an attribution tracing interest of the attributable taxpayer, or of an interposed entity, in a CFE was taken into account in

calculating the attributable taxpayer's attribution percentage for the CFC; and

- (c) foreign tax is payable by the CFE under an accruals tax law of a listed country in respect of an amount that is calculated by reference to an item of net income or net profit of the CFC, where the amount is taxed in the listed country:
- (i) at that country's normal company tax rate; and
 - (ii) in a tax accounting period commencing or ending:
 - (A) in the year of income of the attributable taxpayer; or
 - (B) in the statutory accounting period of the CFC;
- and
- (d) the item constitutes the whole or part (which whole or part is in this section called the *foreign accruals-taxed attributable income*) of the attributable income of the CFC of the statutory accounting period;

then the otherwise assessable section 456 amount is reduced by the amount calculated using the formula:

$$\text{Indirect attribution interests via CFE} \times \frac{\text{Foreign accruals-taxed attributable income}}{\text{Foreign accruals-taxed attributable income}}$$

where:

Indirect attribution interests via CFE means the total of the attributable taxpayer's indirect attribution interests in the CFC that are held through the CFE.

Foreign accruals-taxed attributable income means the amount of the foreign accruals-taxed attributable income.

(2) Where:

- (a) apart from this subsection, subsection (1) would reduce the otherwise assessable section 456 amount of the attributable taxpayer in relation to the CFC in a case where foreign tax is payable by 2 or more CFEs under accruals tax laws; and
- (b) any indirect attribution interest referred to in the formula component ***Indirect attribution interests via CFE*** in subsection (1) is held through any 2 or more of the CFEs;

then that indirect attribution interest is only to be taken into account once in applying the subsection.

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- (3) Where, because of any of subsections 362(2) to (5), the amount that would otherwise be the attribution percentage of the attributable taxpayer for the CFC is reduced, then the Commissioner may, for the purposes of this section, make such consequential reduction as the Commissioner considers reasonable in the circumstances to any indirect attribution interest in the CFC held by the attributable taxpayer.

457 Assessability where CFC changes residence from unlisted country to listed country or to Australia

- (1) Where at any time (in this section called the *residence-change time*) a company that:
- (a) is a CFC; and
 - (b) has an attributable taxpayer;
- ceases to be resident in an unlisted country and becomes:
- (c) a resident of a listed country; or
 - (d) a Part X Australian resident;
- then the attributable taxpayer's assessable income of the year of income in which the residence-change time occurs includes the amount calculated under subsection (2).
- (2) The amount is calculated using the formula:

Attribution percent \times Adjusted distributable profits

where:

Attribution percent means the attributable taxpayer's attribution percentage, at the residence-change time, in relation to the CFC.

Adjusted distributable profits means:

- (a) if paragraph (1)(c) applies—the amount that would be the CFC's distributable profits at the residence-change time if:
 - (i) the CFC's income were its adjusted tainted income (excluding any non-portfolio dividends) derived during the period beginning on the first day of the statutory accounting period in which the residence-change time occurred and ending immediately before the time at which the residence-change time occurs; and
 - (ii) the CFC's only other income were an amount that the CFC would have derived had it disposed of all of its

- tainted assets immediately before the residence-change time for a consideration equal to their market value; and
- (iii) the CFC's only expenses were expenses related to income covered by subparagraphs (i) and (ii); or
- (b) if paragraph (1)(d) applies—the amount that would be the CFC's distributable profits at the residence-change time if:
- (i) the CFC's only income were its adjusted tainted income (excluding any non-portfolio dividends) derived during the period beginning on the first day of the statutory accounting period in which the residence-change time occurred and ending immediately before the time at which the residence-change time occurs; and
 - (ii) the CFC's only expenses were expenses related to income covered by subparagraph (i).
- (3) If:
- (a) at the residence-change time, regulations made for the purposes of section 320 come into effect; and
 - (b) a result of those regulations coming into effect is that the company:
 - (i) ceases to be a resident of an unlisted country; and
 - (ii) becomes a resident of a listed country;at the residence-change time;
- then no amount is to be included in the attributable taxpayer's assessable income under subsection (1) in relation to that change of residence.

459A Assessability where CFC or CFT has interest in certain attributable taxpayers

- (1) Where:
- (a) an amount (in this subsection called the *section 456 to 459A amount*) is included in the assessable income of an Australian partnership or of an Australian trust of a year of income under section 456 or 457 or under this section (apart from subsection (2)); and
 - (b) a CFC or CFT has an individual interest in the net income of the Australian partnership, or a present entitlement to a share of the net income of the Australian trust, being an interest or entitlement held either directly or indirectly through

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interposed Australian partnerships, CFPs or Australian trusts (or any combination thereof); and

- (c) a taxpayer is an attributable taxpayer in relation to the CFC or CFT:
 - (i) where the section 456 to 459A amount is included in assessable income under section 456—at the end of the statutory accounting period referred to in that section; or
 - (ii) where the amount is included under section 457—at the residence-change time referred to in that section; or
 - (v) where the amount is included under this section—at the time referred to in whichever subparagraph of this paragraph applied for the purposes of so including the amount;

then, subject to subsection (2), the assessable income of the attributable taxpayer of the year of income includes an amount calculated using the formula:

$AP \times \text{Interest/Entitlement} \times \text{Section 456 to 459A amount}$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage, at the time referred to in paragraph (c), for the CFC or CFT.

Interest/Entitlement means the percentage of the net income of the Australian partnership or Australian trust represented by the sum of the direct and indirect interests or present entitlements of the CFC or CFT.

Section 456 to 459A amount means the section 456 to 459A amount.

(2) Where:

- (a) apart from this subsection, an amount (in this subsection called the **subsection (1) amount**) is included under subsection (1) in the assessable income of an attributable taxpayer in relation to a CFT; and
- (b) the following conditions are satisfied in respect of one or more other amounts (each of which is in this subsection called an **assessed attributable amount**):
 - (i) each is:
 - (A) apart from this subsection, included in the assessable income of a taxpayer (whether or not

the attributable taxpayer), other than a trust or partnership; or

- (B) assessed to a trustee under section 98, 99 or 99A;
- (ii) each is attributable directly through the CFT, or indirectly through the CFT and any interposed partnerships or trusts (or any combination thereof), to the section 456 to 459A amount referred to in subsection (1);

then the subsection (1) amount is reduced to the extent that the Commissioner considers it represents an assessed attributable amount or assessed attributable amounts.

- (3) A reference in subsection (1) to an Australian trust or in subsection (2) to a trust does not include a reference respectively to an Australian trust or a trust that is, in relation to the year of income concerned:
 - (a) a corporate unit trust within the meaning of Division 6B of Part III; or
 - (b) a public trading trust within the meaning of Division 6C of that Part; or
 - (c) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust.

460 Only resident partners, beneficiaries etc. liable to be assessed as a result of attribution

- (1) This section applies where an amount is included under section 456, 457, or 459A in the assessable income of an Australian partnership or an Australian trust of a year of income, except where the Australian trust is, in relation to the year of income:
 - (a) a corporate unit trust within the meaning of Division 6B of Part III; or
 - (b) a public trading trust within the meaning of Division 6C of that Part; or
 - (c) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a

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non-complying approved deposit fund or a pooled superannuation trust.

(2) Where:

- (a) as a result of the amount being so included, there is, apart from this subsection, a tax detriment for:
 - (i) a partner in the Australian partnership; or
 - (ii) a partner in another partnership (in this subsection called the *ultimate partnership*), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the partner and the Australian partnership or the Australian trust; and
- (b) the partner is not, in respect of his or her interest in the net income or partnership loss of the Australian partnership or the ultimate partnership, in the capacity of trustee of a trust; and
- (c) the tax detriment would be reduced by an amount if it were recalculated on the assumption that section 92 applied only to so much of the partner's interest in the net income or partnership loss of the Australian partnership or the ultimate partnership as is attributable to periods when the partner was a Part X Australian resident;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

(3) Where:

- (a) as a result of the amount being included as mentioned in subsection (1), there is, apart from this subsection, a tax detriment for:
 - (i) a beneficiary in the Australian trust; or
 - (ii) a beneficiary in another trust (in this subsection called the *ultimate trust*), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the beneficiary and the Australian partnership or the Australian trust; and
- (b) the beneficiary is not a partnership and is not, in respect of his or her share of the net income of the Australian trust or the ultimate trust, in the capacity of trustee of another trust; and

- (c) the tax detriment would be reduced by an amount if it were recalculated on the assumption that sections 97, 98A and 100 applied only to so much of the beneficiary's share of the net income of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

(4) Where:

- (a) as a result of the amount being included as mentioned in subsection (1), there is, apart from this subsection, a tax detriment for:
- (i) the trustee of the Australian trust; or
 - (ii) the trustee of another trust (in this subsection called the *ultimate trust*), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the trustee and the Australian partnership or the Australian trust; and
- (b) the tax detriment would be reduced by an amount if it were recalculated on the assumption that:
- (i) section 98 applied only to so much of a beneficiary's share of the net income of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident; and
 - (ii) sections 99 and 99A applied only to the Australian trust or the ultimate trust if it were a resident trust estate within the meaning of Division 6 of Part III;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

460A Effect of reducing section CGT event J1 amount

- (1) This section applies in either of the following cases:
- (a) one or more schemes or arrangements have the effect of reducing the attribution percentage of an attributable taxpayer in relation to a company that is a CFC, and are intended by the attributable taxpayer or an associate of the attributable taxpayer to have that effect;
 - (b) a company ceases to be a CFC in relation to a particular taxpayer.

Part X Attribution of income in respect of controlled foreign companies

Division 9 Attribution of attributable income and other amounts

Section 460A

- (2) Work out the amount (if any) included under this Division in the taxpayer's assessable income because of CGT event J1 (as it notionally happens to the company under Division 7) as though the reduction or cessation had not happened.

Note: CGT event J1 is about companies ceasing to be related after a roll-over.

Division 10—Post-attribution asset disposals

461 Reduction of capital proceeds where attributed income not distributed

(1) Where:

- (a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account the capital proceeds from a CGT event happening in relation to a CGT asset, being an interest in an attribution account entity (in this section called the *disposal entity*); and
- (b) immediately before the CGT event takes place, either or both of the following conditions are satisfied:
 - (i) there is an attribution surplus for the disposal entity in relation to the taxpayer;
 - (ii) there is an attribution surplus for one or more other attribution account entities in relation to the taxpayer, where each such entity is one in which the taxpayer has an indirect attribution account interest held through the disposal entity;

then, for the purposes of this Act:

- (c) the capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the CGT event is, subject to subsection (3), taken to be reduced by the amount of the attribution surplus, or the sum of the attribution surpluses, as the case requires; and
- (d) an attribution debit is taken to arise at the time of the CGT event under section 372, in relation to the taxpayer, for each attribution account entity (in this section called a *surplus entity*) in relation to which there is an attribution surplus to which paragraph (1)(c) applies; and
- (e) the amount of the attribution debit is equal to so much of the surplus as is taken into account under paragraph (1)(c); and
- (f) there is no grossed-up amount in relation to the attribution debit under section 373.

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- (3) For the purposes of paragraph (1)(c):
- (a) where the CGT event causes the taxpayer's attribution account percentage for a surplus entity to be reduced by a proportion, then only that proportion of the attribution surplus for the entity is, subject to this subsection, to be taken into account under that paragraph; and
 - (b) where there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (a) of this subsection) it exceeds the capital proceeds from the CGT event, then only so much of the surplus as does not exceed those capital proceeds is to be taken into account under paragraph (1)(c); and
 - (c) where there are 2 or more attribution surpluses referred to in paragraph (1)(c) and (after any application of paragraph (a) of this subsection) their sum exceeds the capital proceeds from the CGT event, then:
 - (i) if the taxpayer makes an election that for the purposes of this paragraph, a part of each surplus (after any application of paragraph (a)) such that the sum of the amounts to which the election relates equals those capital proceeds—only the part to which the election relates of each surplus is to be taken into account under paragraph (1)(c); or
 - (ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (a)) is to be taken into account under paragraph (1)(c), being the proportion calculated using the formula:
$$\frac{\text{Amount of capital proceeds}}{\text{Total surplus}}$$
where:
total surplus means the sum of the attribution surpluses (after any application of paragraph (a)).
- (4) An election for the purposes of paragraph (3)(c) must be made on or before the date of lodgment of the taxpayer's return of income for the year of income referred to in paragraph (1)(a) or within such further period after the lodgment of the return as the Commissioner allows.

- (4A) In determining, for the purposes of this section, whether there was an attribution surplus immediately before a CGT event, and the amount of such a surplus, also take into account any attribution credit that later arises because the CGT event caused section 104-175 of the *Income Tax Assessment Act 1997* (as it notionally applies to the CGT event entity under Division 7) to operate.
- (5) In this section:
- interest*, in relation to an attribution account entity, means:
- (a) if the entity is a company—an interest in shares in the company, or an entitlement to acquire such an interest; or
 - (b) if the entity is a partnership—an interest of a partner in the profits or property of the partnership, or an entitlement of a partner to acquire such an interest; or
 - (c) if the entity is a trust—an entitlement of a beneficiary to a share of the income or corpus of the trust, or an entitlement of a beneficiary to acquire such an entitlement.

Division 11—Keeping of records

462 Keeping of records—section 456

Subject to this Division, where:

- (a) a person is an attributable taxpayer in relation to a CFC at the end of a statutory accounting period of the CFC; and
- (b) the CFC has attributable income for the statutory accounting period in respect of the person;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the CFC held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the CFC at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under section 456 in relation to the CFC's attributable income for the statutory accounting period in respect of the person.

Note: There is an administrative penalty if you do not keep or retain records as required by this Division: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

462A Keeping of records—section 457

Subject to this Division, where:

- (a) subsection 457(1) applies to a change of residence of a CFC; and
- (b) at the residence-change time referred to in that subsection, a person is an attributable taxpayer in relation to the CFC;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the CFC held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the CFC at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under section 457 in relation to the change of residence concerned.

464A Keeping of records—section 459A

Subject to this Division, where:

- (a) subsection 459A(1) applies in relation to an amount (in this section called the *trigger amount*) included in the assessable income of an Australian partnership or of an Australian trust as mentioned in paragraph 459A(1)(a); and
- (b) at the time referred to in whichever subparagraph of paragraph 459A(1)(c) is applicable, a person is an attributable taxpayer in relation to the CFC or the CFT mentioned in that paragraph;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC or the CFT at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the CFC or the CFT held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the CFC or the CFT at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) that, apart from subsection 459A(2), would be included in the assessable income of the person under subsection 459A(1) in relation to the trigger amount.

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465 Offence of failing to keep records

- (1) A person who contravenes section 462, 462A, or 464A is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) An offence under section 462, 462A, or 464A is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

466 Manner in which records required to be kept

A person who is required by this Division to keep records must:

- (a) keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) keep the records so as to enable the person's liability under this Act to be readily ascertained.

**467 Circumstances where records not required to be kept—
reasonable excuse etc.**

This Division does not require a person to keep a record of information if:

- (a) the person did not know, and had no reasonable grounds to suspect, that section 462, 462A or 464A, as the case requires, was applicable to the person; or
- (b) the person did not know that, and made all reasonable efforts to ascertain whether, section 462, 462A or 464A, as the case requires, was applicable to the person; or
- (c) the person did not know, and made all reasonable efforts to obtain, the information.

468 Treatment of partnerships

- (1) Subject to subsections (2) and (3), the following provisions apply to a partnership as if the partnership were a person:
- (a) sections 462 to 467 (inclusive);

- (b) subsections 262A(4) and (5), in so far as those subsections apply to records kept under or for the purposes of this Division;
 - (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part of that Act relates to the provisions covered by paragraph (a) or (b) of this subsection.
- (2) Where, by virtue of subsection (1), an offence is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.
- (3) In a prosecution of a person for an offence by virtue of subsection (2), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence was taken to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, an act or omission by virtue of which the offence is taken to have been committed.

Part XI—Foreign investment funds and foreign life assurance policies

Division 1—Preliminary

Subdivision A—Application of Part

469 Taxpayers to be taxed on share of income of certain foreign investment funds and foreign life assurance policies

- (1) This Part applies to a taxpayer who has an interest or interests in what is referred to in this Part as a foreign investment fund (*FIF*). That expression refers to certain non-resident companies and non-resident trusts.
- (2) This Part also applies to a taxpayer who has an interest in a foreign life assurance policy (*FLP*). That expression refers to certain life assurance policies issued by a non-resident. A taxpayer is regarded as having an interest in a FLP if, and only if, the taxpayer has the legal title to the FLP.
- (3) The object of this Part is to include in a taxpayer's assessable income of a year of income an amount (*foreign investment fund income*) that represents income attributable to an interest or interests in a FIF or a FLP held by the taxpayer during the accounting period (*notional accounting period*) of the FIF or FLP that ends in that year of income.
- (4) The provision of this Act (*the operative provision*) that includes foreign investment fund income in a taxpayer's assessable income is section 529, which is contained in Division 16.
- (5) The operative provision does not apply, or its application is affected, in certain circumstances which are set out in:
 - (a) Divisions 2 to 15 of this Part; and
 - (b) section 768-965 of the *Income Tax Assessment Act 1997*.
- (6) Division 18 contains the provisions for determining whether any foreign investment fund income accrued from a FIF or a FLP to a taxpayer in respect of a notional accounting period.

There are 3 methods provided for making a determination in respect of a FIF. These are called:

- (a) the market value method;
- (b) the deemed rate of return method;
- (c) the calculation method.

The method available to the taxpayer in respect of a particular notional accounting period of a FIF generally depends on the level of detailed information that the taxpayer has about the FIF's income and on the method used by the taxpayer to determine whether foreign investment fund income accrued from that FIF in previous notional accounting periods.

There are 2 methods provided for making a determination in respect of a FLP. These are called:

- (d) the deemed rate of return method;
 - (e) the cash surrender value method.
- (7) Division 19 provides for the keeping of accounts to avoid double taxation in respect of interests in FIFs or FLPs.
 - (9) Division 21 contains provisions that apply in certain circumstances if an interest in a FIF or a FLP is disposed of.
 - (10) Division 22 provides for the keeping of records relating to interests in FIFs and FLPs.

Subdivision B—Meaning of certain expressions used in this Part

470 Definitions

In this Part, unless the contrary intention appears:

accounts means ledgers, journals, profit and loss accounts and balance-sheets and includes statements, reports and notes attached to, or intended to be read with, any of the above.

acquisition, in relation to an interest in a FIF or a FLP, has the meaning given by section 488.

approved stock exchange means:

- (a) a stock exchange named in regulations made for the purposes of this definition; or

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- (b) until regulations are so made—a stock exchange named in Schedule 3.

associate has the meaning given by Subdivision E.

Australian entity has the meaning given by section 471.

Australian partnership has the meaning given by section 472.

Australian tax means income tax or withholding tax.

Australian trust has the meaning given by section 473.

balance-sheet includes any similar statement and also includes statements, reports and notes attached to, or intended to be read with, a balance-sheet or similar statement.

calculation method has the meaning given by paragraph 534(2)(c).

CFC has the same meaning as in Part X.

CFT has the same meaning as in Part X.

complying superannuation entity has the same meaning as in the *Income Tax Assessment Act 1997*.

complying superannuation/FHSA asset has the same meaning as in the *Income Tax Assessment Act 1997*.

convertible note:

- (a) in relation to a foreign company, has the same meaning as in Division 3A of Part III; or
- (b) in relation to a foreign trust, means an instrument issued by the trustee of the trust, being an instrument that, if the trust were a company, would be a convertible note issued by the company, and includes an instrument that would be a convertible note within the meaning of Division 3A of Part III if:
- (i) references in that Division to a company were references to the trust, or to the trustee of the trust, as the context requires; and
 - (ii) references in that Division to shares were references to interests in the trust.

deemed rate of return method has the meaning given by paragraph 534(2)(b) in relation to a FIF and the meaning given by paragraph 534(3)(a) in relation to a FLP.

disposal, in relation to an interest in a FIF or a FLP, has the meaning given by section 488.

distribution has the meaning given by section 474.

entitled to acquire has the meaning given by section 475.

entity means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in the capacity of trustee;
- (d) any other person.

FIF or **foreign investment fund** has the meaning given to FIF by section 481.

fixed entitlement has the same meaning as in the *Income Tax Assessment Act 1997*.

fixed trust has the same meaning as in the *Income Tax Assessment Act 1997*.

FLP or **foreign life assurance policy** has the meaning given to FLP by section 482.

foreign company has the meaning given by section 481.

foreign trust has the meaning given by section 481.

general insurance business means insurance business other than life insurance business.

interest, in relation to a FIF or a FLP, has the meaning given by section 483.

life insurance business has the same meaning as in section 11 of the *Life Insurance Act 1995*.

Lloyd's means The Society of Lloyd's incorporated by the Lloyd's Act 1871 of the United Kingdom.

market value method has the meaning given by paragraph 534(2)(a).

notional accounting period:

- (a) in relation to a FIF, has the meaning given by section 486; or
- (b) in relation to a FLP, has the meaning given by section 487.

Part XI Australian resident means a resident within the meaning of section 6 but does not include an entity if:

- (a) there is a double tax agreement in force in respect of a foreign country; and
- (b) that agreement contains a provision that is expressed to apply if, apart from the provision, the entity would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and
- (c) that provision has the effect that the entity is, for the purposes of the agreement, a resident solely of the foreign country.

profit and loss account includes any similar statement and also includes statements, reports and notes attached to, or intended to be read with, a profit and loss account or similar statement.

quoted price has the meaning given by section 476.

resident superannuation entity has the meaning given by section 477.

segregated exempt assets has the same meaning as in the *Income Tax Assessment Act 1997*.

share, in relation to a foreign company, includes any interest in the capital of the company that is in the nature of a share or stock, including such an interest in the nature of a preference share (whether or not redeemable), a bonus share or a share with deferred rights.

statutory accounting period has the same meaning as in Part X.

tax detriment has the meaning given by section 478.

the operative provision means section 529.

trust means:

- (a) an entity in the capacity of trustee (including an entity that manages a trust if there is no trustee); or
- (b) as the case requires, a trust or a trust estate.

trustee, in relation to a fund that has no trustee, means the person who manages the fund.

wholly-owned subsidiary has the meaning given by section 479.

471 Australian entity

For the purposes of this Part, each of the following is an Australian entity:

- (a) an Australian partnership;
- (b) an Australian trust;
- (c) an entity (other than a partnership or trust) that is a Part XI Australian resident.

472 Australian partnership

For the purposes of this Part, a partnership is an Australian partnership at a particular time if at least one of the partners is an Australian entity at that time.

473 Australian trust

For the purposes of this Part, a trust is an Australian trust at a particular time (*the test time*) if:

- (a) at any time in the period of 12 months immediately preceding the test time:
 - (i) any trustee of the trust was a resident; or
 - (ii) the central management and control of the trust was in Australia; or
- (b) assuming that period had been a year of income:
 - (i) the trust would have been a corporate unit trust and a resident unit trust for the purposes of Division 6B of Part III in relation to that year of income; or
 - (ii) the trust would have been a public trading trust and a resident unit trust for the purposes of Division 6C of Part III in relation to that year of income.

474 Distributions by a FIF or a FLP

- (1) Some calculations made under this Part involve taking into account distributions made by a FIF or a FLP to a person who has an interest in the FIF or FLP.
- (2) A reference in this Part to a distribution made by a FIF or a FLP to a person who has an interest in the FIF or FLP is a reference to any amount paid or credited, or any property distributed, to the person by the FIF or in relation to the FLP that constitutes income derived, or a receipt of capital, by the person and:
 - (a) without limiting the generality of the above, includes a reference to:
 - (i) the issue by a FIF to a person of a further interest in the FIF in satisfaction of the person's entitlement to a payment by the FIF; and
 - (ii) in the case of a FLP—any payment to a person of a bonus or a refund of premium under or in respect of the FLP; but
 - (b) does not include a reference to the issue by a FIF or a FLP to a person of a further interest in the FIF or FLP without any consideration being paid or given by the person for the interest.

475 Entitlement to acquire

For the purposes of this Part, a person is taken to be entitled to acquire anything that the person is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

476 Quoted price

- (1) It is necessary for the purposes of several provisions of this Part to value an interest in a FIF by reference to the quoted price on a particular day on a stock market of the class of interests in which the interest is included.
- (2) For the purposes of such a provision, that quoted price is:
 - (a) if there was more than one transaction on that stock market on that day in interests in that class—the last published price

at which such an interest was traded on that stock market on that day; or

- (b) if information as to the price mentioned in paragraph (a) was not published or there were no transactions on that stock market on that day in such interests—the last price at which an offer was made on that day to buy such an interest.

477 Resident superannuation entity

For the purposes of this Part, a trust is a *resident superannuation entity* at a particular time if at that time the trust is:

- (a) an Australian superannuation fund; or
- (b) a complying approved deposit fund or a pooled superannuation trust.

478 Tax detriment

- (1) For the purposes of this Part, each of the following is a tax detriment to a partner in a partnership:
 - (a) an increase in an amount included under section 92 in the partner's assessable income in respect of an interest in the net income of the partnership;
 - (b) a reduction in an amount allowable under section 92 as a deduction to the partner in respect of the partner's interest in a partnership loss of the partnership;
 - (c) a combination of such a reduction to nil and such an increase.
- (2) For the purposes of this Part, an increase in an amount included under section 97, 98A or 100 in the assessable income of a beneficiary in respect of a share of the net income of a trust is a tax detriment to the beneficiary.
- (3) For the purposes of this Part, an increase (including from nil) in an amount assessable to a trustee under section 98 in respect of a beneficiary's share of, or under section 99 or 99A in respect of the whole or a part of, the net income of a trust is a tax detriment to the trustee.
- (4) The amount of the tax detriment is equal to the amount of the increase or reduction or, if paragraph (1)(c) applies, the sum of the amounts of the reduction and increase.

479 Wholly-owned subsidiary

- (1) For the purposes of this Part, a company (*the subsidiary company*) is taken to be a wholly-owned subsidiary of another company (*the holding company*) at a particular time if:
 - (a) at that time, all the shares in the subsidiary company were owned by:
 - (i) the holding company; or
 - (ii) a company that is, or 2 or more companies each of which is, a wholly-owned subsidiary of the holding company; or
 - (iii) the holding company and a company that is, or 2 or more companies each of which is, a wholly-owned subsidiary of the holding company; and
 - (b) there was no agreement, arrangement or understanding in force at that time under which any person was in a position, or would be in a position after that time, to affect rights of the holding company or of a wholly-owned subsidiary of the holding company in relation to the subsidiary company.
- (2) For the purposes of this section, if a company (*the relevant company*) is a wholly-owned subsidiary of another company (including a company that is such a wholly-owned subsidiary because of any other application or applications of this subsection), every company that is a wholly-owned subsidiary of the relevant company is taken to be a wholly-owned subsidiary of that other company.
- (3) For the purposes of subsection (1), a person is taken to be in a position at a particular time to affect any rights of a company (*the relevant company*) in relation to another company if, at that time, that person has a right, power or option (whether under any provision of the constituent document of either of those companies or under any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the relevant company from exercising those rights for its own benefit or receiving any benefits accruing because of those rights.

Subdivision C—Key concepts

480 Outline of Subdivision

This Subdivision explains the meanings of certain key concepts as they are used for the purposes of this Part. For those purposes it is necessary to determine:

- (a) what is meant by a FIF or a FLP (sections 481 and 482); and
- (b) what is meant by an interest in a FIF or a FLP (section 483); and
- (c) the taxpayers to whose interests in FIFs or FLPs this Part applies (section 485); and
- (d) what is a notional accounting period of a FIF or a FLP (sections 486 and 487).

481 What is a FIF

- (1) An entity is a FIF at a particular time if at that time the entity is:
 - (a) a foreign company; or
 - (b) a foreign trust.
- (2) A company is a foreign company at a particular time if at that time the company is not a Part XI Australian resident.
- (3) A trust is a foreign trust at a particular time if:
 - (a) at that time the trust is neither an Australian trust nor a resident superannuation entity; and
 - (b) the trust did not result from:
 - (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate.

482 What is a FLP

- (1) A reference in this Part to a FLP or to a foreign life assurance policy in relation to a taxpayer in relation to a year of income is a reference to a life assurance policy issued by an entity that was not

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a resident of Australia at any time in that year of income but does not include a policy issued in Australia if the entity that issued the policy was, when the policy was issued, authorised under the *Life Insurance Act 1995* to carry on life insurance business in Australia.

(2) In subsection (1):

life assurance policy means a policy insuring payment of money:

- (a) on death (other than death by accident or expressly named sickness only); or
- (b) on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract within the meaning of the *Life Insurance Act 1995*);

and includes:

- (c) an instrument evidencing a contract that is subject to payment of premiums or instalments of premiums for a term dependent on the termination or continuance of human life; or
- (d) an instrument securing the grant of an annuity for a term dependent upon human life;

but does not include:

- (e) such a policy or instrument:
 - (i) that provides for the payment of money only on death, or death or permanent disability, and in respect of which the premium, or each of the instalments of premium, is calculated solely by reference to the period:
 - (A) for which the human life concerned is expected to continue; or
 - (B) within which the human life concerned is expected to terminate; or
 - (ii) that was issued before 1 July 1992 but cannot be cancelled, surrendered or redeemed on or after that day and whose terms have not been altered in a material respect on or after that day; or
- (f) a contract between a non-resident and a resident:
 - (i) under which the non-resident reinsures the resident against the whole or a part of the liability of the resident

under a policy (*the relevant policy*) issued by the resident; and

- (ii) in respect of which the premium, or each of the instalments of premium, is calculated solely by reference to the period:
 - (A) for which the human life to which the relevant policy applies is expected to continue; or
 - (B) within which the human life to which the relevant policy applies is expected to terminate.

483 What is an interest in a FIF or a FLP

- (1) An interest in a FIF that is a foreign company is:
 - (a) a share in the company other than an eligible finance share within the meaning of section 327; or
 - (b) an option, convertible note, or other instrument, that confers an entitlement to acquire such a share.
- (2) An interest in a FIF that is a foreign trust is:
 - (a) an interest in the corpus or income of the trust (including, in the case of a unit trust, an interest constituted by a unit in the unit trust); or
 - (b) an option, convertible note, or other instrument, that confers an entitlement to acquire an interest referred to in paragraph (a).
- (3) A person has an interest in a FLP if the person has the legal title to the FLP and, if only one person has the legal title to the FLP, a reference in this Part to the person's interest or interests in the FLP is taken to be a reference to the FLP.

484 Bare trustee's interest to be attributed to beneficiary

- (1) If an interest in a FIF or a FLP is held by a person as trustee for another person who is absolutely entitled to the interest as against the trustee, this Part applies as if the interest were held by the other person and any acts of the trustee were acts of the other person.
- (2) For the purposes of subsection (1), if a person holds an interest in a FIF or a FLP as trustee for another person, the other person is not taken not to be absolutely entitled to the interest as against the trustee merely because the other person is under a legal disability.

485 Taxpayers to whose interests in FIFs and FLPs this Part applies

- (1) The operative provision applies to a taxpayer in relation to a FIF or a FLP in accordance with this section. Section 485A also has effect when the operative provision is applied to work out the net income of a partnership or trust estate.
- (2) The application of the operative provision to a taxpayer in relation to a FIF or a FLP is to be worked out separately in relation to each notional accounting period of the FIF or FLP.
- (3) If:
 - (a) a taxpayer had an interest or interests in a FIF at the end of a year of income; and
 - (b) that year of income is the 1992-93 year of income or a later year of income; and
 - (c) the taxpayer was a Part XI Australian resident at any time in that year of income;the operative provision applies to the taxpayer in relation to the FIF in respect of the notional accounting period of that FIF that ended in that year of income.
- (4) If:
 - (a) a taxpayer had an interest or interests in a FLP at any time during the notional accounting period of the FLP that ends in a year of income; and
 - (b) that year of income is the 1992-93 year of income or a later year of income; and
 - (c) the taxpayer was a Part XI Australian resident at any time in that year of income;then, subject to subsection (5), the operative provision applies to the taxpayer in relation to the FLP in respect of that notional accounting period.
- (5) The operative provision does not apply to the taxpayer in relation to a FLP in respect of the 1992-93 year of income if the taxpayer did not have any interest or interests in the FLP at the end of that year of income.
- (6) Without affecting the circumstances in which, apart from this subsection, a taxpayer would be taken to be a Part XI Australian resident at a time in a year of income, a taxpayer in the capacity of

a trustee of a trust that is an Australian trust or a resident superannuation entity at a time in a year of income is taken for the purposes of subsection (3) or (4) to have been a Part XI Australian resident at that time.

- (7) The application of the operative provision to a taxpayer in relation to a FIF or a FLP is subject to Divisions 2 to 15.

485AA Election to exclude interests in foreign hybrids from operation of this Part

Limited partnerships that are treated as companies

- (1) If:
- (a) disregarding subsection 94D(6):
 - (i) at the end of a year of income, a taxpayer has an interest in a FIF that is a corporate limited partnership for the purposes of Division 5A of Part III in relation to the year of income; and
 - (ii) the interest consists of a share in the FIF; and

Note: The share will be an interest in the partnership that is treated by Division 5A of Part III as a share.

- (b) the entity satisfies the requirements of paragraphs 830-10(1)(a) to (d) of the *Income Tax Assessment Act 1997* in relation to the year of income;

the taxpayer may elect that subsection (5) of this section applies in relation to the interest in the FIF.

Actual companies

- (2) If:
- (a) at the end of a year of income, a taxpayer has an interest in a FIF that consists of one or more shares in the FIF; and
 - (b) the interest is not one to which paragraph (1)(a) applies; and
 - (c) the entity satisfies the requirements of paragraphs 830-15(1)(a) to (c) of the *Income Tax Assessment Act 1997* in relation to the year of income;

the taxpayer may elect that subsection (5) of this section applies in relation to the interest in the FIF.

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Time limit for making election

- (3) A taxpayer must make an election under this section:
- (a) on or before the day on which the taxpayer lodges its return of income for the year of income; or
 - (b) within a further time allowed by the Commissioner.

When election is in force

- (4) If the taxpayer makes the election, it is in force during the year of income and all later years of income.

Effect of election on interest in FIF etc.

- (5) While the election is in force, the operative provision, and any other provision of this Part relevant to the operation of that provision, does not apply to the taxpayer in relation to the interest in the FIF consisting of the share or shares or any option, convertible note, or other instrument, that confers an entitlement to acquire the share or shares.

Note: The election will also have the effect under Division 830 of the *Income Tax Assessment Act 1997* of making the company or limited partnership a foreign hybrid in relation to the taxpayer's interest in the FIF.

Effect of election on other interests in FIF

- (6) However, subsection (5) does not have effect so far as that interest in the FIF is relevant for the purpose of the application of this Part in relation to the taxpayer, or any other taxpayer, in relation to any other interest in the FIF.

Note: For example, in applying section 580 to work out other taxpayers' shares of the calculated profit of the FIF, the interest would not be disregarded.

Election irrevocable

- (7) The election is irrevocable.

485A Applying operative provision in working out net income of partnership or trust estate

- (1) For the purpose of working out the net income of a partnership or of a trust estate, the operative provision applies as mentioned in section 485, subject to the following provision.
- (2) The requirement in the definition of *net income* in sections 90 and 95 for assessable income to be calculated as if the partnership or trust estate concerned were a taxpayer who is a resident is, in applying the operative provision, to be taken to be a requirement to calculate that assessable income as if the taxpayer were a Part XI Australian resident.

486 Notional accounting period of a FIF

- (1) This section sets out what is a notional accounting period of a FIF for the purposes of the application of this Part to a taxpayer in relation to the FIF.
- (2) Subject to the following provisions of this section, each period that is a year of income of the taxpayer is a notional accounting period of the FIF.
- (3) If the accounts of a FIF are made out for periods not exceeding 12 months, the taxpayer may elect that the notional accounting periods of that FIF are to be the respective periods in respect of which the accounts of the FIF are made out.
- (4) An election made under subsection (3) is irrevocable so long as the taxpayer continues to have an interest in the FIF.
- (5) Subject to subsection (6), if an election is made under subsection (3):
 - (a) the first period (*the first period*) in respect of which the accounts of the FIF are made out that begins during the year of income of the taxpayer in which the election is made, and all later such periods, are notional accounting periods of the FIF; and
 - (b) the period starting at the beginning of that year of income and ending immediately before the beginning of the first period is a notional accounting period of the FIF.

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- (6) If, after the making of an election under subsection (3), any accounts of the FIF are made out for a period exceeding 12 months:
- (a) neither that period, nor any succeeding period exceeding 12 months for which accounts of the FIF are made out, is a notional accounting period of the FIF; and
 - (b) the period:
 - (i) beginning at the end of the last period in respect of which accounts of the FIF were made out for a period not exceeding 12 months; and
 - (ii) ending at the end of the taxpayer's year of income in which that last period ends;
is a notional accounting period of the FIF; and
 - (c) all later years of income of the taxpayer are notional accounting periods of the FIF.
- (7) Despite the preceding provisions of this section, the first notional accounting period of a FIF is the period that:
- (a) in the case of a foreign company:
 - (i) if the company was incorporated or established or otherwise came into existence before 1 January 1993—began on that day; or
 - (ii) if the company was incorporated or established or otherwise came into existence on or after that day—began on the day of incorporation or establishment; or
 - (b) in the case of a foreign trust:
 - (i) if the trust was in existence immediately before 1 January 1993—began on that day; or
 - (ii) if the trust came into existence on or after that day—began on the day on which the trust came into existence;
- and ended on the next day that is the last day of a notional accounting period of the FIF under whichever of the preceding provisions of this section is applicable.

487 Notional accounting period of a FLP

- (1) This section sets out what is a notional accounting period of a FLP for the purposes of the application of this Part to a taxpayer in relation to the FLP.

- (2) Subject to this section, each period of 12 months ending on 30 June is a notional accounting period of a FLP.
- (3) If cash surrender values for interests in a FLP are available on a day (a *relevant day*) during the same month (being one of the 12 months of the calendar year) in each calendar year (whether or not cash surrender values for such interests are also available at other times), the taxpayer may elect that the notional accounting periods of the FLP are to be the periods ascertained under the following provisions of this section.
- (4) An election made under subsection (3) is irrevocable so long as the taxpayer continues to have an interest in the FLP.
- (5) Subject to subsection (6), if an election is made under subsection (3):
 - (a) the period (*the first elective period*) beginning immediately after the end of the month in which the last relevant day before the election occurred and ending at the end of the month in which the next relevant day occurs is a notional accounting period of the FLP; and
 - (b) each later period beginning after the end of the month in which a relevant day occurs and ending at the end of the month in which the next relevant day occurs is a notional accounting period of the FLP; and
 - (c) the period beginning on 1 July immediately preceding the first elective period and ending immediately before the beginning of the first elective period is a notional accounting period of the FLP.
- (6) If, after the making of an election under subsection (3), a cash surrender value is not available for the taxpayer's interest in a FLP in respect of a relevant day:
 - (a) neither the period of 12 months ending on that day nor any following period of 12 months ending on a relevant day is a notional accounting period of the FLP; and
 - (b) the period of 12 months beginning on 1 July immediately preceding the period of 12 months first mentioned in paragraph (a) is a notional accounting period of the FLP; and
 - (c) all later periods of 12 months beginning on 1 July are notional accounting periods of the FLP.

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- (7) Despite the preceding provisions of this section, the first notional accounting period of a FLP is the period that:
 - (a) if the FLP was in existence before 1 January 1993—began on that day; or
 - (b) if the FLP came into existence on or after that day—began on the day on which the FLP came into existence;and ended on the next day that is the last day of a notional accounting period of the FLP under whichever of the preceding provisions of this section is applicable.
- (8) If the taxpayer disposes of the taxpayer's interest or all of the taxpayer's interest in a FLP, the notional accounting period of the FLP during which the disposal took place ends immediately after the disposal took place.

Subdivision D—The disposal and acquisition of interests

488 What is a disposal or acquisition of an interest in a FIF or a FLP

- (1) Some of the provisions of this Part refer to an interest in a FIF or a FLP having been disposed of or acquired and this section determines what is such a disposal or acquisition for the purposes of those provisions.
- (2) Subject to this section, if a change has occurred in the ownership of an interest in a FIF or a FLP, the change is taken to have effected a disposal of the interest by the person who owned it immediately before the change and an acquisition of the interest by the person who owned it immediately after the change.
- (3) A change in the legal ownership of an interest is not a change in the ownership of the interest for the purposes of this section unless there is also a change in the beneficial ownership of the interest.
- (4) A reference in subsection (2) to a change in the ownership of an interest is a reference to a change that has occurred in any way, including any of the following ways:
 - (a) by the execution of an instrument;
 - (b) by the entering into of a transaction;
 - (c) by the transmission of the interest by operation of law;
 - (d) by the doing of any other act or thing;
 - (e) by the occurrence of any event.

- (5) Without limiting the generality of subsection (4), a change is taken to have occurred in the ownership of an interest by:
 - (a) a declaration of trust in relation to the interest under which the beneficiary is absolutely entitled to the interest as against the trustee; or
 - (b) the release, discharge, satisfaction, surrender, forfeiture, expiry, abandonment or extinction, at law or in equity, of the interest; or
 - (c) the redemption or buy-back in whole or in part, or the cancellation, of the interest.
- (6) An issue to a person of an interest in a FIF or a FLP is an acquisition of the interest by the person.
- (7) None of the following is an acquisition or disposal of an interest in a FIF or a FLP:
 - (a) the conversion of a convertible note issued by a FIF into another interest in the FIF pursuant to a right conferred by the convertible note if no consideration is paid or payable in respect of the exercise of that right;
 - (b) the exercise of any other right in relation to an interest in a FIF or a FLP if no consideration is paid or payable in respect of the exercise of that right;
 - (c) the exchange of an interest in a FIF or a FLP for a different interest in the FIF or FLP of the same value.

489 Time of disposal or acquisition of interest

If an interest in a FIF or a FLP has been disposed of or acquired, the time of disposal or acquisition is:

- (a) if the interest was disposed of or acquired under a contract—the time of making of the contract; or
- (b) otherwise—the time of the change in the ownership of the interest that is or gave rise to the disposal or acquisition.

490 Consideration for disposal or acquisition

- (1) In the circumstances referred to in subsections (2) and (3) it is necessary for the purposes of this Part to make special provision for the calculation of the consideration in respect of the disposal or acquisition of an interest in a FIF or a FLP.

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- (2) If a person disposed of an interest in a FIF or a FLP and:
- (a) the person did not receive any consideration in respect of the disposal; or
 - (b) both of the following subparagraphs apply:
 - (i) the amount that, apart from this subsection, would be taken to be the consideration received by the person in respect of the disposal is greater or less than the market value of the interest at the time of the disposal;
 - (ii) the person, and the person to whom the interest was disposed of, were not dealing with each other at arm's length in connection with the disposal;

the person is taken to have received as consideration in respect of the disposal an amount equal to the market value of the interest at the time of the disposal.

- (3) If a person acquired an interest in a FIF or a FLP and:
- (a) the person did not pay or give any consideration in respect of the acquisition; or
 - (b) both of the following subparagraphs apply:
 - (i) the amount that, apart from this subsection, would be taken to be the consideration paid or given by the person in respect of the acquisition was greater or less than the market value of the interest at the time of the acquisition;
 - (ii) the person, and the person from whom the person acquired the interest, were not dealing with each other at arm's length in connection with the acquisition;

the person is taken to have paid or given as consideration in respect of the acquisition an amount equal to the market value of the interest at the time of the acquisition.

Subdivision E—Associates

491 Associates of an entity to be determined in accordance with section 318 as modified

- (1) For the purposes of this Part, the associates of an entity are to be determined in accordance with section 318 subject to the modifications made by subsection (2) of this section.

- (2) The modifications are as follows:
- (a) **relative**, in relation to a person, means:
 - (i) a spouse of the person other than a spouse who is legally married to the person but is living separately and apart from the person and has been so living for at least 12 months; or
 - (ia) a spouse of the person, other than a spouse within the meaning of paragraph (a) of the definition of *spouse* in subsection 995-1(1) of the *Income Tax Assessment Act 1997* who is living separately and apart from the person and has been so living for at least 12 months; or
 - (ii) a child of the person; or
 - (iii) if the person has not reached the age of 18 years:
 - (A) a parent of the person; or
 - (B) a brother or sister of the person;
 - (b) **child**, in relation to a person, means:
 - (i) a child of the person (other than a child excluded under subsection (3)); or
 - (ii) a child (other than a child referred to in subparagraph (i)) of a spouse of the person, being a child who lives with the person;
 - (c) **trust** does not include a public unit trust, a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust;
 - (d) subsections 318(5) and (7) are to be disregarded;
 - (e) for the purposes of the application of paragraphs 318(6)(a) and (b) in relation to an entity, the references in those paragraphs to interposed companies, partnerships or trusts are taken to be references to any such companies, partnerships or trusts that are associates of the entity.
- Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining relationships for the purposes of subparagraph (2)(a)(iii).
- (3) For the purposes of subparagraph (2)(b)(i), the following children are excluded under this subsection:
- (a) a step-child of the person; and
 - (b) someone who would be the step-child of the person except that the person is not legally married to the person's spouse.

Division 2—Exemption of attributable taxpayers for interests in certain FIFs

492 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from certain FIFs.

493 Exemption of attributable taxpayer in relation to certain trusts

If an amount of foreign investment fund income that accrued to a taxpayer from a foreign trust in respect of a notional accounting period of the trust would, apart from this section, be included in the taxpayer's assessable income of a year of income and:

- (a) the taxpayer is an attributable taxpayer for the purposes of Division 6AAA in relation to the year of income and in relation to a trust estate and the trust to which the trust estate relates is the same entity as the foreign trust; or
- (b) the foreign trust is a CFT and the taxpayer is an attributable taxpayer in relation to that CFT at any time during the year of income;

the operative provision does not apply to the taxpayer in relation to the foreign trust in respect of the notional accounting period of the foreign trust that ends in the year of income.

494 Exemption of attributable taxpayer referred to in section 456

- (1) If:
 - (a) an amount of foreign investment fund income that accrued to a taxpayer from a FIF in respect of a notional accounting period of the FIF would, apart from this subsection, be included in the taxpayer's assessable income of a year of income; and
 - (b) a statutory accounting period of a CFC coincides with that notional accounting period of the FIF; and
 - (c) section 456 applies to the taxpayer at the end of the statutory accounting period of the CFC; and

(d) the CFC is the same entity as the FIF;
the operative provision does not apply to the taxpayer in relation to the FIF in respect of the notional accounting period of the FIF referred to in paragraph (a).

(2) If:

- (a) an amount of foreign investment fund income that accrued to a taxpayer from a FIF in respect of a notional accounting period of the FIF would, apart from this subsection, be included in the taxpayer's assessable income of a year of income; and
- (b) each of 2 or more statutory accounting periods of a CFC occurs partly within that notional accounting period of the FIF; and
- (c) section 456 applies to the taxpayer at the end of each of those statutory accounting periods of the CFC; and
- (d) the CFC is the same entity as the FIF;

the operative provision does not apply to the taxpayer in relation to the FIF in respect of the notional accounting period of the FIF referred to in paragraph (a).

**Division 3—Exemption for interest in foreign company
that is designated as engaging, or whose assets
are principally for use, in certain activities**

495 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a foreign company that is taken by the application of one of the methods referred to in section 498 to have been principally engaged in eligible activities at the time determined under section 497.

496 Interpretation

- (1) In this Division:

eligible activities means business activities (including the provision of services) other than activities:

- (a) named in regulations made for the purposes of this section; or
 - (b) until regulations are so made—named in Schedule 4.
- (2) The inclusion in regulations referred to in paragraph (1)(a), or in Schedule 4, of references to banking, investment, life insurance business, general insurance business, and certain activities in connection with real property, as activities that are not eligible activities does not affect the exemptions provided for by Divisions 4, 5, 6 and 7.

497 Exemption

- (1) The operative provision does not apply to a taxpayer in relation to a foreign company in respect of a notional accounting period of the foreign company if the foreign company is taken by one of the methods referred to in section 498 to have been principally engaged in eligible activities at the time (*the test time*) applicable under subsection (2).

- (2) The test time is:
 - (a) if the taxpayer uses the stock exchange listing method referred to in section 499—the end of the notional accounting period; or
 - (b) if the taxpayer uses the balance-sheet method referred to in section 500:
 - (i) if the notional accounting period is a period in respect of which the accounts of the company are made out—the end of that period; or
 - (ii) if the notional accounting period is the taxpayer's year of income—the end of the last period in respect of which the accounts of the company were made out that ended before the end of that year of income.

498 How to determine whether a foreign company is taken to have been principally engaged in eligible activities

- (1) The question whether a foreign company is taken to have been principally engaged in eligible activities at the test time in relation to a notional accounting period is to be determined either:
 - (a) by ascertaining, by the stock exchange listing method applicable under section 499, the designation accorded to the company at the test time by an approved stock exchange or an international sectoral classification system; or
 - (b) by ascertaining, by the balance-sheet method applicable under section 500, the extent to which the company's assets were for use in eligible activities at the test time.
- (2) If both of those methods are capable of being applied, the question is to be determined in relation to a particular taxpayer by whichever method the taxpayer chooses.
- (3) If one only of those methods is capable of being applied, the question is to be determined by that method.
- (4) If neither of those methods is capable of being applied, section 497 does not exempt the taxpayer from the application of the operative provision in relation to the company in respect of the notional accounting period.

Section 499

499 Stock exchange listing method

- (1) The stock exchange listing method may be applied only if the taxpayer's interest or any of the taxpayer's interests in the foreign company at the test time in relation to a notional accounting period was included in a class of interests in the company that were quoted on the stock market of an approved stock exchange.
- (2) Subject to subsection (3), if the stock exchange listing method applies and at the test time:
 - (a) one of the following subparagraphs applies:
 - (i) the company was included by an approved stock exchange in a class of companies designated by the stock exchange as engaged in activities of a particular kind;
 - (ii) the company was included:
 - (A) by an international sectoral classification system named in regulations made for the purposes of this section; or
 - (B) until regulations are so made—by an international sectoral classification system named in Schedule 5;
in a class of companies designated by the system as engaged in activities of a particular kind; and
 - (b) activities of the kind referred to in the designation by the stock exchange or the international sectoral classification system, as the case may be, are eligible activities;
then, irrespective of the extent (if any) to which the company engages in activities that are not eligible activities, the company is taken, for the purposes of the application of section 497 in relation to the taxpayer, to have been principally engaged in eligible activities at that time.
- (3) If, at the test time:
 - (a) if subparagraph (2)(a)(i) applies and subparagraph (2)(a)(ii) does not apply:
 - (i) if there was only one approved stock exchange that included the company in a designated class of companies—that stock exchange; or

- (ii) if there were 2 or more approved stock exchanges that included the company in a designated class of companies—each of those stock exchanges; or
 - (b) if subparagraph (2)(a)(ii) applies and subparagraph (2)(a)(i) does not apply:
 - (i) if there was only one international sectoral classification system that included the company in a designated class of companies—that system; or
 - (ii) if there were 2 or more international sectoral classification systems that included the company in a designated class of companies—each of those systems; or
 - (c) if both subparagraphs (2)(a)(i) and (2)(a)(ii) apply—each approved stock exchange and each international sectoral classification system that included the company in a designated class of companies;
included the company in a class of companies designated by the stock exchange or system as engaged in activities of an unclassified kind or of a kind designated as *miscellaneous*, the company is not taken under subsection (2) to have been principally engaged in eligible activities at that time.
- (4) For the purposes of subsection (3), the designation by an approved stock exchange or an international sectoral classification system of a class of companies as *conglomerates* or as *multi-industry* is not taken to be a designation of the companies as being engaged in activities of an unclassified kind or as being designated *miscellaneous*.

500 Balance-sheet method

- (1) The balance-sheet method involves determining the extent to which a foreign company's assets were for use in eligible activities by reference to a relevant balance-sheet of the company and, if appropriate, of its subsidiaries prepared as at the test time in relation to a notional accounting period.

Part XI Foreign investment funds and foreign life assurance policies

Division 3 Exemption for interest in foreign company that is designated as engaging, or whose assets are principally for use, in certain activities

Section 500

- (2) If, at the test time, the gross value of the foreign company's assets for use in eligible activities was 50% or more of the gross value of all of the company's assets, the company is taken, for the purposes of the application of section 497 in relation to the taxpayer, to have been principally engaged in eligible activities at that time.
- (3) If, at the test time, a company (*the holding company*) was the direct or indirect owner of 50% or more of the paid-up share capital of another company (*the subsidiary company*), the following paragraphs apply:
- (a) the gross value at the test time of the holding company's assets for use in eligible activities includes the amount worked out using the formula:
- $$\text{Gross value of subsidiary's eligible assets} \times \frac{\text{Interest in share capital}}{\text{Total share capital}}$$
- (b) the gross value at the test time of all the holding company's assets does not include the gross value of the shares in the subsidiary but includes the amount worked out using the formula:
- $$\text{Gross value of subsidiary's assets} \times \frac{\text{Interest in share capital}}{\text{Total share capital}}$$

In the formulas:

Gross value of subsidiary's eligible assets means the gross value at the test time of the subsidiary company's assets for use in one or more eligible activities.

Gross value of subsidiary's assets means the gross value at the test time of all the subsidiary company's assets.

Interest in share capital means the amount of the share capital of the subsidiary company that was owned by the holding company.

Total share capital means the total amount of the share capital of the subsidiary company.

- (4) Subsection (3) applies in relation to the subsidiary company whether the subsidiary company engages in eligible activities or activities that are not eligible activities, or both.

- (5) In subsection (3):
- (a) any reference to the holding company's assets does not include:
 - (i) in the case of the reference in paragraph (3)(a)—a reference to so much of the holding company's assets for use in eligible activities that comprise debts due or other amounts payable to the holding company by the subsidiary company, or by any company interposed between the holding company and the subsidiary company, as are related to the subsidiary company's assets whose gross value is included in the gross value of the holding company's assets for use in eligible activities; or
 - (ii) in the case of the reference in paragraph (3)(b)—a reference to so much of all the holding company's assets that comprise debts due or other amounts payable to the holding company by the subsidiary company, or by any company interposed between the holding company and the subsidiary company, as are related to the subsidiary company's assets whose gross value is included in the gross value of all the holding company's assets; and
 - (b) any reference to the subsidiary company's assets does not include a reference to:
 - (i) shares owned by the subsidiary company in another company that is a subsidiary of the holding company by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*; or
 - (ii) assets comprising debts or other amounts payable to the subsidiary company by:
 - (A) the holding company; or
 - (B) any company interposed between the subsidiary company and the holding company; or
 - (C) any other company that is a subsidiary of the holding company by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*.
- (6) For the purposes of subsection (3), the percentage of the paid-up share capital of the subsidiary company of which the holding company was the owner at the test time includes the percentage (if any) of that paid-up share capital of which the holding company
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Section 500

was the indirect owner at that time, as calculated in accordance with section 501.

- (7) Subsections (3) to (6) apply in relation to the ownership by a company of any of the paid-up share capital of another company whether the other company's place of incorporation or establishment is the same as, or different from, the former company's place of incorporation or establishment.
- (8) If a company had, at the test time, an interest, as a partner in a partnership, in any assets of the partnership:
 - (a) the gross value at that time of all of the company's assets does not include the value of the company's interest in the partnership as shown in the company's balance-sheet but includes the gross value of the company's interest in each of the partnership's assets; and
 - (b) the company's assets at that time that were for use in eligible activities are taken to have included the company's interests in the assets of the partnership that were for use in one or more eligible activities.
- (9) A reference in this section to the gross value of an asset of a company at the test time is a reference to that value as shown in a balance-sheet of the company that:
 - (a) was prepared in accordance with commercially accepted accounting principles; and
 - (b) gives a true and fair view of the company's financial position as at that time.
- (10) For the purposes of this section, the gross value, at the test time, of an asset in which a company has an interest as a partner in a partnership is to be that value as shown in a balance-sheet of the partnership that:
 - (a) was prepared in accordance with commercially accepted accounting principles; and
 - (b) gives a true and fair view of the partnership's financial position as at that time.
- (11) If, at the test time, any of the company's assets (*the relevant assets*) are for use partly in one or more eligible activities and partly for other purposes, a reference in this section to the gross value at that time of the company's assets for use in one or more

eligible activities is a reference to so much only of the gross value at that time of the relevant assets as is proportionate to the extent to which they are for use at that time in one or more eligible activities.

- (12) If an amount that, under subsection (3) or (8), is to be included in:
- (a) the gross value, at the test time, of all the assets of a foreign company; or
 - (b) the gross value, at that time, of such of those assets as were for use at that time in one or more eligible activities;
- is not expressed in the currency in which the balance-sheet applicable under subsection (9) in relation to the foreign company is expressed, the amount to be so included is the equivalent amount expressed in that currency, being the equivalent amount obtained by reference to the appropriate rate of exchange between those 2 currencies in force at that time.
- (13) A reference in this section to an asset of a company being for use in an eligible activity is a reference to the asset being for use by the company in engaging in that activity either through its directors or employees in the performance of their duties as directors or employees or through another person pursuant to a contract or arrangement.

501 Indirect ownership of paid-up share capital of company

- (1) For the purposes of this section, a company has a direct ownership interest in another company at a particular time equal to the percentage of the paid-up share capital of the other company of which the first-mentioned company is the owner at that time.
- (2) The percentage of the paid-up share capital of a company (*the bottom company*) of which another company (*the top company*) is the indirect owner at a particular time (*the indirect ownership interest*) is calculated in accordance with this section.
- (3) If there is only one company interposed between the top company and the bottom company, the indirect ownership interest is calculated by multiplying the direct ownership interest that the top company holds in the interposed company by the direct ownership interest that the interposed company holds in the bottom company.

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- (4) If there are 2 companies interposed between the top company and the bottom company, the indirect ownership interest is calculated:
 - (a) by multiplying the direct ownership interest that the top company holds in the first interposed company by the direct ownership interest that the first interposed company holds in the second interposed company; and
 - (b) by multiplying the result of the calculation referred to in paragraph (a) by the direct ownership interest that the second interposed company holds in the bottom company.

- (5) If there are 3 or more companies interposed between the top company and the bottom company, the indirect ownership interest is calculated:
 - (a) by multiplying the direct ownership interest that the top company holds in the first interposed company by the direct ownership interest that the first interposed company holds in the second interposed company; and
 - (b) by multiplying the result of the calculation referred to in paragraph (a) by the direct ownership interest that the second interposed company holds in the third interposed company; and so on, ending with a multiplication by the direct ownership interest that the last interposed company holds in the bottom company.

Division 4—Exemption for interest in foreign bank or holding company of foreign bank

502 Object of Division

The object of this Division is to exempt certain taxpayers from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a foreign company that is a bank or has a wholly-owned subsidiary that is a bank.

503 Exemption for interest in foreign bank

If:

- (a) at the end of the notional accounting period of a foreign company the taxpayer had an interest in the foreign company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
- (b) throughout that period, or the part of that period in which the taxpayer had that interest, as the case may be:
 - (i) shares in the foreign company were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange; and
 - (ii) the foreign company was authorised under the law of its place of residence to carry on banking business; and
 - (iii) the foreign company was principally engaged in the active carrying on of banking business;

the interest referred to in paragraph (a) is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the foreign company in respect of that notional accounting period.

504 Exemption for interest in foreign holding company of foreign bank

If:

- (a) at the end of the notional accounting period of a foreign company (*the holding company*) that ended during a year of income:
 - (i) the taxpayer had an interest in the holding company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
 - (ii) one of the following sub-subparagraphs applies:
 - (A) the holding company was included by an approved stock exchange in a class of companies designated by the stock exchange as engaged in activities of a kind designated as *banking* or *banks*;
 - (B) the holding company was included by an international sectoral classification system named in regulations made for the purposes of section 499, or, until regulations are so made, by an international sectoral classification system named in Schedule 5, in a class of companies designated by the system as engaged in activities of a kind designated as *banking* or *banks*; and
- (b) throughout that period, or the part of that period in which the taxpayer had that interest, as the case may be:
 - (i) shares in the holding company that were included in the class referred to in subparagraph (a)(i) were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange; and
 - (ii) one or more other foreign companies were wholly-owned subsidiaries of the holding company; and
 - (iii) if there was only one such subsidiary, that subsidiary was:
 - (A) authorised under the law of its place of residence to carry on banking business; and
 - (B) principally engaged in the active carrying on of banking business; and

(iv) if there were 2 or more such subsidiaries:

(A) at least one subsidiary was authorised under the law of its place of residence to carry on banking business; and

(B) the principal activities of all the subsidiaries, considered together, were the active carrying on of banking business;

the interest referred to in subparagraph (a)(i) is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the holding company in respect of that notional accounting period.

**Division 5—Exemption for interest in foreign company
whose assets are principally for use in carrying
on life insurance business**

505 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a foreign company that is taken by the application of the method in section 507 to have been principally engaged in life insurance business at the test time in relation to a notional accounting period. That method involves determining the extent to which the foreign company's assets were for use in carrying on life insurance business at that time by reference to a relevant balance-sheet of the company and, if appropriate, of its subsidiaries prepared at that time.

506 Exemption for interest in foreign life insurance company

- (1) The operative provision does not apply to a taxpayer in relation to a foreign company in respect of a notional accounting period of the foreign company if the foreign company is taken to have been principally engaged in carrying on life insurance business at the time (*the test time*) applicable under subsection (2).
- (2) The test time is:
 - (a) if the notional accounting period is a period in respect of which the accounts of the company are made out—the end of that period; or
 - (b) if the notional accounting period is the taxpayer's year of income—the end of the last period in respect of which the accounts of the company were made out that ended before the end of that year of income.

507 How to determine whether a foreign company was principally engaged in carrying on life insurance business

- (1) The question whether a foreign company is taken to have been principally engaged in carrying on life insurance business at the test time is to be determined as provided by this section.

- (2) If:
- (a) throughout the notional accounting period referred to in section 506 or the part of that period in which the taxpayer had an interest in a foreign company, the company was authorised under the law of its place of residence to carry on life insurance business; and
 - (b) at the test time, the gross value of the foreign company's assets for use in carrying on life insurance business was 50% or more of the gross value of all of the company's assets;
- the company is taken, for the purposes of the application of section 506 in relation to the taxpayer, to have been principally engaged in carrying on life insurance business at that time.
- (3) If, at the test time, a company (*the holding company*) was the direct or indirect owner of 50% or more of the paid-up share capital of another company (*the subsidiary company*), the following paragraphs apply:
- (a) the gross value at the test time of the holding company's assets for use in carrying on life insurance business includes the amount worked out using the formula:
$$\text{Gross value of subsidiary's eligible assets} \times \frac{\text{Interest in share capital}}{\text{Total share capital}}$$
 - (b) the gross value at the test time of all the holding company's assets:
 - (i) except as provided by subsection (11), does not include the gross value of the shares in the subsidiary company owned by the holding company; but
 - (ii) includes the amount worked out using the formula:
$$\text{Gross value of subsidiary's assets} \times \frac{\text{Interest in share capital}}{\text{Total share capital}}$$

In the formulas:

Gross value of subsidiary's eligible assets means the gross value at the test time of the subsidiary company's assets for use in carrying on life insurance business.

Gross value of subsidiary's assets means the gross value at the test time of all the subsidiary company's assets.

Interest in share capital means the amount of the share capital of the subsidiary company that was owned by the holding company.

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Total share capital means the total amount of the share capital of the subsidiary company.

- (4) Subsection (3) applies in relation to the subsidiary company whether the subsidiary company carries on life insurance business or not.
- (5) In subsection (3):
- (a) any reference to the holding company's assets does not include:
 - (i) in the case of the reference in paragraph (3)(a)—a reference to so much of the holding company's assets for use in carrying on life insurance business that comprise debts due or other amounts payable to the holding company by the subsidiary company, or by any company interposed between the holding company and the subsidiary company, as are related to the subsidiary company's assets whose gross value is included in the gross value of the holding company's assets for use in carrying on life insurance business; or
 - (ii) in the case of the reference in paragraph (3)(b)—a reference to so much of all the holding company's assets that comprise debts due or other amounts payable to the holding company by the subsidiary company, or by any company interposed between the holding company and the subsidiary company, as are related to the subsidiary company's assets whose gross value is included in the gross value of all the holding company's assets; and
 - (b) any reference to the subsidiary company's assets does not include a reference to:
 - (i) shares owned by the subsidiary company in another company that is a subsidiary of the holding company by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*; or
 - (ii) assets comprising debts or other amounts payable to the subsidiary company by:
 - (A) the holding company; or
 - (B) any company interposed between the subsidiary company and the holding company; or

- (C) any other company that is a subsidiary of the holding company by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*.
- (6) For the purposes of subsection (3), the percentage of the paid-up share capital of the subsidiary company of which the holding company was the owner at the test time includes the percentage (if any) of that paid-up share capital of which the holding company was the indirect owner at that time, as calculated in accordance with section 501.
- (7) Subsections (2) to (5) apply in relation to the ownership by a company of any of the paid-up share capital of another company whether the other company's place of incorporation or establishment is the same as, or different from, the former company's place of incorporation or establishment.
- (8) A reference in this section to the gross value of an asset of a company at the test time is a reference to that value as shown in a balance-sheet of the company that:
- (a) was prepared in accordance with commercially accepted accounting principles; and
 - (b) gives a true and fair view of the company's financial position as at that time.
- (9) If, at the test time, any of a company's assets (*the relevant assets*) are for use partly in carrying on life insurance business and partly for other purposes, a reference in this section to the gross value at that time of the company's assets for use in carrying on life insurance business is a reference to so much only of the gross value at that time of the relevant assets as is proportionate to the extent to which they are for use at that time in carrying on life insurance business.
- (10) If an amount that, under subsection (3), is to be included in:
- (a) the gross value, at the test time, of all the assets of a foreign company; or
 - (b) the gross value, at that time, of such of those assets as were for use at that time in carrying on life insurance business;
- is not expressed in the currency in which the balance-sheet applicable under subsection (8) in relation to the foreign company is expressed, the amount to be so included is the equivalent amount
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expressed in that currency, being the equivalent amount obtained by reference to the appropriate rate of exchange between those 2 currencies in force at that time.

- (11) For the purposes of subsection (2), if, at the test time:
- (a) the foreign company referred to in that subsection owned shares in another company which was not a resident of Australia at that time and which at that time managed funds of the foreign company by investing those funds at the discretion of the other company; and
 - (b) the funds so managed were maintained by the foreign company in a manner similar to the manner in which companies carrying on life insurance business in Australia maintain statutory funds under Part 4 of the *Life Insurance Act 1995*;

the gross value of those shares at that time is to be included in the gross value of all the foreign company's assets, and in the gross value of the foreign company's assets for use in carrying on life insurance business, at that time.

507A Exemption for interest in foreign holding company of foreign life insurance company

Interest in holding company disregarded

- (1) If:
- (a) at the end of the notional accounting period of a foreign company (the **holding company**), the taxpayer had an interest in the holding company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
 - (b) the holding company requirements set out in subsection (2) are satisfied; and
 - (c) the subsidiary company requirements set out in subsection (3) are satisfied;

the interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the holding company in respect of that notional accounting period.

Holding company requirements

- (2) The holding company requirements are that:
- (a) at the end of the notional accounting period, either:
 - (i) the holding company was included by an approved stock exchange in a class of companies designated by the stock exchange as engaged in the carrying on of life insurance business; or
 - (ii) the holding company was included by an international sectoral classification system named in regulations made for the purposes of section 499 or, until regulations are so made, by an international sectoral classification system named in Schedule 5, in a class of companies designated by the system as engaged in the carrying on of life insurance business; and
 - (b) throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be, shares in the holding company that were included in the class mentioned in paragraph (1)(a) were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange.

Subsidiary company requirements

- (3) The subsidiary company requirements are that:
- (a) throughout the notional accounting period (the ***interest holding period***), or the part (also the ***interest holding period***) of that period in which the taxpayer had the interest in the holding company, as the case may be, one or more other foreign companies were wholly-owned subsidiaries of the holding company; and
 - (b) if there was only one such subsidiary, that subsidiary was:
 - (i) throughout the interest holding period, authorised under the law of its place of residence to carry on life insurance business; and
 - (ii) at the test time, principally engaged in the active carrying on of life insurance business; and
 - (c) if there were 2 or more such subsidiaries:
 - (i) throughout the interest holding period, at least one subsidiary was authorised under the law of its place of residence to carry on life insurance business; and

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- (ii) at their test time, the principal activities of all the subsidiaries, considered together, were the active carrying on of life insurance business.

Test time

- (4) The **test time** in relation to a subsidiary is:
 - (a) if the notional accounting period is one in respect of which the accounts of the subsidiary are made out—the end of that period; or
 - (b) if the notional accounting period is the taxpayer's year of income—the end of the last period in respect of which the accounts of the subsidiary were made out that ended before the end of that year of income.

Single subsidiary—principally engaged in active carrying on of life insurance business

- (5) For the purposes of subparagraph (3)(b)(ii), a subsidiary was principally engaged in the active carrying on of life insurance business at the test time if at that time the gross value of its assets for use in carrying on life insurance business was 50% or more of the gross value of all of its assets. For this purpose, subsections 507(3) to (11) (inclusive) apply in the same way as they apply for the purpose of paragraph 507(2)(b).

More than one subsidiary—principal activities, considered together, were active carrying on of life insurance business

- (6) For the purposes of subparagraph (3)(c)(ii), the question whether, at their test time, the principal activities of 2 or more subsidiaries, considered together, were the active carrying on of life insurance business is determined as follows:
 - (a) first, work out for each subsidiary (including by applying subsections 507(3) to (11) (inclusive) in the same way as they apply for the purpose of paragraph 507(2)(b)):
 - (i) the gross value, at its test time, of the subsidiary's assets for use in carrying on life insurance business; and
 - (ii) the gross value, at its test time, of all of the subsidiary's assets; and
 - (b) secondly, work out:

- (i) the sum of the gross values in subparagraph (a)(i) for all of the subsidiaries; and
- (ii) the sum of the gross values in subparagraph (a)(ii) for all of the subsidiaries; and
- (c) thirdly, if the sum in subparagraph (b)(i) is 50% or more of the sum in subparagraph (b)(ii), then, at their test time, the principal activities of all of the subsidiaries, considered together, were the active carrying on of life insurance business.

Division 6—Exemption for interest in foreign general insurance company

508 Object of Division

The object of this Division is to exempt certain taxpayers from taxation in respect of certain foreign investment fund income that would otherwise be taken to accrue from a foreign company that carries on general insurance business.

509 Exemption for interest in foreign general insurance company

If:

- (a) at the end of the notional accounting period of a foreign company the taxpayer had an interest in the foreign company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
- (b) throughout that period, or the part of that period in which the taxpayer had that interest, as the case may be:
 - (i) shares in the foreign company that were included in that class were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange; and
 - (ii) the foreign company was authorised under the law of its place of residence to carry on general insurance business; and
 - (iii) the foreign company was principally engaged in the active carrying on of general insurance business;

the interest referred to in paragraph (a) is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the foreign company in respect of that notional accounting period.

509A Exemption for interest in foreign holding company of foreign general insurance company

Interest in holding company disregarded

- (1) If:
- (a) at the end of the notional accounting period of a foreign company (the *holding company*), the taxpayer had an interest in the holding company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
 - (b) the holding company requirements set out in subsection (2) are satisfied; and
 - (c) the subsidiary company requirements set out in subsection (3) are satisfied;

the interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the holding company in respect of that notional accounting period.

Holding company requirements

- (2) The holding company requirements are that:
- (a) at the end of the notional accounting period, either:
 - (i) the holding company was included by an approved stock exchange in a class of companies designated by the stock exchange as engaged in the carrying on of general insurance business; or
 - (ii) the holding company was included by an international sectoral classification system named in regulations made for the purposes of section 499 or, until regulations are so made, by an international sectoral classification system named in Schedule 5, in a class of companies designated by the system as engaged in the carrying on of general insurance business; and
 - (b) throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be, shares in the holding company that were included in the class mentioned in paragraph (1)(a) were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange.

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Subsidiary company requirements

- (3) The subsidiary company requirements are that, throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be:
- (a) one or more other foreign companies were wholly-owned subsidiaries of the holding company; and
 - (b) if there was only one such subsidiary, that subsidiary was:
 - (i) authorised under the law of its place of residence to carry on general insurance business; and
 - (ii) principally engaged in the active carrying on of general insurance business; and
 - (c) if there were 2 or more such subsidiaries:
 - (i) at least one subsidiary was authorised under the law of its place of residence to carry on general insurance business; and
 - (ii) the principal activities of all the subsidiaries, considered together, were the active carrying on of general insurance business.

Division 7—Exemption for interest in foreign company engaged in certain activities connected with real property

510 Object of Division

The object of this Division is to exempt certain taxpayers from taxation in respect of certain foreign investment fund income that would otherwise be taken to accrue from a foreign company that engages in certain activities connected with real property.

511 Exemption

If:

- (a) at the end of the notional accounting period of a foreign company the taxpayer had an interest in the foreign company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
- (b) throughout that period, or the part of that period in which the taxpayer had that interest, as the case may be:
 - (i) shares in the foreign company that were included in that class were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange; and
 - (ii) the foreign company was principally engaged in the active carrying on of any one or more of the following:
 - (A) construction;
 - (B) development of real property through capital improvement;
 - (C) receipt of rental income from commercial real property owned by the company, being property in respect of which the management, maintenance and security services were principally provided by directors or employees of the company or by a wholly-owned subsidiary of the company that was principally engaged in carrying on the business of

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providing those services through directors or employees of that subsidiary;

(D) provision of management services in respect of real property by directors or employees of the company;

(E) acting as agent in connection with the sale or purchase of commercial real property;

the interest referred to in paragraph (a) is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the foreign company in respect of that notional accounting period.

511A Exemption for interest in foreign holding company of foreign real property company

Interest in holding company disregarded

(1) If:

(a) at the end of the notional accounting period of a foreign company (the *holding company*), the taxpayer had an interest in the holding company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and

(b) the holding company requirements set out in subsection (2) are satisfied; and

(c) the subsidiary company requirements set out in subsection (3) are satisfied;

the interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the holding company in respect of that notional accounting period.

Holding company requirements

(2) The holding company requirements are that:

(a) at the end of the notional accounting period, either:

(i) the holding company was included by an approved stock exchange in a class of companies designated by the stock exchange as engaged in carrying on one or more of the activities mentioned in subparagraph 511(b)(ii); or

- (ii) the holding company was included by an international sectoral classification system named in regulations made for the purposes of section 499 or, until regulations are so made, by an international sectoral classification system named in Schedule 5, in a class of companies designated by the system as engaged in carrying on one or more of the activities mentioned in subparagraph 511(b)(ii); and
- (b) throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be, shares in the holding company that were included in the class mentioned in paragraph (1)(a) were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange.

Subsidiary company requirements

- (3) The subsidiary company requirements are that, throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be:
 - (a) one or more other foreign companies were wholly-owned subsidiaries of the holding company; and
 - (b) if there was only one such subsidiary—that subsidiary was principally engaged in the active carrying on of one or more of the activities mentioned in subparagraph 511(b)(ii); and
 - (c) if there were 2 or more such subsidiaries—the principal activities of all the subsidiaries, considered together, were the active carrying on of one or more of the activities mentioned in subparagraph 511(b)(ii).

Division 8—Exemption for interests in certain US entities

512 Object of Division

The object of this Division is to exempt a taxpayer from taxation under this Part in respect of foreign investment fund income that would otherwise be taken to accrue from interests in certain entities that are subject to tax in the United States of America.

512A Division does not apply to interests in CFTs

This Division does not apply in relation to an interest in a CFT.

513 Exemptions

- (1) The operative provision does not apply to a taxpayer in respect of an interest in:
 - (a) an entity that is treated as a corporation, and is subject to tax on its worldwide income, under the Internal Revenue Code of 1986 of the United States of America; or
 - (b) a company or trust that is treated as a regulated investment company, or a real estate investment trust, for the purposes of the Internal Revenue Code of 1986 of the United States of America.
- (2) The operative provision does not apply to a taxpayer in respect of an interest in one of the following entities if the conditions in subsection (3) or (4) are satisfied:
 - (a) an entity that is a limited partnership, or a limited liability company under a law of the United States of America or a law of a State of the United States of America;
 - (b) an entity that is treated as a common trust fund for the purposes of the Internal Revenue Code of 1986 of the United States of America.
- (3) The condition in this subsection is that the taxpayer satisfies the Commissioner that:

- (a) the interest that the taxpayer holds at the end of the entity's notional accounting period is held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:
 - (i) a business conducted in the United States of America; or
 - (ii) real property located in the United States of America; and
 - (b) the entity does not directly, or indirectly through one or more interposed entities (other than through an entity covered by paragraph (1)(a) or (b)):
 - (i) have an interest in income or gains derived from sources outside of the United States of America; or
 - (ii) hold an interest in a FIF that is not resident in the United States of America; or
 - (iii) hold real property that is not located in the United States of America.
- (4) The condition in this subsection is that the taxpayer satisfies the Commissioner that:
- (a) the interest that the taxpayer holds at the end of the entity's notional accounting period is held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:
 - (i) a business conducted in the United States of America; or
 - (ii) real property located in the United States of America; and
 - (b) throughout the entity's notional accounting period, the total value of:
 - (i) any interests that the entity has in income or gains derived from sources outside the United States of America; and
 - (ii) any interests that the entity has in FIFs that are not resident in the United States of America; and
 - (iii) any real property held by the entity that is not located in the United States of America;being interests or real property that the entity has or holds directly, or indirectly through one or more interposed entities (other than through an entity covered by paragraph (1)(a) or

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- (b)), does not exceed 5% of the total value of all interests held by the entity in other entities; and
- (c) throughout the entity's notional accounting period, the value of assets held by the entity that:
 - (i) produce income from sources outside the United States of America; or
 - (ii) if disposed of would give rise to a gain from a source outside the United States of America;do not exceed 5% of the total value of assets held by the entity.
- (5) For the purposes of subsection (4), the value of FIF interests and the value of assets is to be determined using the accounting records of the entity.

Division 9—Exemption for interests of less than \$50,000

514 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a FIF or a FLP if the value of the interests of the taxpayer and any associates is less than \$50,000.

515 Exemption

(1) If:

(a) a taxpayer who is a natural person (otherwise than in the capacity of a trustee) had an interest or interests in a particular FIF or FLP at the end of a notional accounting period of that FIF or FLP; and

(b) the sum of:

(i) the values of all the interests of the taxpayer and any associates of the taxpayer in FIFs; and

(ii) the values of all FLPs in which the taxpayer and any associates of the taxpayer had interests;

at the end of the year of income in which that notional accounting period ended did not exceed \$50,000;

the operative provision does not apply to the taxpayer in relation to that FIF or FLP in respect of that notional accounting period of that FIF or FLP.

(2) For the purposes of subsection (1), the value at the end of the year of income of a person's interest in a FIF, or of a FLP in which a person has an interest, is taken to be:

(a) the cost incurred by the person in acquiring the interest in the FIF or FLP, as the case may be; or

(b) the market value of the interest in the FIF or of the FLP, as the case may be, at the end of the year of income;

whichever is the greater amount.

Division 11—Exemption for interest in an employer-sponsored superannuation fund

518 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a FIF that is an employer-sponsored superannuation fund.

519 Interests of employees and former employees to be exempt

(1) If:

- (a) a taxpayer who is a natural person had an interest or interests in a particular FIF at the end of a notional accounting period of that FIF; and
- (b) that FIF was a superannuation fund maintained by an employer, or by an associate of an employer, for the benefit of employees of the employer; and
- (c) the taxpayer had the interest or interests because he or she was such an employee;

the operative provision does not apply to the taxpayer in relation to that FIF in respect of that notional accounting period.

(2) In this section:

employee, in relation to an employer, includes:

- (a) a former employee of the employer; or
- (b) if the employer is a company—a director or former director of the company.

**Division 11A—Exemption for complying
superannuation/FHSA assets, segregated exempt
assets and interests held by complying
superannuation entities etc.**

519A Objects of Division

The objects of this Division are:

- (a) to exempt taxpayers from taxation under this Part in respect of foreign investment fund income that would otherwise be taken to accrue from complying superannuation/FHSA assets or segregated exempt assets; and
- (b) to exempt taxpayers who are trustees of complying superannuation entities or certain fixed trusts from taxation under this Part in respect of foreign investment fund income.

519B Exemption

Complying superannuation/FHSA assets and segregated exempt assets

- (1) The operative provision does not apply to a taxpayer in respect of an interest in a FIF that is a complying superannuation/FHSA asset or a segregated exempt asset of the taxpayer.

Complying superannuation entities

- (2) If a taxpayer is the trustee of a complying superannuation entity in relation to a year of income, the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

Fixed trusts with various fixed entitlements

- (3) If:
 - (a) a taxpayer is the trustee of a fixed trust (an *interposed fixed trust*) at the end of a year of income; and
 - (b) one of the following subparagraphs (whether or not the same subparagraph) applies in relation to each of the fixed

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entitlements to shares of the income and capital of the trust at the end of the year of income:

- (i) it is a complying superannuation/FHSA asset;
- (ii) it is a segregated exempt asset;
- (iii) it is held by the trustee of a complying superannuation entity;
- (iv) it is held by the trustee of an interposed fixed trust within the meaning of this subsection or subsection (4);

the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

Fixed trusts with some fixed entitlements held by former complying superannuation entities

- (4) If a taxpayer is the trustee of a fixed trust (an ***interposed fixed trust***) at the end of a year of income, where:
 - (a) some of the fixed entitlements to shares of the income and capital of the trust are held by the trustees of entities that:
 - (i) are not complying superannuation entities in relation to the year of income; but
 - (ii) acquired their fixed entitlements in previous years of income and were complying superannuation entities in relation to those years; and
 - (b) one of the following subparagraphs (whether or not the same subparagraph) applies in relation to each of the other fixed entitlements to shares of the income and capital of the trust at the end of the year of income:
 - (i) it is a complying superannuation/FHSA asset;
 - (ii) it is a segregated exempt asset;
 - (iii) it is held by the trustee of a complying superannuation entity;
 - (iv) it is held by the trustee of an interposed fixed trust within the meaning of this subsection or subsection (3); and
 - (c) the market value at the end of the year of income of the fixed entitlements to which paragraph (a) applies is not more than 5% of the market value at that time of all of the fixed entitlements to income and capital of the trust;

the operative provision does not apply to the taxpayer in relation to a FIF in respect of the notional accounting period of the FIF that ends in the year of income.

- (5) In determining for the purposes of subparagraph (4)(a)(ii) whether an entity was a complying superannuation entity in relation to the year of income in which it acquired the fixed entitlements mentioned in that subparagraph, disregard any notice issued after the end of that year of income under section 40 of the *Superannuation Industry (Supervision) Act 1993* to the effect that the entity was not a complying superannuation entity in relation to the year of income.

Division 12—Exemption for certain interests that are trading stock

520 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from FIFs to the extent that that income is attributable to interests in FIFs that consist of trading stock whose value to be taken into account at the end of the year of income under section 70-70 of the *Income Tax Assessment Act 1997* is its market value.

521 Exemption

If:

- (a) subsection 70-70(2) of the *Income Tax Assessment Act 1997* applies to a taxpayer in respect of a year of income; and
- (b) at any time during the notional accounting period of a FIF that ended in that year of income the taxpayer had an interest in the FIF that was trading stock;

that interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the FIF in respect of that notional accounting period.

Division 13—Exemption for interest in foreign company principally engaged in several activities

522 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a foreign company that engages in several activities.

523 Exemption

If:

- (a) at the end of the notional accounting period of a foreign company a taxpayer had an interest in the foreign company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
- (b) throughout that period, or the part of that period in which the taxpayer had that interest, as the case may be:
 - (i) shares in the foreign company that were included in that class were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange; and
 - (ii) the foreign company was engaged in the active carrying on of any 2 or more of the following activities:
 - (A) construction;
 - (B) development of real property through capital improvement;
 - (C) receipt of rental income from commercial real property owned by the company, being property in respect of which the management, maintenance and security services were principally provided by directors or employees of the company or by a wholly-owned subsidiary of the company that was principally engaged in carrying on the business of providing those services through directors or employees of that subsidiary;

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- (D) provision of management services in respect of real property by directors or employees of the company;
 - (E) acting as agent in connection with the sale or purchase of commercial real property;
 - (F) general insurance business of a kind that the company was authorised under the law of its place of residence to carry on;
 - (G) life insurance business of a kind that the company was authorised under the law of its place of residence to carry on;
 - (H) eligible activities within the meaning of Division 3; and
- (c) having regard to all the activities in which the company engaged in that period or that part of that period, it would be concluded that any 2 or more of the activities referred to in subparagraph (b)(ii), taken together, were the activities in which the company was principally engaged throughout that period or that part of that period, as the case may be;
- then the taxpayer's interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the foreign company in respect of the notional accounting period.

523A Exemption for interest in foreign holding company of foreign mixed activity company

Interest in holding company disregarded

- (1) If:
- (a) at the end of the notional accounting period of a foreign company (the **holding company**), the taxpayer had an interest in the holding company that consisted of shares included in a class of shares that were quoted on the stock market of an approved stock exchange; and
 - (b) the holding company requirement set out in subsection (2) is satisfied; and

- (c) the subsidiary company requirements set out in subsection (3) are satisfied;

the interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the holding company in respect of that notional accounting period.

Holding company requirement

- (2) The holding company requirement is that throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be, shares in the holding company that were included in the class mentioned in paragraph (1)(a) were widely held, and actively traded on a regular basis, on a stock market of an approved stock exchange.

Subsidiary company requirements

- (3) The subsidiary company requirements are that, throughout the notional accounting period, or the part of that period in which the taxpayer had the interest in the holding company, as the case may be:
- (a) one or more other foreign companies were wholly-owned subsidiaries of the holding company; and
 - (b) if there was only one such subsidiary—that subsidiary was principally engaged in the active carrying on of 2 or more of the activities mentioned in subparagraph 523(b)(ii); and
 - (c) if there were 2 or more such subsidiaries—the principal activities of all the subsidiaries, considered together, were the active carrying on of 2 or more activities mentioned in subparagraph 523(b)(ii).

Division 14—Exemption for interests in FIFs the value of which is not more than 10% of the value of all taxpayers' interests in FIFs

524 Object of Division

The object of this Division is to exempt a taxpayer from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from FIFs if the total value of the taxpayer's interests in those FIFs does not exceed 10% of the total value of all the taxpayer's interests in FIFs.

525 Exemption

(1) If:

- (a) at the end of the notional accounting period of a FIF, or the end of the notional accounting periods of FIFs, that ended in the year of income a taxpayer had an interest in that FIF or interests in those FIFs; and
- (b) apart from this Division the operative provision would apply to the taxpayer in relation to that FIF or those FIFs in respect of that notional accounting period or those notional accounting periods; and
- (c) the value or the sum of the values of the taxpayer's interest or interests in that FIF or those FIFs at the end of that year of income did not exceed 10% of the sum of the values of all the taxpayer's interests in FIFs at the end of that year of income (other than interests in relation to which the operative provision does not apply to the taxpayer in respect of notional accounting periods that ended in that year of income because of Division 2 or 11);

the operative provision does not apply to the taxpayer in relation to the FIF or FIFs referred to in paragraph (a) in respect of the notional accounting period or notional accounting periods referred to in that paragraph.

- (2) For the purposes of subsection (1), the value at the end of the year of income of a person's interests in a FIF is taken to be:

- (a) the cost incurred by the person in acquiring the interest in the FIF; or
 - (b) the market value of the interest in the FIF at the end of the year of income;
- whichever is the greater amount.

Division 15—Exemption for certain interests of underwriting members of Lloyd's

526 Object of Division

The object of this Division is to exempt a taxpayer who is an underwriting member of Lloyd's from taxation in respect of foreign investment fund income that would otherwise be taken to accrue from a Premiums Trust Fund.

527 Exemption

The operative provision does not apply to a taxpayer who is an underwriting member of Lloyd's in relation to an interest in assets that form part of a Premiums Trust Fund, as referred to in section 83 of the Insurance Companies Act 1982 of the United Kingdom.

Division 16—Assessable income to include foreign investment fund income

528 Object of Division

The object of this Division is to include in a taxpayer's assessable income in certain circumstances foreign investment fund income that accrued to the taxpayer.

529 Foreign investment fund income to be included in assessable income

- (1) The circumstances in which this section applies to a taxpayer in relation to a FIF or FLP in respect of a notional accounting period of the FIF or FLP are as set out in section 485.
- (2) If foreign investment fund income accrued to a taxpayer to whom this section applies from a FIF or a FLP in respect of a notional accounting period of the FIF or FLP, the taxpayer's assessable income of the year of income in which the notional accounting period ended includes:
 - (a) if the taxpayer was a resident throughout the whole of the notional accounting period—the foreign investment fund income; or
 - (b) if the taxpayer was a resident throughout a part or parts of the notional accounting period—so much of the foreign investment fund income as is worked out using the formula:

$$\text{Foreign investment fund income} \times \frac{\text{Number of days of residence}}{\text{Total number of days}}$$

In the formula in paragraph (b):

foreign investment fund income means the amount of the foreign investment fund income that accrued to the taxpayer from the FIF or FLP in respect of the notional accounting period.

number of days of residence means the number of days in the notional accounting period throughout which the taxpayer was a resident.

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total number of days means the number of days in the notional accounting period.

530 Reduction of foreign investment fund income because of interim dividend or interim distribution of trust income

(1) If:

- (a) a FIF attribution account payment is made by a FIF or a FLP to a taxpayer during a notional accounting period of the FIF or FLP, as the case may be; and
- (b) under section 529 an amount of foreign investment fund income that is taken to have accrued to the taxpayer from that FIF or FLP in respect of that period would be included in the taxpayer's assessable income of the year of income in which that period ended;

the amount to be included (*the section 529 amount*) under that section in that assessable income is reduced by so much of the payment as:

- (c) is included in that assessable income; or
- (ca) was included in the taxpayer's assessable income of the year of income that immediately preceded the year of income referred to in paragraph (b); or
- (d) is a non-portfolio dividend (as defined in section 317) that is:
 - (i) non-assessable non-exempt income under section 23AJ; or
 - (ii) notional exempt income of the taxpayer under section 23AJ or 404;

and does not exceed the section 529 amount.

(2) If:

- (a) an amount of foreign investment fund income that accrued to a taxpayer from a FIF in respect of a notional accounting period of the FIF is included in the taxpayer's assessable income of a year of income; and
- (b) a residence-change time (within the meaning of section 457) in relation to a CFC occurs in that notional accounting period of the FIF; and
- (c) section 457 applies to the taxpayer in respect of the taxpayer's assessable income of the year of income in which the residence-change time occurs; and

(d) the CFC is the same entity as the FIF;
the amount included in the taxpayer's assessable income under section 457 is taken for the purposes of subsection (1) of this section to be a FIF attribution account payment made by the FIF to the taxpayer.

530A Reduction of foreign investment fund income because of employee share scheme shares or rights

(1A) If:

- (a) a taxpayer acquired a qualifying share or right under an employee share scheme and has not made an election under section 139E covering the share or right; and
- (b) for the whole of a notional accounting period of a FIF the following conditions are satisfied:
 - (i) the taxpayer holds the share or right;
 - (ii) the share or right is an interest in the FIF;
 - (iii) the cessation time for the share or right has not occurred;

the foreign investment fund income of the taxpayer, to the extent that it relates to the share or right, for the notional accounting period is zero.

(1) If:

- (a) a taxpayer acquired a qualifying share or right under an employee share scheme and has not made an election under section 139E covering the share or right; and
- (b) there is a period (the *reduction period*) forming part of a notional accounting period of a FIF in respect of which the following conditions are satisfied:
 - (i) the taxpayer holds the share or right;
 - (ii) the share or right is an interest in the FIF;
 - (iii) the cessation time for the share or right has not occurred;

the foreign investment fund income of the taxpayer for the notional accounting period is to be reduced by an amount equal to any increase in the market value of the share or right during the reduction period.

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- (2) In the section, *cessation time*, *market value*, *qualifying right* and *qualifying share* have the same meanings as in Division 13A of Part III.
- (3) This section applies in relation to a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right because of Subdivision DB of Division 13A of Part III in the same way as it applies in relation to a share or right.
- (4) The cessation time for the stapled security or right is the cessation time provided for in that Division.

**Division 17—Foreign Investment Fund losses resulting
from application of market value method or cash
surrender value method to be allowable
deductions**

531 Object of Division

The object of this Division is to allow foreign investment fund losses incurred by a taxpayer as a result of the application of the market value method in relation to a FIF, or the cash surrender value method in relation to a FLP, to be deducted from the taxpayer's assessable income.

**532 Foreign investment fund loss from FIF under market value
method to be allowable deduction**

If:

- (a) a taxpayer incurs a foreign investment fund loss under section 541 from a FIF in respect of a notional accounting period; and
- (b) a FIF attribution surplus for the FIF under section 604 exists in relation to the taxpayer at the end of that notional accounting period;

so much of that foreign investment fund loss as does not exceed that FIF attribution surplus is an allowable deduction from the taxpayer's assessable income of the year of income in which that notional accounting period ended.

**533 Foreign investment fund loss from FLP under cash surrender
value method to be allowable deduction**

If:

- (a) a taxpayer incurs a foreign investment fund loss under section 599 from a FLP in respect of a notional accounting period; and

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Division 17 Foreign Investment Fund losses resulting from application of market value method or cash surrender value method to be allowable deductions

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(b) a FIF attribution surplus for the FLP under section 604 exists in relation to the taxpayer at the end of that notional accounting period;

so much of that foreign investment fund loss as does not exceed that FIF attribution surplus is an allowable deduction from the taxpayer's assessable income of the year of income in which that notional accounting period ended.

533A Foreign investment fund losses to be expressed in Australian currency

For the purposes of section 532 or 533, if the foreign investment fund loss mentioned in that subsection is not expressed in Australian currency, it is to be converted to the corresponding amount in Australian currency in accordance with the rate of exchange applicable at the end of the notional accounting period.

Division 17A—Deduction for overseas superannuation transfers

533B Deduction for overseas superannuation transfers

If:

- (a) a taxpayer has an interest in a FIF that is a fund or scheme in relation to which Subdivision 305-B of the *Income Tax Assessment Act 1997* applies (see section 305-55 of that Act) (the *paying fund*); and
- (b) the paying fund transfers an amount to a complying superannuation fund in respect of the taxpayer; and
- (c) the taxpayer chooses under section 305-80 of the *Income Tax Assessment Act 1997* that the amount, or part of the amount, is to be treated as assessable income of the complying superannuation fund; and
- (d) immediately before the transfer happens, there is a FIF attribution surplus for the paying fund under section 604 in relation to the taxpayer;

then the taxpayer is entitled to a deduction, for the year of income in which the transfer happened, for the lesser of:

- (e) the FIF attribution surplus; and
- (f) the amount covered by the taxpayer's choice.

Division 18—How to determine whether Foreign Investment Fund income accrued to a taxpayer from a FIF or a FLP

Subdivision A—Preliminary

534 Object of Division

- (1) The object of this Division is to prescribe methods for determining whether any foreign investment fund income accrued from a particular FIF or FLP in respect of a notional accounting period to a taxpayer to whom the operative provision applies in relation to the FIF or FLP in respect of that period.
- (2) Subject to this Subdivision, there are 3 alternative methods for making a determination in relation to a FIF, as follows:
 - (a) the method set out in Subdivision B (*the market value method*);
 - (b) the method set out in Subdivision C (*the deemed rate of return method*);
 - (c) the method set out in Subdivision D (*the calculation method*).
- (3) Subject to this Subdivision, there are 2 alternative methods for making a determination in relation to a FLP, as follows:
 - (a) the method set out in Subdivision E (*the deemed rate of return method*);
 - (b) the method set out in Subdivision F (*the cash surrender value method*).

535 Methods applicable in relation to a FIF

- (1) Subject to this section, if it is practicable to apply the market value method in respect of the taxpayer's interest, or all of the taxpayer's interests in a particular class or classes, in a FIF in respect of the notional accounting period, the market value method is to be so applied.
 - (2) Subject to this section, if it is not practicable to apply the market value method in respect of the taxpayer's interest, or all of the
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taxpayer's interests in a particular class, in a FIF in respect of the notional accounting period, the deemed rate of return method is to be applied in respect of the interest or the interests in that class.

- (3) Subject to subsections (4) and (5), the taxpayer may elect to apply the calculation method in respect of all of the taxpayer's interests in a FIF in respect of a notional accounting period, and if such an election is made, the calculation method is to be so applied.
- (4) The taxpayer is not entitled to make an election under subsection (3) in relation to a FIF in relation to a notional accounting period (*the current notional accounting period*) if:
 - (a) the taxpayer has made an election under that subsection in relation to the FIF in relation to a previous notional accounting period ending after the day on which the *Taxation Laws Amendment Act (No. 2) 1993* receives the Royal Assent; and
 - (b) the taxpayer has not made an election under that subsection in relation to the FIF in relation to every notional accounting period (if any) in respect of which the operative provision applied that has occurred after the previous notional accounting period and before the current notional accounting period.
- (4A) Subsection (4) does not prevent the taxpayer from making an election under subsection (3) in relation to a FIF in relation to a notional accounting period if the taxpayer also makes a choice under subsection 559A(1) in relation to the FIF in relation to the notional accounting period.
- (5) The taxpayer is not entitled to make an election under subsection (3) in relation to a FIF unless the taxpayer also makes an election in relation to the FIF under subsection 486(3).
- (6) This section has effect subject to section 577.

536 Methods applicable in relation to FLP

- (1) The deemed rate of return method is to be applied in respect of the taxpayer's interest in a FLP in respect of a notional accounting period unless, under the following provisions of this section, the cash surrender value method is to be applied in respect of that period.

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Division 18 How to determine whether Foreign Investment Fund income accrued to a taxpayer from a FIF or a FLP

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- (2) Subject to subsection (3), the taxpayer may elect to apply the cash surrender value method in respect of the taxpayer's interest in the FLP in respect of a notional accounting period (*the relevant notional accounting period*) if the deemed rate of return method has not already been applied in respect of that interest in respect of that period.
- (3) The taxpayer is not entitled to make an election under subsection (2) in relation to a FLP unless the taxpayer also makes an election in relation to a FLP under subsection 487(3).
- (4) If such an election is made, then, subject to the following provisions of this section, the cash surrender value method is to be applied in respect of the relevant notional accounting period and in respect of every later notional accounting period.
- (5) An election under subsection (2) is irrevocable.
- (6) If the cash surrender value method would, apart from this subsection, be required to be applied in respect of a notional accounting period but the taxpayer is unable to provide cash surrender values for the beginning and the end of that period, the cash surrender value is not to be applied in respect of that period or any later notional accounting period.
- (7) If the deemed rate of return method is to be applied in respect of a notional accounting period because of subsection (6) and the cash surrender value method has been applied in respect of one or more previous notional accounting periods, then subsections (8) and (9) have effect.
- (8) The application of the deemed rate of return method in respect of the first notional accounting period in respect of which it is to be applied because of subsection (6) (*the notional accounting period concerned*) is to be on the same basis as that on which it would have been applied if the cash surrender value method had not been applied in respect of any previous notional accounting period.
- (9) However, if:
 - (a) the FLP was issued after 3 November 1992; and
 - (b) the amount, or the sum of the amounts, of foreign investment fund income (*the actual FIF income*) that accrued to the taxpayer from the FLP in respect of the notional accounting

period or notional accounting periods in respect of which the cash surrender value method was applied is less than the amount, or the sum of the amounts, of foreign investment fund income (*the notional FIF income*) that would have so accrued if the deemed rate of return method had been applied in respect of that period or those periods;

the amount that, apart from this subsection, would have been the foreign investment fund income that accrued to the taxpayer from the FLP in respect of the notional accounting period concerned is increased by the amount worked out using the formula:

The notional FIF income - The actual FIF income.

Subdivision B—Market value method for FIFs

537 Procedure for determining foreign investment fund income by market value method

- (1) This Subdivision applies only if it is practicable to ascertain, as at the relevant times referred to in this Subdivision, the market value of the interest, or the market values of all the interests in a particular class or classes, of a person (*the taxpayer*) in a FIF. For the purposes of this Subdivision as so applying, a reference to an interest in a FIF is a reference to an interest of which it is practicable to ascertain the market value as at the relevant time.
- (2) Accordingly, this Subdivision sets out the procedure for determining by the market value method whether, in respect of the interest, or the interests in the class or classes concerned, any foreign investment fund income accrued to the taxpayer from the FIF in respect of a notional accounting period (*the relevant period*). There are 2 steps in this procedure, which are set out in sections 538 and 542, respectively.

538 Step 1—calculation of foreign investment fund amount

- (1) The first step in the procedure is to work out the foreign investment fund amount in relation to the taxpayer in respect of the relevant period.

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- (2) This is done as follows:
- (a) first, determine the market value of the taxpayer's interest, or the sum of the market values of all the taxpayer's interests in the relevant class or classes, on the last day of the period;
 - (b) secondly, add the amount or value of each distribution (if any) in respect of the interest, or any of the interests, held on that day that was made by the FIF to the taxpayer during the period;
 - (c) thirdly, if the taxpayer had that interest or any of those interests on the day immediately before the first day of the period, deduct:
 - (i) if subparagraph (ii) does not apply—the market value of the interest or interests on that day; or
 - (ii) if the deemed rate of return method was applied, in respect of the taxpayer's interest or interests in the FIF, in respect of the notional accounting period immediately before the relevant period—the value, determined under section 551 in accordance with that method, of the group or groups of interests of the taxpayer in the FIF on that day;
 - (d) fourthly, if the taxpayer acquired that interest or any of those interests during the period, deduct the amount or value of the consideration paid or given by the taxpayer in respect of the acquisition;
 - (e) fifthly, if the taxpayer disposed of any interest or interests in the relevant class or classes during the period, add the amount or value of each distribution (if any) in respect of that interest or those interests made by the FIF to the taxpayer during the period.
- (3) Unless the taxpayer has made an election under subsection (4) in relation to the FIF, each amount resulting from the application of one of the paragraphs of subsection (2) is to be expressed in the currency used in determining the market value referred to in paragraph (2)(a).
- (4) The taxpayer may elect that each amount required to be calculated under any paragraph of subsection (2) is to be expressed in Australian currency at the exchange rate applicable:
- (a) in the case of paragraph (2)(a)—on the day referred to in that paragraph; and

- (b) in the case of paragraph (2)(b) or (e)—at the time of each distribution referred to in that paragraph; and
 - (c) in the case of paragraph (2)(c)—on the day when the taxpayer had the interests as mentioned in that paragraph; and
 - (d) in the case of paragraph (2)(d)—at the time when the consideration referred to in that paragraph is paid or given.
- (5) If the taxpayer makes the election:
- (a) it applies in relation to all of the taxpayer's interests in the FIF in relation to the relevant period and all later relevant periods; and
 - (b) it is irrevocable.

539 How market value is ascertained

- (1) For the purposes of the application of section 538 in relation to the taxpayer in respect of the relevant period, the market value of an interest in the FIF on a particular day (*the relevant day*) is to be determined in accordance with this section.
- (2) If the interest is included in a class of interests that were quoted on the relevant day on the stock market of an approved stock exchange, the market value of the interest on that day is the amount worked out on the basis of the quoted price of such an interest on that day on that stock market.
- (3) If:
 - (a) an interest in a company or trust is not included in a class of interests that were quoted on the relevant day on the stock market of an approved stock exchange; and
 - (b) the interest is included in a class of interests for which, at intervals of not more than 12 months:
 - (i) the company, or the trustee or manager of the trust, offered a buy-back or redemption price; or
 - (ii) an associate of the company, or of the trustee or manager, offered a purchase price; and
 - (c) there was on that day such a buy-back, redemption or purchase price, being a price that:
 - (i) was publicly available and was offered to all persons having interests in that class; and

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(ii) was calculated by reference to the market values of the assets of the company or trust; and

(iii) represents an arm's length valuation of the interest on that day;

the market value of the interest on that day is the amount worked out on the basis of that price.

(4) If:

(a) the relevant period started on 1 January 1993; and

(b) the relevant day is 31 December 1992; and

(c) neither subsection (2) nor (3) applies to the class of interests in which the interest is included; and

(d) subsection (2) or (3) would apply to the class of interests in both of the following cases:

(i) if the relevant day were instead the last reporting day for the FIF before 1 January 1993;

(ii) if the relevant day were instead the next reporting day for the FIF on or after 1 January 1993, being a reporting day that is not more than 12 months after the one referred to in subparagraph (i);

the market value of the interest on the relevant day is the average of the 2 market values that would be applicable under paragraph (d) on the reporting days referred to in subparagraphs (d)(i) and (ii).

(5) A reference in this section to a quoted price on a particular day of a class of interests on the stock market of an approved stock exchange is, if the class of interests is quoted on that day on 2 or more such stock markets, taken to be a reference to the quoted price on that day of that class of interests on whichever of those stock markets is nominated by the taxpayer.

(6) If the taxpayer has nominated a particular stock market for the purposes of the application of this section in respect of the taxpayer's interest in a particular FIF, that stock market is taken to continue to be so nominated by the taxpayer unless and until it is no longer practicable to use that stock market for those purposes as, for example, if that stock market ceases to exist or the class of interests in the FIF in which the taxpayer's interest is included ceases to be quoted on that stock market.

- (7) A reference in subsection (4) to a reporting day for a FIF is a reference to a day on which:
- (a) in the case of a foreign company—the directors reported to the members on the financial position of the company; or
 - (b) in the case of a foreign trust—the trustee or manager of the trust reported to the holders of interests in the trust on the financial position of the trust.

540 Gross foreign investment fund income

If the foreign investment fund amount as worked out under section 538 is a positive amount, that amount is gross foreign investment fund income in relation to the taxpayer from the FIF in respect of the relevant period.

541 Foreign investment fund loss

If the foreign investment fund amount as worked out under section 538 is a minus amount, that amount is a foreign investment fund loss incurred by the taxpayer from the FIF in respect of the relevant period.

542 Step 2—Calculation of foreign investment fund income

- (1) The second step in the procedure is to work out under this section the amount of any foreign investment fund income in relation to the taxpayer in respect of the relevant period.
- (2) If:
- (a) there is, under section 540, any gross foreign investment fund income in relation to the taxpayer from the FIF in respect of the relevant period; and
 - (b) that gross foreign investment fund income exceeds the total of any unapplied previous foreign investment fund losses incurred by the taxpayer from the FIF in respect of a notional accounting period or notional accounting periods before the relevant period;
- the following provisions have effect.
- (3) If no election is made under subsection 538(4) in relation to the FIF, the excess referred to in paragraph (2)(b) is to be converted to the corresponding amount in Australian currency in accordance

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with the rate of exchange applicable at the end of the relevant period.

- (4) Foreign investment fund income equal to that corresponding amount is taken to have accrued to the taxpayer from the FIF in respect of the relevant period.
- (5) The reference in paragraph (2)(b) to an unapplied foreign investment fund loss incurred by the taxpayer from the FIF in respect of a notional accounting period before the relevant period is a reference to so much of the undeducted amount of a foreign investment fund loss under section 541 that was incurred by the taxpayer from the FIF in respect of any such notional accounting period as exceeds the sum of the amounts (if any) worked out under the following paragraphs in respect of each referable notional accounting period of the FIF:
 - (a) if paragraph (b) does not apply to the referable notional accounting period concerned—any amount that under section 540 was gross foreign investment fund income in relation to the taxpayer from the FIF in respect of that period; or
 - (b) if the operative provision did not apply to the taxpayer in respect of the referable notional accounting period concerned, or the application of the operative provision to the taxpayer in respect of that period was affected, because of any of Divisions 2 to 9 and 11 to 15:
 - (i) any amount that under section 540 would have been gross foreign investment fund income in relation to the taxpayer from the FIF in respect of that period; or
 - (ii) any amount by which the amount that under section 540 was gross foreign investment fund income in relation to the taxpayer from the FIF in respect of that period would have been increased; or
 - (iii) any amount by which the amount that under section 541 was a foreign investment fund loss in relation to the taxpayer from the FIF in respect of that period would have been reduced;

if the operative provision had applied to the taxpayer in respect of that period or the application of the operative provision to the taxpayer in respect of that period had not been so affected, as the case may be.

- (6) In subsection (5):

undeducted amount, in relation to a foreign investment fund loss, means so much of that loss as has not been allowed, and is not allowable, as a deduction under section 532 from the taxpayer's assessable income of any year of income preceding the year of income in which the relevant period ends.

referable notional accounting period, in relation to a FIF, means a notional accounting period of the FIF that occurred after the notional accounting period in which the foreign investment fund loss was incurred and before the relevant period.

- (7) In calculating under subsection (5) the extent (if any) to which a foreign investment fund loss that was incurred by the taxpayer from a FIF in respect of a notional accounting period is an unapplied previous foreign investment fund loss, an amount worked out under paragraph (5)(a) or subparagraph (5)(b)(i), (ii) or (iii) does not include any part of that amount that has been, or is to be, taken into account in calculating the extent to which a foreign investment fund loss under section 541 that was incurred by the taxpayer from the FIF in respect of a notional accounting period before the first-mentioned notional accounting period was an unapplied previous foreign investment fund loss.
- (8) For the purposes of applying subsections (5), (6) and (7) in working out the amount of an unapplied previous foreign investment fund loss, if any amount that is to be taken into account under any of those subsections in relation to a notional accounting period is not expressed in the same currency as the gross foreign investment fund income mentioned in paragraph (2)(a), the amount is to be converted to the corresponding amount in that currency in accordance with the rate of exchange applicable at the end of that notional accounting period.

Subdivision C—Deemed rate of return method for FIFs

Procedure to be followed

543 Procedure for determining foreign investment fund income from a FIF by deemed rate of return method

This Subdivision sets out in several steps the procedure for determining by the deemed rate of return method whether any foreign investment fund income accrued to a person (*the taxpayer*) from a particular FIF in respect of a notional accounting period (*the relevant period*). In following the procedure it is necessary to determine the value of an interest in a FIF on a day called *the relevant day*, which has the meaning given by section 545, and then to apply a specified rate of return to that value.

544 Step 1—groups of interests

- (1) The first step in the procedure is to determine:
 - (a) whether the taxpayer had only one interest, or had 2 or more interests, in the FIF during the relevant period; and
 - (b) if the taxpayer had 2 or more such interests—whether any of the interests form a group or groups within the meaning of subsection (4) or (5).
- (2) Subject to subsection (6), if the taxpayer had only one interest in a FIF during the relevant period, the procedure applies in respect of the interest and so applies as if the interest were a group.
- (3) If the taxpayer had 2 or more interests in a FIF during the relevant period, the procedure:
 - (a) applies separately in respect of each interest (if any) that is not included in a group and so applies as if each such interest were a separate group; and
 - (b) if any of the interests form a group or groups—applies separately in respect of the group or each of the groups.
- (4) Interests in a FIF which are of the same class and which the taxpayer had throughout the relevant period form a group.

- (5) Subject to subsection (6), interests in a FIF which are of the same class and which the taxpayer had throughout the same part of the relevant period form a group.
- (6) Any interest in a FIF that the taxpayer ceased to have before the end of the relevant period is to be disregarded.

Determination of Opening Value

545 Step 2—determination of opening value of interests

The second step is to determine the value of the interests in the group or the respective values of the interests in each group as at the day (*the relevant day*) referred to in whichever of the following paragraphs applies:

- (a) if the taxpayer had the interests in the FIF at the beginning of the relevant period—the day immediately preceding the first day of the relevant period; or
- (b) if the interests in the FIF were acquired by the taxpayer during the relevant period—the day on which they were acquired.

550 If relevant period starts after 1 January 1993

If the interests in the group were acquired before the start of the relevant period and that period starts on a day later than 1 January 1993, the value of the interests on the relevant day is to be determined in accordance with section 551, 552 or 553, as the case requires.

551 Value of interests at start of relevant period (being later than 1 January 1993)—deemed rate of return method applied for previous period

If the deemed rate of return method was applied in respect of the notional accounting period that immediately preceded the relevant period, the value of the interests in the group on the relevant day is to be determined as follows:

- (a) first, ascertain the value, as previously determined under this Subdivision, of the interests in the group at the beginning of the immediately preceding period or, if any of the interests

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were acquired after that time, at the date or dates of the acquisition of the interest or interests concerned;

- (b) secondly, add so much of the foreign investment fund income determined in relation to the taxpayer in respect of the immediately preceding period as was attributable to the interests in the group;
- (c) thirdly, deduct the amount or value of so much (if any) of any distributions made by the FIF to the taxpayer during the immediately preceding period as were attributable to the interests in the group.

552 Value of interests at start of relevant period (being later than 1 January 1993)—calculation method applied, or interests exempt, for previous period

- (1) If:
 - (a) the calculation method was applied in respect of the notional accounting period immediately preceding the relevant period; or
 - (b) the operative provision did not apply to the taxpayer in respect of that immediately preceding period, or the application of the operative provision to the taxpayer in respect of that notional accounting period was affected, because of any of Divisions 2 to 15;the value of the interests in the group on the relevant day is to be determined in accordance with this section.
- (2) If the interests are included in a class of interests for which there were quoted prices on an approved stock exchange at any time during the immediately preceding period, the value of the interests in the group on the relevant day is the amount worked out on the basis of the quoted price for such an interest on the latest day during the immediately preceding period on which there was a quoted price for such an interest on such a stock exchange.
- (3) If it is not practicable to determine the value of the interests in a group on the relevant day under subsection (2), that value is taken to be the amount that would be that value if:
 - (a) this Part had been in force at all times since the interests were acquired; and

- (b) the value of each interest in the group at the date on which it was acquired was the consideration paid or given in respect of the acquisition by the taxpayer; and
- (c) subject to paragraph (b), the deemed rate of return method had been used to determine whether any foreign investment fund income accrued to the taxpayer from the FIF in respect of each notional accounting period of the FIF before the relevant period.

553 Value of interests at start of relevant period (being later than 1 January 1993)—market value method applied for previous period

If the market value method was applied in respect of the notional accounting period immediately preceding the relevant period, the value of the interests in the group on the relevant day is the value of the interests at the end of that immediately preceding period as determined in accordance with that method.

554 Value of interests at time of acquisition (after start of relevant period)

If the interests in the group were acquired by the taxpayer during the relevant period, the value of the interests on the relevant day is the consideration paid or given by the taxpayer in respect of the acquisition.

Application of Rate of Return to Opening Value

555 Step 3—determination of foreign investment fund amount

- (1) The third step is to determine, in relation to the taxpayer in respect of the relevant period, the foreign investment fund amount in respect of the taxpayer's interests in the group.
- (2) The foreign investment fund amount is the amount worked out using the formula:

$$\text{Opening value} \times \text{Deemed rate of return} \times \frac{\text{Number of days held}}{365}$$

For the purposes of this subsection:

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Opening value means the value of the interests in the group on the relevant day.

Deemed rate of return, in relation to the relevant period, means:

- (a) if there is only one base interest rate in relation to the year of income in which the relevant period ends—that rate; or
 - (b) if there are 2 or more base interest rates in relation to that year of income—the weighted average of those rates;
- increased, in either case, by 4 percentage points.

Number of days held means the number of days in the relevant period in which the taxpayer had the interests in the group.

556 Step 4—conversion of foreign investment fund amount to Australian currency

- (1) If the taxpayer's interests in the FIF during the relevant period form one group only, the foreign investment fund amount determined in respect of the taxpayer's interests in the group is to be converted to the corresponding amount in Australian currency in accordance with the rate of exchange applicable at the end of that period.
- (2) If the taxpayer's interests in the FIF during the relevant period form 2 or more groups, the sum of the foreign investment fund amounts respectively determined in respect of the taxpayer's interests in each of those groups is to be converted to the corresponding amount in Australian currency in accordance with the rate of exchange applicable at the end of that period.

557 Foreign investment fund income

Foreign investment fund income equal to the corresponding amount calculated under subsection 556(1) or (2), as the case requires, is taken to have accrued to the taxpayer from the FIF in respect of the relevant period.

Subdivision D—Calculation method for FIFs

Procedure to be followed

557A Certain other provisions to be disregarded in applying this Subdivision

In applying this Subdivision, disregard:

- (a) Division 974 of the *Income Tax Assessment Act 1997*; and
- (b) the operation of any provision of this Act to the extent to which that operation depends on an expression whose meaning is given by Division 974 of the *Income Tax Assessment Act 1997*.

558 Procedure for determining foreign investment fund income by calculation method

- (1) This Subdivision sets out the procedure for determining by the calculation method whether any foreign investment fund income accrued to a person (*the taxpayer*) from a particular FIF in respect of a notional accounting period (*the relevant period*).
- (2) The procedure is to be applied separately for each taxpayer.
- (3) The procedure involves:
 - (a) determining whether, for the purposes of the application of this Subdivision in relation to the taxpayer, there is any calculated profit or calculated loss in respect of the FIF in respect of the relevant period; and
 - (b) if there is such a calculated profit, determining the share of that calculated profit to which the taxpayer is entitled; and
 - (c) if there is such a calculated loss, taking the calculated loss into account in respect of later notional accounting periods as provided in section 572.

559 Determination of calculated profit or calculated loss of FIF

- (1) The first step in the procedure referred to in paragraph 558(3)(a) is to work out the notional income of the FIF of the relevant period.
- (2) The second step in that procedure is to work out the notional deductions from that notional income.

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- (3) If the notional income exceeds the notional deductions, the excess is a calculated profit in respect of the FIF in respect of the relevant period.
- (4) If the notional income is less than the notional deductions, the difference is a calculated loss in respect of the FIF in respect of the relevant period.
- (5) All calculations for the purpose of determining whether there is a calculated profit or a calculated loss in respect of the FIF in respect of the relevant period are to be made in the currency in which the accounts of the FIF are made out.
- (6) If an amount that is to be included in the notional income of the FIF of the relevant period or is to be a notional deduction from that notional income is expressed in a currency other than the currency referred to in subsection (5), that amount is to be converted into the corresponding amount in the currency referred to in subsection (5) at such rate of exchange as is reasonable and appropriate.
- (7) After any calculated profit in respect of the FIF in respect of the relevant period is determined, the amount of that calculated profit is to be converted into the corresponding amount in Australian currency at the rate of exchange applicable at the end of the relevant period.

559A Choice to work out notional income and notional deductions under Part X

- (1) The taxpayer may choose to work out the notional income and notional deductions of the FIF in accordance with subsection (3) if:
 - (a) the FIF is a foreign company; and
 - (b) the taxpayer's attribution percentage in relation to the FIF is 10% or more at the end of the relevant period; and
 - (c) if the taxpayer has previously made a choice under this subsection in relation to the FIF in relation to a notional accounting period of the FIF—the taxpayer has made such a choice in relation to the FIF in relation to every notional accounting period of the FIF (if any) occurring between:
 - (i) the end of the notional accounting period of the FIF for which the taxpayer first made such a choice in relation to the FIF; and

- (ii) the start of the relevant period.
- (2) For the purposes of this section:
- (a) treat the FIF as a FIF that is a CFC; and
 - (b) treat the taxpayer as an attributable taxpayer in relation to the FIF throughout the relevant period; and
 - (c) treat the relevant period as the statutory accounting period of the FIF.

Main rule—work out notional income and notional deductions under Part X, etc.

- (3) For the purposes of working out the notional income and notional deductions of the FIF of the relevant period:
- (a) treat that notional income as the FIF's notional assessable income worked out under Part X for the relevant period; and
 - (b) treat those notional deductions as the FIF's notional allowable deductions worked out under Part X for the relevant period; and
 - (c) if the taxpayer is an AFI entity at a particular time in the relevant period—treat the FIF as an AFI subsidiary at that time.
- (4) In working out the FIF's notional allowable deductions for the purposes of paragraph (3)(b):
- (a) disregard sections 429 and 431 (which deal with losses); and
 - (b) instead, include notional deductions (if any) from the notional income of the FIF of the relevant period worked out under section 572 (which deals with notional deductions for calculated losses for prior periods).
- (5) For the purposes of subsection (3), treat the FIF's commencing day mentioned in Subdivision C of Division 7 of Part X as the first day of the period over which, apart from this section, the profits or gains of a capital nature derived by the FIF during the relevant period would be determined.

Application of sections 575 to 579

- (6) For the purposes of subsection (3), apply sections 575 to 579 in relation to a taxpayer (the **actual taxpayer**), subject to the rules in subsections (7) and (8).

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- (7) If the actual taxpayer has made a choice under subsection (1) in relation to a FIF (the *first-tier FIF*), in working out the first-tier FIF's notional assessable income for the purposes of paragraph (3)(a):
- (a) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which deal with amounts included in notional assessable income under Part XI); and
 - (b) instead, include in that notional assessable income the first-tier FIF's notional income worked out under section 576.
- (8) If the taxpayer mentioned in paragraphs (1)(b) and (3)(c) is the first-tier FIF mentioned in section 576 (because of the effect of section 576 on this section):
- (a) treat the references in those paragraphs to the taxpayer as references to the actual taxpayer (and not to the first-tier FIF); and
 - (b) if, as a result of paragraph (a), the actual taxpayer has made a choice under subsection (1) in relation to a FIF (the *second-tier FIF*)—in working out the second-tier FIF's notional assessable income for the purposes of paragraph (3)(a):
 - (i) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which deal with amounts included in notional assessable income under Part XI); and
 - (ii) instead, include in that notional assessable income the second-tier FIF's notional income worked out under section 579.

Note: The actual taxpayer cannot make a choice under subsection (1) in relation to a third-tier FIF, because the calculation method is not available in respect of a third-tier FIF (see subparagraph 579(b)(ii)).

Definitions

- (9) In this section:

AFI entity has the same meaning as in section 326.

AFI subsidiary has the same meaning as in Part X (see section 326).

attributable taxpayer has the same meaning as in Part X (see section 361).

attribution percentage has the same meaning as in Part X (see section 362).

notional allowable deductions has the same meaning as in Part X (see section 382).

notional assessable income has the same meaning as in Part X (see section 382).

What is included in notional income

560 Notional income—general provision

- (1) The notional income of the FIF of the relevant period includes the gross income, and the profits or gains of a capital nature, derived by the FIF during that period.
- (2) For the purposes of the application of this Subdivision to the taxpayer in relation to a FIF, an amount (***the excluded amount***) is not to be taken into account in determining whether an amount is to be included in the notional income of the FIF of the relevant period, or in calculating an amount to be so included, to the extent (if any) to which the excluded amount:
 - (a) has been, or is to be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of the relevant period or a previous notional accounting period; or
 - (b) would have been, or would be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of a previous notional accounting period if the taxpayer had been required for the purposes of this Part to work out the notional deductions from that notional income.

561 Section 560 to be subject to following provisions

Section 560 is subject to sections 562 to 566, but those sections do not limit by implication the application of section 560 in circumstances to which those sections do not apply.

Section 562

562 Notional income—discounted securities

- (1) Subject to subsection (2), if the FIF was the holder of a qualifying security within the meaning of Division 16E of Part III during the relevant period, that Division applies, so far as it is capable of application, for the purpose of determining whether an amount is included in the notional income of the FIF of the relevant period in respect of that security as if the FIF were a taxpayer that is a resident and that period were the year of income in which that period ends.
- (2) If the accounting standards applicable during the relevant period in the country in which the FIF is incorporated or established require part of any discount or deferred interest in respect of the qualifying security to be treated in the accounts of the FIF as having been derived by the FIF during that period on an accruing basis, and an amount is shown in those accounts as having been so derived, the amount to be included in the notional income of the FIF of that period in respect of that security is the amount so shown in those accounts.

563 Notional income—interest in net income from partnership

- (1) If:
 - (a) the FIF was a partner in a partnership at the end of the accounting period of the partnership; and
 - (b) that accounting period of the partnership ends in the relevant period;the notional income of the FIF of the relevant period includes the interest of the FIF in any net income of the partnership of that accounting period.
- (2) For the purposes of subsection (1):
 - (a) a partnership has a net income in relation to an accounting period of the partnership if the amount that, if the partnership were a FIF and that accounting period were a notional accounting period, would be the notional income of the partnership of that accounting period under this section exceeds the notional deductions that would be allowable from that notional income; and
 - (b) the excess is taken to be the amount of that net income.

564 Notional income—exclusion of certain dividends and trust distributions

- (1) The notional income of the FIF in respect of the relevant period does not include any dividend or distribution paid to the FIF by another FIF unless the FIF's interest in the other FIF is covered by Division 8.
- (2) If the FIF's interest in the other FIF is covered by Division 8, the notional income of the FIF in respect of the relevant period does not include any dividend or distribution paid to the FIF by the other FIF to the extent of the grossed-up amount of a FIF attribution debit that arises in relation to the taxpayer as a result of the dividend or distribution.

565 Derivation of income, profits or gains

Income, profits or gains are taken to have been derived by a FIF although the income, profits or gains are not actually paid to the FIF but are reinvested, accumulated, capitalised, carried to a reserve, sinking fund or insurance fund (however designated), or are otherwise dealt with on behalf of the FIF or as the FIF directs.

566 Notional income to be pre-tax

An amount included in the notional income of a FIF is an amount before the payment of any foreign tax or Australian tax in respect of that amount.

What are notional deductions

567 Notional deductions—general provision

Subject to sections 568 to 574, any losses or outgoings of a revenue or capital nature incurred by the FIF during the relevant period, to the extent to which they relate to income, or to profits or gains of a revenue nature, are notional deductions from the notional income of the FIF of that period.

567A Notional deductions: net capital losses

- (1) Any net capital losses incurred by the FIF during the relevant period (other than losses taken into account under section 567) are

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notional deductions from the notional income of the FIF of that period.

- (2) For the purposes of the application of this Subdivision to the taxpayer in relation to a FIF, an amount (the *excluded amount*) is not taken into account in determining whether an amount is a notional deduction from the notional income of the FIF of the relevant period, or in calculating the amount of such a deduction, to the extent (if any) to which the excluded amount:
- (a) has been, or is to be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of the relevant period or a previous notional accounting period; or
 - (b) would have been, or would be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of a previous notional accounting period if the taxpayer had been required for the purposes of this Part to work out the notional deductions from that notional income.

568 Notional deductions—expenditure in acquiring trading stock

Without limiting the generality of section 567, expenditure incurred by the FIF during the relevant period in the acquisition of trading stock (not being securities within the meaning of the *Corporations Act 2001*) is, subject to section 574, a notional deduction from the notional income of the FIF of that period.

569 Notional deductions—exclusion of expenditure in acquiring securities or partnership interest

Expenditure incurred by the FIF during the relevant period in the acquisition of shares or interests in shares in a company, an interest in a trust, other securities, or an interest in a partnership, is not a notional deduction from the notional income of the FIF of that period.

570 Notional deductions—amortisation of expenditure in acquiring property

- (1) Subject to subsection (1A), if:

- (a) the accounts of the FIF in respect of the relevant period include an amount in respect of the amortisation of the expenditure incurred in the acquisition of:
 - (i) a depreciating asset within the meaning of Division 40 of the *Income Tax Assessment Act 1997*; or
 - (ii) industrial property within the meaning of Division 10B of Part III of this Act; or
 - (iii) any other prescribed class of property; and
- (b) the amortisation is based on the effective life of the depreciating asset or industrial or other property; and
- (c) the accounts were prepared in accordance with generally accepted accounting principles and give a true and fair view of the financial position of the FIF;

the amount so included is, subject to section 574, a notional deduction from the notional income of the FIF of the relevant period.

(1A) If:

- (a) the accounts of the FIF in respect of one or more accounting periods include an amount in respect of the amortisation of the expenditure incurred in the acquisition of a class of property prescribed for the purposes of subparagraph (1)(a)(iii); and
 - (b) the regulations prescribing the class also prescribe a percentage as the annual amortisation percentage in relation to the class, or a category of property included in the class;
- then subsection (1) must be applied, in relation to each notional accounting period that is appropriate, as if the accounts had amortised the expenditure in relation to the class or the category on the basis of the prescribed annual amortisation percentage.
- (2) Except as provided in subsection (1), no amount in respect of the amortisation of expenditure in the acquisition of any property is a notional deduction from the notional income of the FIF of the relevant period.

571 Notional deductions—interest in partnership loss

(1) If:

- (a) the FIF was a partner in a partnership at the end of an accounting period of the partnership; and

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- (b) that accounting period of the partnership ends in the relevant period;
- the interest of the FIF in a partnership loss of the partnership of that accounting period is, subject to section 574, a notional deduction from the notional income of the FIF of the relevant period.
- (2) For the purposes of subsection (1):
- (a) a partnership has a partnership loss in relation to an accounting period of the partnership if the amount of the deductions that, if the partnership were a FIF and that accounting period were a notional accounting period, would be notional deductions under this section from the notional income of the FIF of that period exceeds that notional income; and
- (b) the excess is taken to be the amount of that partnership loss.

572 Notional deductions—past calculated losses

- (1) If there was any calculated loss, or there were any calculated losses, in respect of the FIF under subsection 559(4) in respect of any notional accounting period or notional accounting periods of the FIF that preceded the relevant period (other than such a preceding notional accounting period that ended before the taxpayer first acquired an interest in the FIF), so much of that calculated loss or of those calculated losses as has not been allowed as a notional deduction from the notional income of the FIF of any of those preceding notional accounting periods is a notional deduction from the notional income of the FIF of the relevant period.
- (2) If 2 or more calculated losses are notional deductions under subsection (1), the calculated losses are to be taken into account in the order in which they were incurred.

573 Notional deductions—taxes

An amount paid by the FIF in respect of Australian tax or foreign tax is a notional deduction from the notional income of the FIF in respect of the relevant period to the extent to which the tax or foreign tax relates to an amount or amounts included in that notional income.

574 Notional deductions—certain amounts to be excluded

- (1) The following expenditure incurred by the FIF during the relevant period is not a notional deduction from the notional income of the FIF of that period:
 - (a) expenditure incurred in the acquisition of:
 - (i) plant, articles, depreciating asset or industrial or other property referred to in paragraph 570(1)(a); or
 - (ii) land or buildings; or
 - (iii) goodwill; or
 - (iv) gold, silver or other precious metals; or
 - (v) any other capital asset;except to the extent that the expenditure is incidental to the acquisition;
 - (b) repayments of debts;
 - (c) any other prescribed expenditure.
- (2) For the purposes of the application of this Subdivision to the taxpayer in relation to a FIF, an amount is not to be a notional deduction from the notional income of the FIF of the relevant period to the extent (if any) to which the amount:
 - (a) has been, or is to be, taken into account in the calculation, in relation to the taxpayer, of an amount included, or to be included, in the notional income of the FIF in respect of the relevant period or in respect of a previous notional accounting period; or
 - (b) would have been, or would be, taken into account in the calculation, in relation to the taxpayer, of an amount that would have been, or would be, included in the notional income of the FIF in respect of a previous notional accounting period if the taxpayer had been required for the purposes of this Part to work out that notional income.

Procedure if FIF has interest in a second tier FIF or in a FLP

575 Application

- (1) Sections 576 to 579 apply if a FIF (*the first tier FIF*) had an interest in another FIF (*the second tier FIF*) or in a FLP during the whole or the part of the notional accounting period of the second tier FIF or of the FLP that ended in the relevant period.

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- (2) For the purposes of the application of the sections referred to in subsection (1), it is to be assumed that:
- (a) the relevant period was a year of income; and
 - (b) the first tier FIF was a taxpayer that was a resident in relation to that year of income; and
 - (c) Divisions 2 to 7 and 9 to 15 were disregarded; and
 - (d) references in this Part to assessable income were references to notional income.

576 Notional income of FIF to include foreign investment fund income from second tier FIF or from FLP

The notional income of the first tier FIF in respect of the relevant period includes any amount of foreign investment fund income that would, on the assumptions referred to in subsection 575(2), be taken under this Part to have accrued to the first tier FIF from the second tier FIF or from the FLP in respect of the relevant period.

577 How to determine whether foreign investment fund income accrued from second tier FIF or from FLP

- (1) Subject to subsection (2), in determining whether any foreign investment fund income would be taken to have accrued to the first tier FIF from the second tier FIF or from the FLP in respect of the relevant period:
- (a) any declaration, election, choice or selection that could be made, any notice that could be given, or any option that could be exercised, under this Act by the first tier FIF apart from this section is not to be made, given or exercised by the first tier FIF but instead may be made, given or exercised by the taxpayer; but
 - (b) if the first tier FIF is not a CFC—the taxpayer is not entitled to make an election under subsection 535(3), as that subsection applies because of paragraph (a), to use the calculation method in respect of the second tier FIF unless:
 - (i) the taxpayer has also made an election under subsection 535(3) to use that method in respect of the first tier FIF; and
 - (ii) the taxpayer also makes the election in relation to the second tier FIF under subsection 486(3) that the

taxpayer is entitled to make because of paragraph (a) of this subsection.

(2) If:

- (a) a FIF that is a CFC had an interest in a FIF that is not a CFC (*the first non-controlled FIF*); and
- (b) the first non-controlled FIF had an interest in another FIF that is not a CFC (*the second non-controlled FIF*);

the taxpayer is taken not to have made an election under subsection 535(3), as that subsection applies because of paragraph (1) (a), to use the calculation method in respect of the second non-controlled FIF.

578 What happens if there is a calculated loss in respect of second tier FIF

If there was a calculated loss in respect of the second tier FIF under subsection 559(4) in respect of the second tier FIF's notional accounting period, that calculated loss is taken into account as provided in section 572 for the purpose of determining whether any amount of foreign investment fund income would be taken under this Part to accrue to the first tier FIF from the second tier FIF in subsequent notional accounting periods of the first tier FIF.

579 If second tier FIF has interest in a third tier FIF or in a FLP

If the taxpayer elects to use the calculation method in respect of the second tier FIF, and the second tier FIF had an interest in another FIF (*the third tier FIF*) or in a FLP during the whole or a part of the notional accounting period of the third tier FIF or of the FLP that ended in a notional accounting period of the second tier FIF, the following provisions have effect:

- (a) the notional income of the second tier FIF includes any amount of foreign investment fund income that would, if the assumptions referred to in subsection 575(2) applied to the second tier FIF, be taken under this Part to have accrued to the second tier FIF from the third tier FIF or from the FLP in respect of the second tier FIF's or the FLP's notional accounting period;

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- (b) in calculating the foreign investment fund income referred to in paragraph (a):
 - (i) any declaration, election, selection or choice that could be made, any notice that could be given, or any option that could be exercised, under this Act by the second tier FIF or by the FLP apart from this subparagraph is not to be made, given or exercised by the second tier FIF or by the FLP but instead may be made, given or exercised by the taxpayer; and
 - (ii) the taxpayer is taken not to have made an election under subsection 535(3), as that subsection applies because of paragraph (a), to use the calculation method in respect of the third tier FIF.

How to determine taxpayer's share of calculated profit of foreign company

580 Procedure to be followed

- (1) The procedure for determining the share of the calculated profit of a foreign company in respect of the relevant period to which the taxpayer is entitled is to work out in accordance with this section:
 - (a) the part of the taxpayer's share of the calculated profit that is attributable to any interest or interests that the taxpayer had in the company throughout the whole of the relevant period; and
 - (b) the part or parts of the taxpayer's share of the calculated profit that is or are attributable to any interest or interests that the taxpayer had in the company throughout a particular part or particular parts of the relevant period;and to add up the amounts so worked out.
- (2) If the taxpayer had an interest or interests in the company throughout the whole of the relevant period, the part of the taxpayer's share of the calculated profit that is attributable to that interest or those interests is the amount worked out using the formula:
Calculated profit \times Attribution percentage
- (3) If the taxpayer had an interest or interests in the company throughout a particular part of the relevant period, the part of the

taxpayer's share of the calculated profit that is attributable to that interest or those interests is the amount worked out using the formula:

$$\text{Calculated profit} \times \text{Attribution percentage} \times \frac{\text{Number of days held}}{\text{Total number of days}}$$

(4) In the formulas in this section:

Calculated profit means the calculated profit of the company in respect of the relevant period.

Attribution percentage means the attribution percentage applicable to the taxpayer in respect of the company at the end of the relevant period.

Number of days held means the number of days in the part of the relevant period throughout which the taxpayer had the interest or interests.

Total number of days means the number of days in the relevant period.

(4A) If:

- (a) because of the taxpayer's election under subsection 486(3), the relevant period ends at the same time as a period (**the real accounting period**) in respect of which the accounts of the company are made out; and
- (b) because of paragraph 486(5)(b) or subparagraph 486(7)(a)(i), the relevant period does not begin at the same time as the real accounting period;

then, for the purposes of this section:

- (c) the relevant period is taken to begin when the real accounting period does; and
 - (d) any interest or interests that the taxpayer had in the company immediately before the time when the relevant period began (disregarding its extension under paragraph (c)) are taken to have been acquired by the taxpayer at that time.
- (5) A reference in this section to an interest that a taxpayer had in a foreign company throughout a particular part of the relevant period does not include a reference to such an interest that the taxpayer ceased to have before the end of that period.

Section 581

581 How to work out attribution percentage applicable to taxpayer in respect of interest or interests in foreign company

- (1) The attribution percentage applicable to the taxpayer in respect of the taxpayer's interest or interests in a foreign company at the end of the relevant period is the percentage that, because of that interest or those interests, as the case may be, the taxpayer had, or was entitled to acquire, at that time of:
 - (a) the total paid-up share capital of the company; or
 - (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the company to its shareholders;
 - (ii) the constituent document of the company;
 - (iii) any variation of the share capital of the company; or
 - (c) the total rights to distributions of capital or profits of the company to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up;or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.
- (2) If the percentage of total rights to vote or participate in decision-making differs as between differing types of decision-making, the highest of those percentages applies for the purposes of paragraph (1)(b).
- (3) For the purposes of subsection (1), the percentage that the taxpayer had, or was entitled to acquire, at the end of the relevant period, because of an interest or interests in the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up, or of the total rights to distributions of capital or profits of the company to its shareholders otherwise than on winding-up, is to be worked out in either case by:
 - (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the relevant period;
 - (ii) the profits of the company for the relevant period; and
 - (b) assuming that the rights to such distributions that the taxpayer had, or was entitled to acquire, at the end of the

relevant period because of the interest or interests were the same at all other times during the relevant period; and

- (c) ascertaining the percentage concerned on that assumption.
- (4) If, apart from this subsection, the sum of the attribution percentages at the end of the relevant period in relation to the company of all the taxpayers to whom the operative provision applies in relation to the company in relation to the relevant period would exceed 100%, the attribution percentage of each taxpayer is the percentage worked out using the formula:

$$\frac{\text{Attribution percentage of the taxpayer concerned}}{\text{Sum of attribution percentages of all of the taxpayers to whom the operative provision applies}} \times 100\%$$

How to determine taxpayer's share of calculated profit of foreign trust

582 Procedure to be followed

- (1) The share of the calculated profit of a foreign trust in respect of the relevant period to which the taxpayer is entitled is to be worked out in accordance with this section.
- (2) If all of the income, profits or gains derived by the trust during the relevant period consisted of either or both of the following:
- (a) income, profits or gains to which beneficiaries of the trust were presently entitled; or
 - (b) income, profits or gains to which beneficiaries of the trust were not presently entitled but which were distributed to beneficiaries of the trust during the relevant period or within 2 months after the end of that period;

the share of the calculated profit of the trust in respect of the relevant period to which the taxpayer is entitled is the amount worked out using the formula:

$$\text{Calculated profit} \times \text{Attribution percentage}$$

In the formula:

Calculated profit means the calculated profit of the trust of the relevant period.

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Attribution percentage means the percentage of the total income, profits and gains derived by the trust during the relevant period to which the taxpayer was presently entitled or to which the taxpayer was not presently entitled but which was distributed to the taxpayer during the relevant period or within 2 months after the end of the relevant period.

- (3) If subsection (2) does not apply, the share of the calculated profit of the trust in respect of the relevant period to which the taxpayer is entitled is the amount determined by calculating:
- (a) the part of the share of the calculated profit to which the taxpayer is entitled that is attributable to any interest or interests that the taxpayer had in the trust throughout the whole of the relevant period; and
 - (b) the part or parts of the share of the calculated profit to which the taxpayer is entitled that is or are attributable to any interest or interests that the taxpayer had in the trust throughout a particular part or particular parts of the relevant period;
- and adding up the amounts so calculated.
- (4) The part of the share of the calculated profit of the trust in respect of the relevant period to which the taxpayer is entitled that is attributable to an interest or interests that the taxpayer had in the trust throughout the whole of the relevant period is the amount worked out using the formula:
- $$\text{Calculated profit} \times \text{Attribution percentage}$$
- (5) The part of the share of the calculated profit of the trust in respect of the relevant period to which the taxpayer is entitled that is attributable to an interest or interests that the taxpayer had in the trust throughout a particular part of the relevant period is the amount worked out using the formula:
- $$\text{Calculated profit} \times \text{Attribution percentage} \times \frac{\text{Number of days held}}{\text{Total number of days}}$$
- (6) For the purposes of the formulas in subsections (4) and (5):

Calculated profit means the calculated profit of the trust of the relevant period.

Attribution percentage means:

- (a) the percentage of the income of the trust represented by the share of the income to which the taxpayer was entitled, or was entitled to acquire, at the end of the relevant period because of:
 - (i) the taxpayer's interest or interests in the trust; and
 - (ii) any interest or interests in the trust that the taxpayer was entitled to acquire; or
- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the taxpayer was entitled, or was entitled to acquire, at the end of the relevant period because of:
 - (i) the taxpayer's interest or interests in the trust; and
 - (ii) any interest or interests in the trust that the taxpayer was entitled to acquire;

or, if those percentages differ, the greater of those percentages.

Number of days held means the number of days in the part of the relevant period throughout which the taxpayer had the interest.

Total number of days means the number of days in the relevant period.

- (6A) If, apart from this subsection, the sum of the attribution percentages at the end of the relevant period in relation to the trust of all the taxpayers to whom the operative provision applies in relation to the trust in relation to the relevant period would exceed 100%, the attribution percentage of each taxpayer is the percentage worked out using the formula:

$$\frac{\text{Attribution percentage of the taxpayer concerned}}{\text{Sum of attribution percentages of all of the taxpayers to whom the operative provision applies}} \times 100\%$$

- (7) For the purposes of subsection (6):
- (a) the percentage of the income of the trust represented by the share of the income to which the taxpayer was entitled, or was entitled to acquire, at the end of the relevant period because of the interest or interests referred to in subparagraph (a)(i) or (ii) of the definition of **attribution percentage** in that subsection; or

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- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the taxpayer was entitled, or was entitled to acquire, at the end of the relevant period because of the interest or interests referred to in subparagraph (b)(i) or (ii) of the definition of *attribution percentage* in that subsection;

is to be worked out by:

- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the year of income;
 - (ii) the corpus of the trust as at the end of the year of income; and
- (d) assuming that the share to which the taxpayer is entitled, or became entitled to acquire, at the end of the relevant period because of the interest or interests was the same at all other times during the year of income; and
- (e) ascertaining the percentage concerned on that assumption.

(7A) If:

- (a) because of the taxpayer's election under subsection 486(3), the relevant period ends at the same time as a period (*the real accounting period*) in respect of which the accounts of the trust are made out; and
- (b) because of paragraph 486(5)(b) or subparagraph 486(7)(b)(i), the relevant period does not begin at the same time as the real accounting period;

then, for the purposes of this section:

- (c) the relevant period is taken to begin when the real accounting period does; and
- (d) any interest or interests that the taxpayer had in the trust immediately before the time when the relevant period began (disregarding its extension under paragraph (c)) are taken to have been acquired by the taxpayer at that time.

- (8) A reference in this section to income, profits or gains having been distributed to a taxpayer is a reference to an amount included in such income, profits or gains having been paid or credited to, or applied for the benefit of, the taxpayer.

- (9) A reference in this section to an interest that a taxpayer had in a foreign trust throughout a particular part of the relevant period does not include a reference to such an interest that the taxpayer ceased to have before the end of that period.

583 Foreign investment fund income

If the taxpayer is entitled to a share of the calculated profit of the FIF in respect of the relevant period, foreign investment fund income equal to the amount of that share is taken to have accrued to the taxpayer from the FIF in respect of that period.

Subdivision E—Deemed rate of return method for FLPs

Procedure to be followed

584 Procedure for determining foreign investment fund income from FLP by deemed rate of return method

This Subdivision sets out in several steps the procedure for determining by the deemed rate of return method whether any foreign investment fund income accrued to a person (*the taxpayer*) from a particular FLP in respect of a notional accounting period (*the relevant period*). In following the procedure it is necessary to determine the value of a FLP on a day called *the relevant day*, which has the meaning given by section 586, and then to apply a specified rate of return to that value.

585 Step 1—interests in a FLP

- (1) The first step in the procedure is to determine whether the taxpayer had only one interest, or had 2 or more interests, in the FLP during the relevant period.
- (2) If the taxpayer had 2 or more interests that were acquired at different times during the relevant period, the procedure applies separately in respect of each such interest.
- (3) The following provisions involve determining the value of the FLP at the relevant times referred to in those provisions.

Section 586

Determination of Opening Value

586 Step 2—determination of opening value

The second step is to determine the value of the FLP as at the day (*the relevant day*) referred to in whichever of the following paragraphs applies:

- (a) if the taxpayer had the interests in the FLP at the beginning of the relevant period—the day immediately preceding the first day of the relevant period; or
- (b) if the interests in the FLP were acquired by the taxpayer during the relevant period—the day on which they were acquired.

589 If relevant period starts after 1 January 1993

If the interests in the FLP were acquired before the start of the relevant period and that period starts on a day later than 1 January 1993, the value of the FLP on the relevant day is to be determined in accordance with section 590.

590 Value at start of relevant period (being later than 1 January 1993)

The value of the FLP on the relevant day is to be determined as follows:

- (a) first, ascertain the value, as previously determined under this Subdivision, of the FLP at the beginning of the notional accounting period that immediately preceded the relevant period;
- (b) secondly, add so much of the foreign investment fund income determined in relation to the taxpayer in respect of the immediately preceding period as was attributable to the FLP;
- (c) thirdly, add the amount of any premium or instalment of premium (excluding the first premium or an instalment of the first premium) paid by the taxpayer in respect of the FLP in the immediately preceding period;
- (d) fourthly, deduct the amount or value of any distributions made to the taxpayer during the immediately preceding period in relation to the FLP.

591 Value at time of acquisition (after start of relevant period)

If the interests in the FLP were acquired by the taxpayer during the relevant period, the value of the FLP on the relevant day is:

- (a) if the taxpayer had paid the whole of the consideration in respect of the acquisition—the amount of that consideration; or
- (b) otherwise—the amount of the first premium paid by the taxpayer in respect of the FLP.

Application of Rate of Return to Opening Value

592 Step 3—determination of foreign investment fund amount

- (1) The third step is to determine, in relation to the taxpayer in respect of the relevant period, the foreign investment fund amount in respect of the taxpayer's interest or interests in the FLP.
- (2) The foreign investment fund amount is the amount worked out using the formula:

$$\text{Opening value} \times \text{Deemed rate of return} \times \frac{\text{Number of days held}}{365}$$

For the purposes of the formula:

Opening value means the value of the FLP on the relevant day.

Deemed rate of return, in relation to the relevant period, means:

- (a) if there is only one base rate in relation to the year of income in which the relevant period ends—that rate; or
 - (b) if there are 2 or more base interest rates in relation to that year of income—the weighted average of those rates;
- increased, in either case, by 4 percentage points.

Number of days held means the number of days in the relevant period in which the taxpayer had the interests in the FLP.

593 Step 4—conversion of foreign investment fund amount to Australian currency

The foreign investment fund amount determined in respect of the taxpayer's interests in a FLP during the relevant period is to be converted to the corresponding amount in Australian currency in

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accordance with the rate of exchange applicable at the end of that period.

594 Foreign investment fund income

Foreign investment fund income equal to the corresponding amount calculated under section 593 is taken to have accrued to the taxpayer from the FLP in respect of the relevant period.

Subdivision F—Cash surrender value method for FLPs

595 Procedure for determining foreign investment fund income by cash surrender value method

- (1) This Subdivision applies only if it is practicable to ascertain, as at the relevant time referred to in this Subdivision, the cash surrender value of the interest of a person (*the taxpayer*) in a FLP. For the purposes of this Subdivision as so applying, a reference to an interest in a FLP is a reference to an interest of which it is practicable to ascertain the cash surrender value as at the relevant time.
- (2) Accordingly, this Subdivision sets out the procedure for determining by the cash surrender value method whether, in respect of the interest, any foreign investment fund income accrued to the taxpayer from the FLP in respect of a notional accounting period (*the relevant period*). There are 2 steps in this procedure, which are set out in sections 596 and 600, respectively.

596 Step 1—calculation of foreign investment fund amount

- (1) The first step in the procedure is to work out the foreign investment fund amount in relation to the taxpayer in respect of the relevant period.
- (2) This is done as follows:
 - (a) first, determine the cash surrender value of the taxpayer's interest at the end of the period;
 - (b) secondly, add the amount or value of each distribution (if any) in respect of the taxpayer's interest in the FLP that was made by the FLP to the taxpayer during the period;

- (c) thirdly, if the taxpayer disposed of any interest in the FLP during the period, add:
 - (i) the amount or value of each distribution (if any) in respect of that interest made by the FLP to the taxpayer during the period; and
 - (ii) the amount or value of any consideration received or receivable by the taxpayer in respect of the disposal;
 - (d) fourthly, if the taxpayer had an interest in the FLP on the day immediately before the first day of the period, deduct:
 - (i) if subparagraph (ii) does not apply—the cash surrender value of the interest on that day; or
 - (ii) if the deemed rate of return method was applied, in respect of the taxpayer's interest in the FLP, in respect of the notional accounting period immediately before the relevant period—the value, determined under Subdivision E in accordance with that method, of the interest on that day;
 - (e) fifthly, if the taxpayer contributed to the interest in the FLP during the period, deduct the amount or value of the consideration paid or given by the taxpayer in respect of the contribution.
- (3) Each amount resulting from the application of one of the paragraphs of subsection (2) is to be expressed in the currency used in determining the cash surrender value referred to in paragraph (2)(a).

598 Gross foreign investment fund income

If the foreign investment fund amount as worked out under section 596 is a positive amount, that amount is gross foreign investment fund income in relation to the taxpayer from the FLP in respect of the relevant period.

599 Foreign investment fund loss

If the foreign investment fund amount as worked out under section 596 is a minus amount, that amount is a foreign investment fund loss incurred by the taxpayer from the FLP in respect of the relevant period.

Section 600

600 Step 2—Calculation of foreign investment fund income

- (1) The second step in the procedure is to work out under this section the amount of any foreign investment fund income in relation to the taxpayer in respect of the relevant period.
- (2) If:
 - (a) there is, under section 598, any gross foreign investment fund income in relation to the taxpayer from the FLP in respect of the relevant period; and
 - (b) that gross foreign investment fund income exceeds the total of any unapplied previous foreign investment fund losses that were incurred by the taxpayer from the FLP in respect of a notional accounting period or notional accounting periods before the relevant period;the following provisions have effect.
- (3) The excess referred to in paragraph (2)(b) is to be converted to the corresponding amount in Australian currency in accordance with the rate of exchange applicable at the end of the relevant period.
- (4) Foreign investment fund income equal to that corresponding amount is taken to have accrued to the taxpayer from the FLP in respect of the relevant period.
- (5) The reference in paragraph (2)(b) to an unapplied previous foreign investment fund loss incurred by the taxpayer from the FLP in respect of a notional accounting period before the relevant period is a reference to so much of the undeducted amount of a foreign investment fund loss under section 599 that was incurred by the taxpayer from the FLP in respect of any such notional accounting period as exceeds the sum of the amounts (if any) worked out under the following paragraphs in respect of each referable notional accounting period of the FLP:
 - (a) if paragraph (b) does not apply to the referable notional accounting period concerned—any amount that under section 598 was gross foreign investment fund income in relation to the taxpayer from the FLP in respect of that period; or
 - (b) if the operative provision did not apply to the taxpayer in respect of the referable notional accounting period concerned, or the application of the operative provision to the

taxpayer in respect of that period was affected, because of any of Divisions 2 to 9 and 11 to 15:

- (i) any amount that under section 598 would have been gross foreign investment fund income in relation to the taxpayer from the FLP in respect of that period; or
- (ii) any amount by which the amount that under section 598 was gross foreign investment fund income in relation to the taxpayer from the FLP in respect of that period would have been increased; or
- (iii) any amount by which the amount that under section 599 was a foreign investment fund loss in relation to the taxpayer from the FLP in respect of that period would have been reduced;

if the operative provision had applied to the taxpayer in respect of that period or the application of the operative provision to the taxpayer in respect of that period had not been affected, as the case may be.

- (6) In subsection (5):

undeducted amount, in relation to a foreign investment fund loss, means so much of that loss as has not been allowed, and is not allowable, as a deduction under section 533 from the taxpayer's assessable income of any year of income preceding the year of income in which the relevant period ends.

referable notional accounting period, in relation to a FLP, means a notional accounting period of the FLP that occurred after the notional accounting period in which the foreign investment fund loss was incurred and before the relevant period.

- (7) In calculating under subsection (5) the extent (if any) to which a foreign investment fund loss that was incurred by the taxpayer from a FLP in respect of a notional accounting period is an unapplied previous foreign investment fund loss, an amount worked out under paragraph (5)(a) or subparagraph (5)(b)(i), (ii) or (iii) does not include any part of that amount that has been, or is to be, taken into account in calculating the extent to which a foreign investment fund loss under section 599 that was incurred by the taxpayer from the FLP in respect of a notional accounting period before the first-mentioned notional accounting period was an unapplied previous foreign investment fund loss.

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- (8) For the purposes of applying subsections (5), (6) and (7) in working out the amount of an unapplied previous foreign investment fund loss, if any amount that is to be taken into account under any of those subsections in relation to a notional accounting period is not expressed in the same currency as the gross foreign investment fund income mentioned in paragraph (2)(a), the amount is to be converted to the corresponding amount in that currency in accordance with the rate of exchange applicable at the end of that notional accounting period.

Division 19—FIF attribution accounts

601 FIF attribution account entity

Each of the following is a FIF attribution account entity:

- (a) a company that is not a resident of Australia;
- (b) a partnership;
- (c) a trust;
- (d) a FLP.

602 FIF attribution account percentage

The FIF attribution account percentage of a taxpayer in relation to a FIF attribution account entity is the interest that the taxpayer has in the income or profits of the entity, whether directly, or indirectly through one or more interposed FIF attribution account entities.

603 FIF attribution account payments

- (1) Each of the following is a FIF attribution account payment:
 - (a) a dividend paid by a company to a shareholder;
 - (b) interest paid on a convertible note to the holder of the note;
 - (c) the individual interest of a partner in the net income (within the meaning of section 90) of a partnership of a year of income;
 - (d) if a beneficiary of a trust is presently entitled to a share of the income of the trust—that share of the net income (within the meaning of section 95) of the trust of a year of income;
 - (e) the whole or part of the net income of a trust of a year of income that is assessable to the trustee under section 99 or 99A;
 - (f) an amount of trust property that would be included in the assessable income of a beneficiary of a year of income under section 99B if:
 - (i) the beneficiary were a resident, within the meaning of section 6, at a time during the year of income; and
 - (ii) paragraph 99B(2)(c) were replaced by a paragraph referring to any FIF attribution account payment under paragraph (d) or (e) of this subsection;

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- (g) a payment made by the person who issued a FLP to a person who has an interest in the FLP;
 - (h) an amount that is included in assessable income under Division 82, 301, 302, 304 or 305 of the *Income Tax Assessment Act 1997*, or Division 82 of the *Income Tax (Transitional Provisions) Act 1997*.
- (2) The FIF attribution account payment is taken to be made:
- (a) in a paragraph (1)(c) case—by the partnership to the partner; and
 - (b) in a paragraph (1)(d) or (f) case—by the trust to the beneficiary; and
 - (c) in a paragraph (e) case—by the trust to the trustee;
- and, in any such case, to be made at the end of the year of income.

604 FIF attribution surplus

A FIF attribution surplus for a FIF attribution account entity in relation to a taxpayer exists at a particular time if the entity's total FIF attribution credits arising before that time in relation to the taxpayer exceed its total FIF attribution debits arising before that time in relation to the taxpayer.

605 FIF attribution credit

- (1) A FIF attribution credit arises for a FIF attribution account entity (*the eligible entity*) in relation to a taxpayer if:
- (a) an amount is included in the taxpayer's assessable income under section 529 in respect of the foreign investment fund income of the eligible entity in respect of a notional accounting period of the eligible entity; or
 - (b) both of the following conditions apply:
 - (i) an amount is included in the taxpayer's assessable income under section 529 in respect of the foreign investment fund income of another FIF attribution account entity (*the other entity*) in respect of a notional accounting period of the other entity;
 - (ii) that amount was calculated by reference to another amount (*the section 576 amount*) that under section 576 was included in the notional income of the other entity

because the other entity had an interest in the eligible entity; or

- (c) each of the following conditions applies:
- (i) the amount (***the section 529 amount***) is included in the taxpayer's assessable income under section 529 in respect of another FIF attribution account entity (***the first tier FIF***) in respect of a notional accounting period of the first tier FIF;
 - (ii) that amount was calculated by reference to another amount (***the section 576 amount***) that under section 576 was included in the notional income of the first tier FIF because the first tier FIF had an interest in another FIF attribution account entity (***the second tier FIF***);
 - (iii) the section 576 amount was calculated by reference to an amount (***the section 579 amount***) that under section 579 was included in the notional income of the second tier FIF because the second tier FIF had an interest in the eligible entity; or
- (d) a FIF attribution account payment that requires a FIF attribution debit for another entity in relation to the taxpayer is made to the eligible entity.
- (2) Subject to the following provisions of this section, the amount of the FIF attribution credit is equal to the amount included in the assessable income or to the amount of the FIF attribution debit, as the case may be.
- (3) If a FIF attribution credit arises under paragraph (1)(b) for an eligible entity, the amount of the FIF attribution credit is to be worked out using the formula:

$$\frac{\text{FIF income} \times \text{Section 529 amount}}{\text{Notional income}}$$

In the formula:

FIF income means the amount of the foreign investment income included, in relation to the eligible entity, in the foreign investment fund income of the other entity for the notional accounting period referred to in paragraph (1)(b) of the other entity.

Section 529 amount means the amount included in the taxpayer's assessable income under section 529 in respect of the notional

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accounting period referred to in paragraph (1)(b) of the other entity.

Notional income means the notional income of the other entity under this Part in respect of the notional accounting period referred to in paragraph (1)(b) of the other entity.

- (4) If a FIF attribution credit arises under paragraph (1)(c) for an eligible entity, the amount of the FIF attribution credit is to be worked out using the formula:

$$\frac{\text{FIF income} \times \text{Section 529 amount}}{\text{Notional income of the first tier FIF}}$$

For the purposes of this subsection:

FIF income means the amount worked out using the formula:

$$\frac{\text{Section 579 amount} \times \text{Section 576 amount}}{\text{Notional income of the second tier FIF}}$$

Section 579 amount means the section 579 amount referred to in subparagraph (1)(c)(iii).

Section 576 amount means the section 576 amount referred to in subparagraph (1)(c)(ii).

Notional income of the second tier FIF means the notional income of the second tier FIF referred to in subparagraph (1)(c)(ii) under the calculation method for the notional accounting period of the first tier FIF referred to in subparagraph (1)(c)(i).

Section 529 amount means the section 529 amount referred to in subparagraph (1)(c)(i).

Notional income of the first tier FIF means the notional income of the first tier FIF referred to in subparagraph (1)(c)(i) under the calculation method for the notional accounting period referred to in that subparagraph.

- (5) If subsection (3) applies to a taxpayer in respect of one or more eligible entities in respect of a particular section 529 amount, the amount of the FIF attribution credit arising under paragraph (1)(a) for the other entity referred to in paragraph (1)(b) is reduced by the FIF attribution credit or the sum of the FIF attribution credits that, except for subsection (6), would arise to the eligible entity or eligible entities under subsection (3).

- (6) If subsection (4) applies to a taxpayer in respect of one or more eligible entities in respect of a particular amount included in the notional income of the second tier FIF referred to in subparagraph (1)(c)(ii), the amount of the FIF attribution credit arising under paragraph (1)(b) for the second tier FIF is to be reduced by the FIF attribution credit or the sum of the FIF attribution credits arising for the eligible entity or eligible entities under subsection (4).
- (7) The FIF attribution credit arises:
- (a) in a paragraph (1)(a) case—at the end of the notional accounting period referred to in that paragraph; or
 - (b) in a paragraph (1)(b) case—at the end of the notional accounting period of the eligible entity that gave rise to the section 576 amount referred to in subparagraph (1)(b)(ii); or
 - (c) in a paragraph (1)(c) case—at the end of the notional accounting period of the eligible entity that gave rise to the section 579 amount referred to in subparagraph (1)(c)(iii); or
 - (d) in a paragraph (1)(d) case—when the FIF attribution account payment referred to in that paragraph is made.
- (8) If, apart from this subsection, a FIF attribution credit would arise in relation to a FIF attribution account entity for an Australian partnership or an Australian trust in respect of an amount included in the assessable income of the partnership or trust of a year of income under section 529, then, subject to subsection (11):
- (a) the FIF attribution credit does not arise for the partnership or trust; and
 - (b) a FIF attribution credit arises in relation to the FIF attribution account entity for:
 - (i) any taxpayer for whom, as a result of the amount being so included, a tax detriment would arise in circumstances set out in subsection (9); and
 - (ii) any taxpayer if, as a result of the amount being so included, a tax detriment would arise for the trustee of a trust in which the taxpayer is a beneficiary, in respect of an amount assessable to the trustee under section 98 in respect of the taxpayer's share of the net income of the trust, in circumstances set out in subsection (10); and
 - (iii) any taxpayer in the capacity of trustee of a trust if, as a result of the amount being so included, a tax detriment

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- would arise for the taxpayer in respect of an amount assessable to the taxpayer under section 99 or 99A, in circumstances set out in subsection (10); and
- (c) the amount of the FIF attribution credit referred to in paragraph (b) equals the amount of the tax detriment; and
 - (d) the FIF attribution credit referred to in paragraph (b) arises at the time when the FIF attribution credit referred to in paragraph (a) would, apart from this subsection, have arisen.
- (9) The circumstances referred to in subparagraph (8)(b)(i) are:
- (a) the circumstances set out in the following subparagraphs:
 - (i) as a result of the amount being included as mentioned in subsection (1), there is a tax detriment for:
 - (A) a partner in the Australian partnership; or
 - (B) a partner in another partnership (*the ultimate partnership*), if the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the partner and the Australian partnership or the Australian trust; and
 - (ii) the partner is not, in respect of his or her interest in the net income or partnership loss of the Australian partnership or the ultimate partnership, in the capacity of trustee of a trust; or
 - (b) the circumstances set out in the following subparagraphs:
 - (i) as a result of the amount being included as mentioned in subsection (1), there is a tax detriment for:
 - (A) a beneficiary in the Australian trust; or
 - (B) a beneficiary in another trust (*the ultimate trust*), if the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the beneficiary and the Australian partnership or the Australian trust; and
 - (ii) the beneficiary is not a partnership and is not, in respect of his or her share of the net income of the Australian trust or the ultimate trust, in the capacity of trustee of another trust.

- (10) The circumstances referred to in subparagraph (8)(b)(ii) or (iii) are that, as a result of the amount being included as mentioned in subsection (1), there is a tax detriment for:
- (a) the trustee of the Australian trust; or
 - (b) the trustee of another trust (*the ultimate trust*), if the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the trustee and the Australian partnership or the Australian trust.
- (11) Subsection (8) does not apply to an Australian trust that is, in relation to the year of income referred to in that subsection:
- (a) a corporate unit trust within the meaning of Division 6B of Part III; or
 - (b) a public trading trust within the meaning of Division 6C of that Part; or
 - (c) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust; or
 - (d) a resident public unit trust within the meaning of subsection 96A(4).

606 FIF attribution debit

- (1) A FIF attribution debit arises for a FIF attribution account entity (*the eligible entity*) in relation to a taxpayer if:
- (a) the eligible entity makes a FIF attribution account payment to the taxpayer or to a FIF attribution account entity; and
 - (b) immediately before the eligible entity makes the FIF attribution account payment, there is a FIF attribution surplus for the eligible entity in relation to the taxpayer.
- (2) The amount of the FIF attribution debit is the lesser of:
- (a) the FIF attribution surplus; and
 - (b) whichever of the following is applicable:
 - (i) if the attribution account payment is made to the taxpayer—the FIF attribution account payment;
 - (ii) in any other case—the taxpayer’s FIF attribution account percentage (for the FIF attribution account

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entity to which the payment is made) of the FIF attribution account payment;

reduced by any attribution debit that arises under section 372 for the entity in relation to the taxpayer as a result of the making of the payment.

- (3) The FIF attribution debit arises when the FIF attribution account payment is made.

607 Additional FIF attribution debit

- (1) A FIF attribution debit also arises for a FIF attribution account entity in relation to a taxpayer if the whole or a part of a foreign investment fund loss incurred by the taxpayer under section 541 or 599 in respect of a notional accounting period is an allowable deduction from the taxpayer's assessable income of a year of income.
- (2) The amount of the FIF attribution debit is the amount of the allowable deduction.
- (3) The FIF attribution debit arises at the end of the notional accounting period.

607AA Additional FIF attribution debit—deduction for overseas superannuation transfers

- (1) If a taxpayer is entitled to a deduction under section 533B, a FIF attribution debit also arises for a FIF attribution account entity (referred to in section 533B as the paying fund) in relation to the taxpayer.
- (2) The amount of the FIF attribution debit is the amount of the deduction.
- (3) The FIF attribution debit arises immediately after the time that the taxpayer becomes entitled to the deduction.

607A Grossed-up amount of a FIF attribution debit

The grossed-up amount in relation to a FIF attribution debit is:

- (a) where subparagraph 606(2)(b)(i) applied in relation to the debit—the amount of the debit; or

- (b) where subparagraph 606(2)(b)(ii) applied in relation to the debit—the amount of the debit, divided by the FIF attribution account percentage referred to in that subparagraph.

Division 21—Post-attribution asset disposals

613 Reduction of capital proceeds if FIF attributed income not distributed

- (1) If:
- (a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account the capital proceeds from a CGT event happening in relation to a CGT asset, being an interest in a FIF attribution account entity; and
 - (b) immediately before the CGT event takes place there is a FIF attribution surplus for the FIF attribution account entity in relation to the taxpayer;
- then, for the purposes of this Act:
- (c) the capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the CGT event is taken to be reduced by so much of the amount of the FIF attribution surplus as does not exceed the capital proceeds; and
 - (d) a FIF attribution debit is taken to arise at the time of the CGT event under section 606, in relation to the taxpayer, for the FIF attribution account entity; and
 - (e) the amount of the FIF attribution debit is equal to so much of the surplus as is taken into account under paragraph (c).
- (3) For the purposes of paragraph (1)(c), if the CGT event causes the taxpayer's FIF attribution account percentage for the FIF attribution account entity to be reduced by a proportion, then only that proportion of the FIF attribution surplus for the entity is to be taken into account under that paragraph.

Division 22—Keeping of records

614 Application of Division

This Division applies to a taxpayer who:

- (a) had an interest or interests in a FIF at the end of a year of income ending on or after 1 January 1993; or
- (b) had an interest in a FLP at any time during a year of income ending on or after that date.

615 Records of acts, transactions etc.

The taxpayer must make and keep records in Australia containing particulars of:

- (a) the acts, transactions and other circumstances that resulted in the taxpayer having:
 - (i) the interest or interests in the FIF at the end of the year of income; or
 - (ii) the interest in the FLP during the year of income; and
- (b) except in the case of a taxpayer who, because of any of Divisions 2 to 15, is wholly exempt from taxation in respect of the interest or interests in respect of the notional accounting period of the FIF or FLP that ended in the year of income—the basis of the calculation of the interest or the interests at that time.

Note: There is an administrative penalty if you do not keep or retain records as required by this Division: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

616 Interest in FIF—if market value method was applied

If, in the case of an interest or interests in a FIF, the market value method was applied to determine whether foreign investment fund income accrued to the taxpayer from the FIF in respect of the notional accounting period of the FIF that ended in the year of income, the taxpayer must make and keep records in Australia containing particulars of:

- (a) if any foreign investment fund income accrued to the taxpayer from the FIF in respect of that notional accounting period—the basis of the calculation of:

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- (i) that foreign investment fund income; and
 - (ii) any unapplied previous foreign investment fund loss referred to in subsection 542(2); or
- (b) if any foreign investment fund loss was incurred by the taxpayer from the FIF in respect of that notional accounting period—the basis of the calculation of that foreign investment fund loss.

617 Interest in FIF—if deemed rate of return method was applied

If, in the case of an interest or interests in a FIF, the deemed rate of return method was applied to determine whether foreign investment fund income accrued to the taxpayer from the FIF in respect of the notional accounting period of the FIF that ended in the year of income, the taxpayer must make and keep records in Australia containing particulars of the basis of the calculation of the foreign investment fund income that accrued to the taxpayer from the FIF in respect of that period.

618 Interest in FIF—if calculation method was applied

If, in the case of an interest or interests in a FIF, the calculation method was applied to determine whether foreign investment fund income accrued to the taxpayer from the FIF in respect of the notional accounting period of the FIF that ended in the year of income, the taxpayer must make and keep records in Australia containing particulars of:

- (a) if there is a calculated profit in respect of the FIF in respect of that notional accounting period—the basis of the calculation of:
 - (i) that calculated profit; and
 - (ii) so much (if any) of any calculated loss or calculated losses in respect of a preceding notional accounting period or preceding notional accounting periods of the FIF as was taken into account under section 572 in determining that calculated profit; and
- (b) the basis of the calculation of any foreign investment fund income that accrued to the taxpayer from the FIF in respect of that period.

619 Interest in FLP

In the case of an interest in a FLP, the taxpayer must make and keep records in Australia containing particulars of:

- (a) if the cash surrender value method was applied to determine whether foreign investment fund income accrued to the taxpayer from the FLP in respect of the notional accounting period of the FLP that ended in the year of income:
 - (i) if any foreign investment fund income accrued to the taxpayer from the FLP in respect of that notional accounting period—the basis of the calculation of:
 - (A) that foreign investment fund income; and
 - (B) any unapplied previous foreign investment fund loss referred to in subsection 600(2); or
 - (ii) if any foreign investment fund loss was incurred by the taxpayer from the FLP in respect of that notional accounting period—the basis of the calculation of that foreign investment fund loss;
- (b) if the deemed rate of return method was applied to determine whether foreign investment fund income accrued to the taxpayer from the FLP in respect of the notional accounting period of the FLP that ended in the year of income—the basis of the calculation of the foreign investment fund income that accrued to the taxpayer from the FLP in respect of that period.

620 Interest in FIF or FLP—if exemption applied

If the taxpayer is wholly or partly exempt from taxation under this Part in respect of the interest or interests in a FIF or a FLP in respect of the notional accounting period of the FIF or FLP that ended in the year of income, the taxpayer must make and keep records in Australia containing particulars of the basis on which the exemption applied, including any acts, transactions, calculations and other circumstances relevant to the application of the exemption.

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621 Offence of failing to keep records

- (1) A person who contravenes section 615, 616, 617, 618, 619 or 620 is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) An offence under section 615, 616, 617, 618, 619 or 620 is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

622 Manner in which records required to be kept

A person who is required by this Division to make and keep records must:

- (a) make and keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) make and keep the records so as to enable the person's liability under this Act to be readily ascertained.

623 If calculation method was applied—defence for failing to keep records if information unobtainable

In a prosecution of a person for an offence against section 618 for failing to keep a record containing particulars of the basis of a calculation, it is a defence if the person proves that the calculation was based on information that the person believed to be contained in the accounts (other than published accounts) of a FIF and that the person made all reasonable efforts to obtain particulars of the accounts or the relevant parts of the accounts but was unable to obtain them.

624 Treatment of partnerships

- (1) Subject to subsections (2) and (3), the following provisions apply to a partnership as if the partnership were a person:
- (a) sections 614 to 623;
- (b) subsections 262A(4) and (5), in so far as those subsections apply to records kept under or for the purposes of this Division;
-

- (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part of that Act relates to the provisions covered by paragraph (a) or (b) of this subsection.
- (2) If, because of subsection (1), an offence is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.
- (3) In a prosecution of a person for an offence because of subsection (2), it is a defence if the person proves that the person:
- (a) did not aid, abet, counsel or procure the act or omission because of which the offence was taken to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, an act or omission because of which the offence is taken to have been committed.

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

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Volume 5 includes: Table of Contents
Schedules 2, 2C – 2H, 2J and 3 – 5

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

The operation of amendments that have been incorporated may be
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Schedule 2

Section 79A

Part I

Zone A

1. All that portion of the mainland of Australia lying north of a line commencing at the westernmost point at which the 26th parallel of south latitude intersects the western coastline thence east to the 141st meridian of east longitude thence north to the south-eastern boundary of the Shire of Boulia thence generally north-easterly by the boundaries dividing the Shires of Winton Flinders Dalrymple and Herberton from the Shires of Boulia Cloncurry McKinlay Richmond Etheridge and Mareeba to the 145th meridian of east longitude thence north to the northern boundary of the Shire of Mareeba thence by that boundary and the boundary dividing the Shires of Douglas and Cook to the eastern coastline.
2. All the islands forming part of Australia lying adjacent to the coastline of the portion of Australia described in paragraph 1.
3. Macquarie Island.
4. Norfolk Island.
5. The Territory of Heard Island and McDonald Islands.
6. The Australian Antarctic Territory.
7. The Territory of Cocos (Keeling) Islands.
8. The Territory of Christmas Island.
9. Lord Howe Island.

Part II

Zone B

1. All that portion of the mainland of Australia lying south of the southern boundary of Zone A and north of a line commencing at the northeastern corner of the shire of Broadsound in the State of Queensland thence generally westerly and southerly by the boundaries dividing the Shires of Broadsound Belyando Jericho Bauhinia Booringa and Balonne from the Shires of Sarina Nebo Wangaratta Dalrymple Aramac Barcaldine Blackall Tambo Murweh and Paroo to the boundary dividing the States of Queensland and New South Wales thence east by that boundary to its junction with the Barwon River at the northeastern corner of the Western Division in the State of New South Wales thence generally southwesterly by part of the boundary dividing the Central and Western Divisions of the State of New South Wales to the northernmost corner of the County of Mouramba and by the boundaries dividing the Counties of Mouramba Mossgiel Waljeers Kilfera Taila Wentworth and Tara from the Counties of Robinson Booroondarra Woore Manara Perry and Windeyer to the boundary dividing the States of New South Wales and South Australia thence south by that boundary to the northeast corner of the County of Hamley in the State of South Australia thence by the north boundaries of the Counties of Hamley and Young part of the north boundary of the County of Burra part of the east boundary of the District Council District of Hallett the east and a north boundary of the District Council District of Peterborough east and north boundaries of the District Council District of Carrieton to the southeast corner of the District Council District of Hawker the eastern north and west boundaries of that District Council District a western boundary of the District Council District of Kanyaka to the north boundary of the County of Frome thence west by part of that boundary and its prolongation west to the west boundary of the County of Manchester thence by the boundaries dividing the Counties of Manchester York and Buxton from the County of Hore-Ruthven part of the west boundary of the County of Buxton and part of the western boundary of the District Council District of Kimba to the easternmost corner of the District Council District of Le Hunte thence generally northwesterly by the east and north

boundaries of the District Council Districts of Le Hunte and Streaky Bay and the east north and west boundaries of the District Council District of Murat Bay to the southern coastline thence by that coastline westerly to the southwestern corner of the Road District of Phillips River in the State of Western Australia thence generally northwesterly by the boundaries dividing the Road Districts of Gnowangerup Kent Lake Grace Kulin Kondinin Narembeen Merredin and Nungarin from the Road Districts of Phillips River Yilgarn and Westonia to the northeast corner of the Road District of Nungarin thence westerly and northwesterly by the boundaries dividing the Road Districts of Nungarin Kununoppin-Trayning Wyalkatchem Dowerin and Wongan-Ballidu from the Road Districts of Mukinbuding Mt Marshall Koorda and Dalwallinu to the No. 2 rabbit proof fence by that fence to the north boundary of the Road District of Perenjori and thence by the boundaries dividing the Road Districts of Perenjori Morawa Mingenew Irwin Greenough and Geraldton from the Road Districts of Yalgoo Mullewa and Upper Chapman to the western coastline.

2. All that portion of Tasmania lying south and west of a line commencing on the west coast at the southwest corner of the County of Wellington and thence generally easterly and southerly by the boundaries dividing the counties of Wellington Devon and Westmorland from the counties of Russell Lincoln and Cumberland to the point on the River Shannon where the hydro-electric transmission line from Waddamana to Launceston crosses that river thence in a straight line in a general southwesterly direction to the trigonometrical station known as Fishers Sugar Loaf thence by a straight line in a general southwesterly direction to the point where the Lyell Highway crosses the Dee River thence by a straight line in a general southwesterly direction to the confluence of the Derwent and Florentine Rivers thence by a straight line in a general southerly direction passing through the trigonometrical station on South East Cape to the southern coastline.
3. All the islands forming part of Australia lying adjacent to the coastline of either of the portions of Australia described in paragraphs 1 and 2.
4. King Island, Tasmania.

Schedule 2

5. All the islands in the group of islands known as the Furneaux Group, Tasmania.

Schedule 2C—Forgiveness of commercial debts

Division 245—Forgiveness of commercial debts

Guide to Division 245

245-1 What this Division is about

This Division applies if:

- (a) a debt or part of a debt ceases to be payable because the obligation to pay the debt or part is released or waived, or is otherwise extinguished (this is referred to as the forgiveness of the debt or part); and
- (b) there are amounts (*reducible amounts*) that would otherwise be taken into account in reducing the debtor's taxable income of the year of income in which the debt is forgiven or a later year of income.

The forgiven amount of the debt is treated as having been used to generate the reducible amounts and is accordingly applied to reduce them in a particular order.

If the debtor is a company that is included in a group of related companies, the forgiven amount of the debt may be treated as having been used to generate reducible amounts of one or more of the other companies.

245-2 Simplified outline of this Division

- (1) This Division applies to the forgiveness of the whole or a part of a commercial debt.

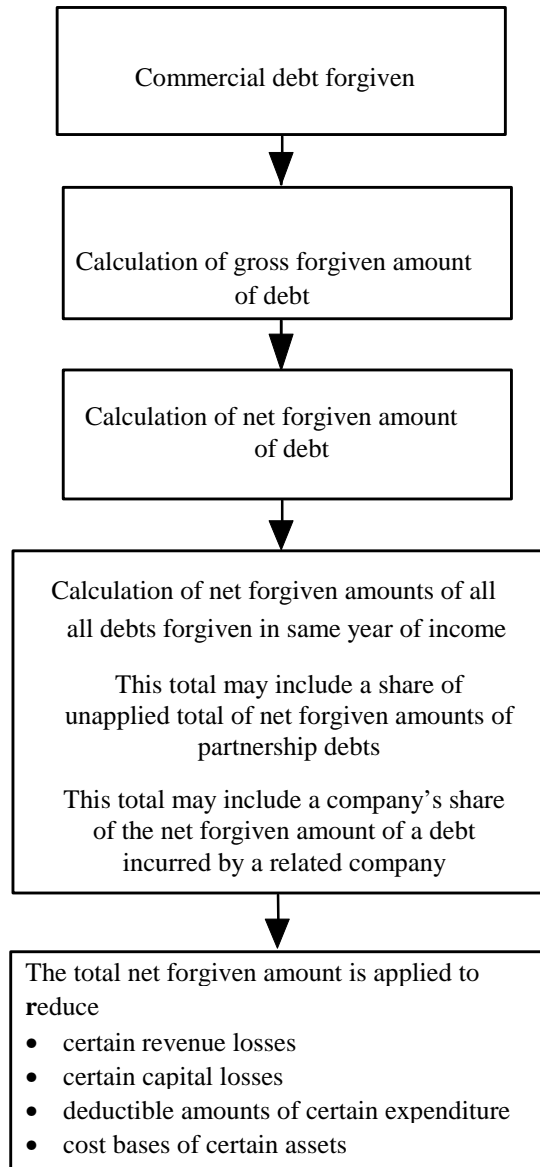
Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-2

- (2) The forgiveness of a debt under an Act relating to bankruptcy, by will, or for reasons of natural love and affection, is not affected by the provisions of the Division.
- (3) Provision is made for the calculation of the **gross forgiven amount** in respect of each debt.
- (4) The gross forgiven amount may then be reduced by certain amounts that are taken into account in assessing the debtor's taxable income apart from this Division.
- (5) If the debt is owed between group companies, the gross forgiven amount may be further reduced in certain circumstances.
- (6) The amount remaining after all reductions to the gross forgiven amount is the **net forgiven amount** in respect of the debt.
- (7) The **total net forgiven amount** of all debts of a particular debtor that are forgiven in the same year of income (the **forgiveness year of income**) is to be applied in reduction of certain amounts that may otherwise be taken into account in assessing the debtor's taxable income.
- (8) The amounts to be reduced are certain revenue losses, net capital losses and other deductible amounts and the cost bases of certain assets.
- (9) Special rules apply in respect of debts of partnerships other than corporate limited partnerships.
- (10) Special rules apply in respect of debts of a company if the company is included in a group of related companies.

245-3 Map of this Division



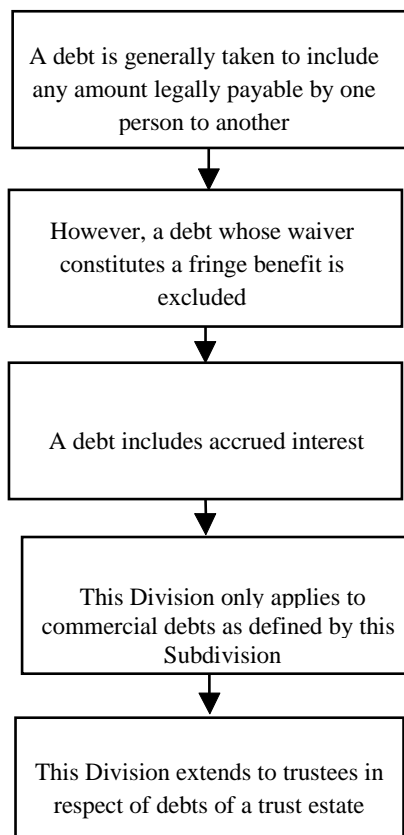
Subdivision 245-A—Debts to which this Division applies

Guide to Subdivision 245-A

245-5 What this Subdivision is about

The purpose of this Subdivision is to identify the debts to which this Division applies.

245-6 Map of this Subdivision



Operative provisions

245-10 Application of this Division

- (1) Subject to subsection (2), this Division applies to a forgiveness of a commercial debt but so applies only if the forgiveness occurs after the commencement day.
- (2) This Division does not apply to a forgiveness referred to in subsection (1) if the forgiveness occurs in accordance with the terms of an agreement or arrangement that:
 - (a) was entered into on or before the commencement day; and
 - (b) is evidenced in writing otherwise than by a document evidencing the agreement or transaction under which the debt arose.

245-15 What is a *debt*

- (1) Subject to this section, a ***debt*** is an enforceable obligation imposed by law on a person to pay an amount to another person.
- (2) If such an obligation is waived and the waiver constitutes a fringe benefit, the debt constituted by the obligation is to be disregarded for the purposes of this Division.
- (3) An amount that, apart from this subsection, would be an enforceable obligation referred to in subsection (1) is not to be regarded as a debt if the amount has been, or will be, included in the assessable income of any year of income of the person on whom the obligation is imposed.

245-20 Debt includes accrued interest

If there is, in respect of a debt, any interest or amount in the nature of interest that has accrued but has not been paid, the obligation to pay that interest or amount is not a separate debt but the first-mentioned debt includes the obligation to pay the interest or amount.

245-25 What constitutes a *commercial debt*

- (1) A debt is a ***commercial debt*** if subsection (2), (3) or (4) provides that the debt is a commercial debt.

Debt on which interest paid is an allowable deduction

- (2) Subject to subsection (4A), a debt is a commercial debt if the whole or any part of interest, or of an amount in the nature of interest, paid or payable in respect of the debt:
- (a) is or would be allowable as a deduction to the debtor; or
 - (b) would be so allowable apart from the operation of an exception provision.

Debt on which no interest is payable

- (3) A debt is a commercial debt if interest, or an amount in the nature of interest, is not payable in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount:
- (a) would have been allowable as a deduction to the debtor; or
 - (b) would have been so allowable apart from the operation of an exception provision.
- (4) A non-equity share issued by a company is taken to be a commercial debt owed by the company to the shareholder.

Debt to Commonwealth not a commercial debt

- (4A) A debt owed to the Commonwealth that arose under a law relating to taxation is not a commercial debt.

Meaning of exception provision

- (5) In this section:

exception provision means a provision of this Act that has the effect of preventing a deduction that would otherwise be allowable, but does not include paragraphs 8-1(2)(a), (b) and (c) of the *Income Tax Assessment Act 1997* (which prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income).

245-26 Application to trustees

This Division applies to a person in the capacity of a trustee of a trust estate in respect of the trust estate's debts, and references in this Division to a debtor include a reference to a person in the capacity of a trustee of a trust estate in respect of the trust estate's debts.

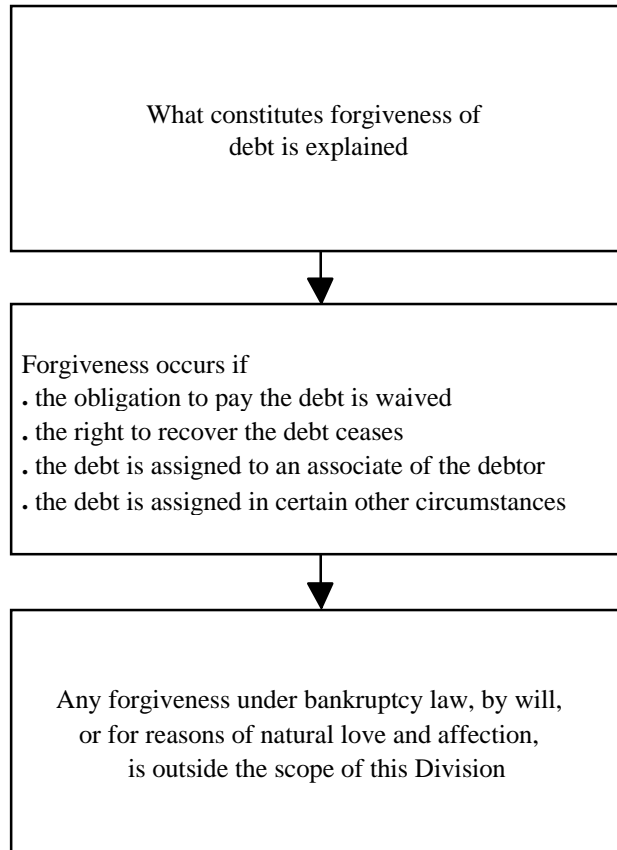
Subdivision 245-B—What constitutes forgiveness of a debt

Guide to Subdivision 245-B

245-30 What this Subdivision is about

<p>This Subdivision explains the circumstances in which a debt is taken to have been forgiven for the purposes of this Division.</p>
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245-31 Map of this Subdivision



Operative provisions

245-35 What constitutes *forgiveness* of a debt

Obligation to pay debt forgiven

- (1) A debt is forgiven if the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished.

Right to sue for debt ceases because of statute of limitations

- (2) A debt is forgiven if the period within which the creditor is entitled to sue for the recovery of the debt ends because of the operation of a statute of limitations without the debt having been paid.

Agreement to end obligation to pay debt with effect from a future time

- (3) If:
- (a) the debtor and creditor in relation to a debt enter into an agreement or arrangement (whether or not enforceable by legal proceedings); and
 - (b) under the agreement or arrangement the debtor's obligation to pay the whole or a part of the debt is to cease at a particular future time; and
 - (c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);

the debt or the part of the debt is taken to be forgiven when the agreement or arrangement is entered into. If, after the agreement or arrangement is entered into, the debt or the part of the debt is forgiven, the last-mentioned forgiveness is disregarded for the purposes of this Division.

Debt parking

- (4) If:
- (a) the creditor, in relation to a debt, assigns the right to receive payment of the debt to another person (the **new creditor**); and
 - (b) either:
 - (i) the new creditor is an associate of the debtor; or
 - (ii) the assignment occurred under an agreement or arrangement to which the new creditor and the debtor were parties; and
 - (c) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of trading on a securities market;

this Division has effect as if:

Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-40

- (d) the debtor had, at the time of the assignment, been forgiven a debt (the *notional debt*) equal to the amount of the assigned debt; and
- (e) the net forgiven amount of the notional debt were equal to the amount that would have been the net forgiven amount of the assigned debt if that debt had been forgiven instead of being assigned.

Subscription for shares to enable debt to be paid

- (5) If:
 - (a) a person subscribes for shares in a company to enable the company to make a payment in or towards discharge of a debt owed by it to the person; and
 - (b) the company applies all or any of the money subscribed in or towards payment of the debt;then:
 - (c) so much of the debt as is paid out of the money so applied is taken to be forgiven; and
 - (d) the time of the forgiveness is taken to be the time when the money is so applied.

Definition

- (6) In this section:

securities market means a market, exchange or other place on which, or a facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III) are made or accepted.

245-40 Forgivenesses to which this Division does not apply

This Division does not apply to a forgiveness of a debt if:

- (a) the forgiveness is effected under an Act relating to bankruptcy; or
- (b) the forgiveness is effected by will; or
- (c) the debt is forgiven for reasons of natural love and affection.

Subdivision 245-C—Calculation of gross forgiven amount of a debt

Guide to Subdivision 245-C

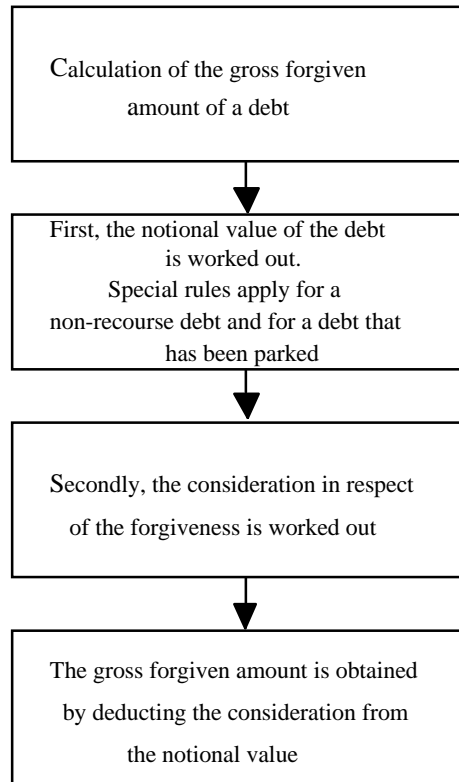
245-45 What this Subdivision is about

If a debt is forgiven, this Subdivision sets out the steps to be followed in calculating the gross forgiven amount of the debt.

245-46 Simplified outline of this Subdivision

- (a) The first step is to work out the *notional value* of a debt that has been forgiven
- The notional value of the debt is calculated as at the time when the debt was forgiven on the basis that the debt was an asset of the creditor at that time.
 - The notional value of the debt is worked out for the purpose of calculating the gross forgiven amount of the debt.
 - A special rule applies for the purpose of working out the notional value of a non-recourse debt.
 - Another special rule applies for the purpose of working out the notional value of a debt that has been parked.
- (b) The second step is to work out the consideration (if any) in respect of the forgiveness of the debt.
- (c) If no such consideration was paid or given, the *gross forgiven amount* of the debt is equal to the notional value of the debt.
- (d) If any such consideration was paid or given, the *gross forgiven amount* of the debt is obtained by deducting the consideration from the notional value of the debt.

245-47 Map of this Subdivision



Operative provisions

245-50 What constitutes a forgiven debt if consideration is given in respect of the forgiveness

If any consideration is paid or given in respect of the forgiveness of a debt, the debt that is forgiven is taken to be:

- (a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and
- (b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

245-55 Working out *notional value* of a debt other than a non-recourse debt

- (1) Subject to sections 245-60 and 245-61, the *notional value* of a debt at the time when it was forgiven is the lesser of the amount worked out under subsection (2) (the *first applicable amount*) and the amount worked out under subsection (3) (the *second applicable amount*).
- (2) The *first applicable amount* is the amount that would have been the value of the debt (considered as an asset of the creditor) at the time when it was forgiven if:
 - (a) except where subsection (4) applies in relation to the debt, at the time when the debt was incurred the debtor was able to pay all the debtor's debts (including the debt concerned) as and when they fell due; and
 - (b) the debtor's capacity to pay the debt at the time when it was forgiven was the same as the debtor's capacity to pay the debt at the time when it was incurred.
- (3) The *second applicable amount* is the sum of the following amounts:
 - (a) the amount that would have been the value of the debt (considered as an asset of the creditor) at the time when it was forgiven if:
 - (i) except where subsection (4) applies in relation to the debt, at the time when the debt was incurred the debtor was able to pay all the debtor's debts (including the debt concerned) as and when they fell due; and
 - (ii) the debtor's capacity to pay the debt at the time when it was forgiven was the same as the debtor's capacity to pay the debt at the time when it was incurred; and
 - (iii) no changes occurred, between the time when the debt was incurred and the time when the debt was forgiven, in any market variables; and
 - (b) the amount or the sum of the amounts of any deduction or deductions that:
 - (i) have been allowed or are allowable to the debtor as a result of the forgiveness of the debt; and

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Division 245 Forgiveness of commercial debts

Section 245-60

- (ii) are attributable to changes in market variables that occurred between the time when the debt was incurred and the time when the debt was forgiven.
- (4) Paragraph (2)(a) and subparagraph (3)(a)(i) do not apply in relation to a debt if:
 - (a) either:
 - (i) at the time when the debt was forgiven the creditor was a resident; or
 - (ii) the forgiveness of the debt was a CGT event involving a CGT asset that was taxable Australian property; and
 - (b) the debtor and the creditor were not dealing with each other at arm's length in respect of the incurring of the debt; and
 - (c) the debt was not a moneylending debt.
- (5) In this section:

market variables, in relation to a debt, means changes in rates of interest, and changes in the rates of exchange between currencies, that affect the value of the debt.

245-60 Special rule for working out notional value of a non-recourse debt

- (1) This section applies to a debt (the *non-recourse debt*) if the debt was incurred directly in respect of the financing of the cost of the acquisition, construction or development of property (but not including the manufacture of goods) by the debtor and the rights of the creditor as against the debtor in the event of default in the payment of the debt or the payment of interest are limited to all or any of the following:
 - (a) rights (including the right to moneys payable) in relation to all or any of the following:
 - (i) the property or the use of the property;
 - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the property;
 - (iii) the loss or disposal of the whole or a part of the property or of the debtor's interest in the property;
 - (b) rights in respect of a mortgage or other security over the property;

- (c) rights arising out of any arrangement relating to the financial obligations, in relation to the property, of the end-user of the property towards the debtor.
- (2) The **notional value** of a non-recourse debt at the time when it was forgiven is the lesser of the following:
 - (a) the amount of the non-recourse debt outstanding at that time;
 - (b) the market value at that time of the creditor's rights referred to in subsection (1) of this section.
- (3) In this section:

end-user, in relation to property, has the same meaning as in section 51AD.

245-61 Special rule for working out notional value of parked debt

If a debt that has been assigned as mentioned in subsection 245-35(4) is forgiven, the notional value of that debt is:

- (a) if the debt was not a moneylending debt and the creditor and the new creditor were not dealing with each other at arm's length in connection with the assignment—the market value of the debt at the time of the assignment; or
- (b) in any other case—the sum of:
 - (i) the amount or value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, to the creditor in respect of the assignment; and
 - (ii) the amount or value of the consideration (if any) paid or given by the new creditor in respect of the assignment.

245-65 The consideration in respect of forgiveness of a debt

- (1) Subject to subsection (2), the **consideration** in respect of the forgiveness of a debt (other than a debt to which subsection (3) or (4) applies) is:
 - (a) if the debtor has paid, or is required to pay, an amount or amounts of money as a result of, or in respect of, the forgiveness of the debt:
 - (i) if the debt is not a moneylending debt—that amount or the sum of those amounts; or
 - (ii) if the debt is a moneylending debt—the sum of the amount or amounts (if any) that the debtor has paid and

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Division 245 Forgiveness of commercial debts

Section 245-65

- the market value, at the time of the forgiveness, of the debtor's obligation to pay an amount or amounts; or
- (b) if the debtor has given, or is required to give, property other than money as a result of, or in respect of, the forgiveness of the debt—the market value of the property at the time of the forgiveness; or
 - (c) if the debtor has paid or given, or is required to pay or give, both an amount or amounts of money and property other than money as a result of, or in respect of, the forgiveness of the debt:
 - (i) if the debt is not a moneylending debt—the sum of that amount or those amounts and the market value of the property at the time of the forgiveness; or
 - (ii) if the debt is a moneylending debt—the sum of the amount or amounts (if any) that the debtor has paid, the market value, at the time of the forgiveness, of the property (if any) that the debtor has given and the market value, at the time of the forgiveness, of the debtor's obligation to pay any amount or amounts or to give any property.
- (2) Subject to subsection (2A), if a debt (other than a moneylending debt) to which subsection (1) applies is forgiven and:
- (a) there is no consideration in respect of the forgiveness; or
 - (b) the whole or a part of the consideration in respect of the forgiveness cannot be valued; or
 - (c) the amount that, apart from this paragraph, would be taken to be the amount or value of the consideration in respect of the forgiveness is greater or less than the market value of the debt at the time of the forgiveness and the debtor and creditor were not dealing with each other at arm's length in connection with the forgiveness;
- the debtor is taken to have paid as *consideration* in respect of the forgiveness of the debt an amount equal to the market value of the debt at the time of the forgiveness.
- (2A) Subsection (2) does not apply in relation to a debt unless:
- (a) at the time when the debt was forgiven the creditor was a resident; or
 - (b) the forgiveness of the debt was a CGT event involving a CGT asset that was taxable Australian property.

- (3) In calculating for the purposes of paragraph 245-35(4)(e) the amount that would have been the net forgiven amount of an assigned debt referred to in that paragraph if that debt had been forgiven instead of being assigned:
- (a) if the debt is not a moneylending debt and the creditor and the new creditor were not dealing with each other at arm's length in connection with the assignment—the *consideration* in respect of the forgiveness of the debt is taken to be the market value of the debt at the time of the assignment; or
 - (b) in any other case—the *consideration* in the respect of the forgiveness of the debt is taken to be the sum of:
 - (i) the amount or value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, to the creditor in respect of the assignment; and
 - (ii) the amount or value of the consideration (if any) paid or given by the new creditor in respect of the assignment.
- (4) If a debt is forgiven by subscribing for shares in a company as mentioned in subsection 245-35(5), the *consideration* in respect of the forgiveness of the debt is the amount worked out using the formula:

$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

where:

amount applied means the amount applied by the company as mentioned in paragraph 245-35(5)(b).

amount subscribed means the amount subscribed as mentioned in paragraph 245-35(5)(a).

market value of shares subscribed for means the market value, of all the shares in the company that were subscribed for as mentioned in paragraph 245-35(5)(a), immediately after those shares were issued.

245-70 Money or other property applied for benefit of creditor

- (1) For the purposes of section 245-65:
- (a) money or property is taken to have been paid or given to a creditor if the money or property has been applied for the

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benefit, or in accordance with the directions, of the creditor;
and

- (b) a debtor is taken to be required to pay money or give property to a creditor if the debtor is required to apply money or property for the benefit, or in accordance with the directions, of the creditor.
- (2) For the purposes of section 245-65, a reference in subsection (1) to the application of money or property for the benefit of a creditor includes, without limiting the generality of the expression, a reference to the application of money or property in the discharge, wholly or partly, of a debt due by the creditor.

245-75 Gross forgiven amount of a debt

- (1) Subject to subsection (3), if no consideration is paid or given, or taken to be paid or given, in respect of the forgiveness of the debt, the ***gross forgiven amount*** of the debt is an amount equal to the notional value of the debt at the time when the debt was forgiven.
- (2) Subject to subsection (3), if any consideration is paid or given, or taken to be paid or given, in respect of the forgiveness of the debt:
- (a) where the notional value of the debt at the time when the debt was forgiven exceeds the consideration—the ***gross forgiven amount*** of the debt is an amount equal to the excess; or
- (b) where the notional value of the debt at the time when the debt was forgiven is equal to or less than the consideration—there is no forgiven amount in respect of the debt and Subdivisions 245-D to 245-G do not apply in respect of the debt.
- (3) If 2 or more persons were liable (otherwise than as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, the ***gross forgiven amount*** of the debt in relation to the person, or each of the persons, in respect of whom the debt was a commercial debt is the amount worked out using the formula:

$$\frac{\text{Overall gross forgiven amount}}{\text{Number of commercial debtors}}$$

where:

overall gross forgiven amount means the amount that would be the gross forgiven amount of the debt if all the persons liable to pay the debt were treated as a single person and the debt was a commercial debt in respect of that person.

number of commercial debtors means the number of persons liable to pay the debt in respect of whom the debt was a commercial debt.

Subdivision 245-D—Calculation of net forgiven amount of a debt

Guide to Subdivision 245-D

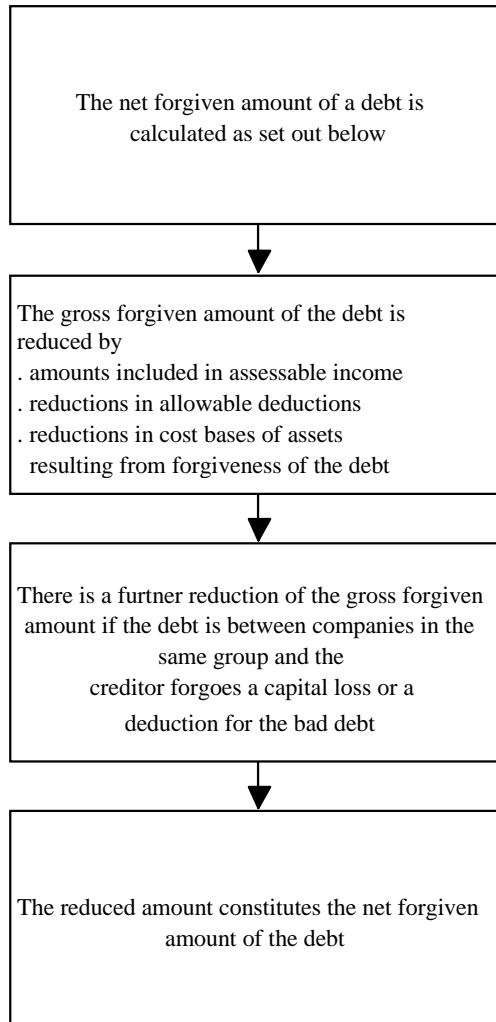
245-80 What this Subdivision is about

This Subdivision provides for the gross forgiven amount of a debt to be reduced in certain circumstances.

If the gross forgiven amount is not reduced under this Subdivision, the gross forgiven amount is also the ***net forgiven amount*** of the debt.

If the gross forgiven amount is reduced under this Subdivision, the amount remaining after the reduction is the ***net forgiven amount*** of the debt.

245-81 Map of this Subdivision



Operative provisions

245-85 Reduction of gross forgiven amount

- (1) The gross forgiven amount of a debt is reduced by the sum of any of the following amounts that apply in relation to the debtor:
- (a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in the debtor's assessable income of any year of income as a result of the forgiveness of the debt;
 - (b) any amount by which, under a provision of this Act other than this Division, a deduction that would otherwise be allowable from the debtor's assessable income of any year of income has been, or will be, reduced as a result of the forgiveness of the debt (except a reduction under Division 727 (indirect value shifting) of the *Income Tax Assessment Act 1997*);
 - (c) any amount by which the cost base to the debtor of any asset for CGT purposes has been, or will be, reduced as a result of the forgiveness of the debt under Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (except a reduction under Division 139 of that Act).

Note: Paragraph (1)(c) does not cover a reduction under Division 727 (indirect value shifting) of the *Income Tax Assessment Act 1997* because that Division is not in Part 3-1 or 3-3 of that Act.

- (2) The amount remaining after reducing the gross forgiven amount under subsection (1) is:
- (a) if section 245-90 does not apply—the *net forgiven amount* of the debt; or
 - (b) if section 245-90 applies—the *provisional net forgiven amount* of the debt.

245-90 Agreement between companies under common ownership for creditor to forgo capital loss or revenue deduction

- (1) This section applies if:
- (a) a debt owed by a company to another company is forgiven; and

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- (b) throughout the period from the time when the debt was incurred until the time when the debt is forgiven, the companies were under common ownership.
- (2) If, apart from this subsection, the creditor would have incurred a capital loss as a result of the forgiveness of the debt:
 - (a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the provisional net forgiven amount of the debt; and
 - (b) if such an agreement is made:
 - (i) the creditor's capital loss is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
 - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.
- (3) If, apart from this subsection, a deduction in respect of the debt would be allowable to the creditor under section 8-1 (about general deductions) or section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997* in the forgiveness year of income:
 - (a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the provisional net forgiven amount of the debt; and
 - (b) if such an agreement is made:
 - (i) the deduction otherwise allowable to the creditor is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
 - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.
- (4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:
 - (a) is in writing and signed by the public officer of the company that is the debtor and by the public officer of the company that is the creditor; and

- (b) is made before whichever is the earlier of the following:
- (i) the date of lodgment of the return of income for the forgiveness year of income of the company that is the creditor;
 - (ii) the date of lodgment of the return of income for the forgiveness year of income of the company that is the debtor;
- or before any later date that the Commissioner determines.

Subdivision 245-E—Application of net forgiven amounts

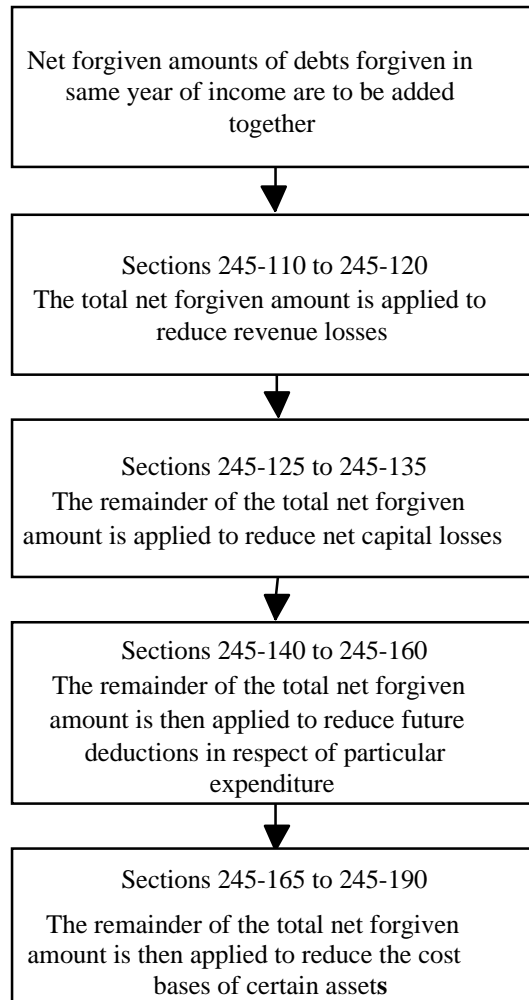
Guide to Subdivision 245-E

245-95 What this Subdivision is about

This Subdivision provides for the total of the net forgiven amounts (the *total net forgiven amount*) of all debts of a particular debtor that are forgiven in the same year of income (the *forgiveness year of income*) to be applied in reduction of amounts that would otherwise be taken into account in assessing the debtor's taxable income of the forgiveness year of income or any later year of income.

This Subdivision does not apply to the calculation of attributable income of a non-resident trust estate or a controlled foreign company.

245-96 Map of this Subdivision



General operative provisions

245-100 Subdivision not to apply to calculation of attributable income

This Subdivision does not apply to the calculation of:

- (a) attributable income of a non-resident trust estate for the purposes of Division 6AAA of Part III; or
- (b) attributable income of a controlled foreign company for the purposes of Part X.

245-105 How *total net forgiven amount* is to be applied

- (1) Subject to subsection (2), the total of the net forgiven amounts of all debts of a debtor that are forgiven in the same year of income (the *forgiveness year of income*) constitutes the *total net forgiven amount* in relation to the debtor in respect of the forgiveness year of income.
- (2) Section 245-215 has effect in calculating the total net forgiven amount of a partner in a partnership.
- (3) Subdivision 245-G has effect in calculating the total net forgiven amount of a company that is included in a group of related companies.
- (4) The total net forgiven amount is to be applied in accordance with this section before the debtor's return in respect of income of the forgiveness year of income is furnished to the Commissioner.
- (5) The total net forgiven amount is to be applied first, in accordance with sections 245-110 to 245-120, in reduction of deductible revenue losses (if any) incurred by the debtor in years of income before the forgiveness year of income.
- (6) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsection (5), it is to be applied, in accordance with sections 245-125 to 245-135, in reduction of deductible net capital losses (if any) incurred by the debtor in respect of years of income before the forgiveness year of income.

Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-110

- (7) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsections (5) and (6), it is to be applied, in accordance with sections 245-140 to 245-160, in reduction of deductible expenditures (if any) that are to be taken into account in the assessment of the debtor's taxable income of the forgiveness year of income or any later year of income.
- (8) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsections (5), (6) and (7), it is to be applied, in accordance with sections 245-165 to 245-190, in reduction of the relevant cost bases of certain assets of the debtor at the beginning of the forgiveness year of income.

Operative provisions relating to reduction of revenue losses

245-110 Definitions applicable to provisions reducing revenue losses

In sections 245-110 to 245-120:

deductible revenue loss means a loss:

- (a) that is of a kind described in the table of deductible revenue losses; and
- (b) in respect of which a deduction would, apart from this Subdivision, be allowable to the debtor in the forgiveness year of income or any later year of income if the debtor had derived sufficient assessable income in the year of income concerned (including sufficient assessable income from which the loss could be deducted).

table of deductible revenue losses means the following table:

Table of deductible revenue losses		
	Column 1	Column 2
	General description	Provision under which loss is deductible
Item	of losses	
1	Tax losses	Section 36-15 or 36-17 of the <i>Income Tax Assessment Act 1997</i>

245-115 Total net forgiven amount to be applied in reduction of revenue losses

The total net forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with section 245-120, of deductible revenue losses (if any).

245-120 Allocation of total net forgiven amount in respect of deductible revenue losses

- (1) The debtor may choose:
 - (a) the order in which the deductible revenue losses are to be reduced; and
 - (b) the amount by which each of those losses is to be reduced; provided that the total net forgiven amount is applied, to the maximum extent possible, in reduction of deductible revenue losses.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

Operative provisions relating to reduction of net capital losses

245-125 Definitions applicable to provisions reducing net capital losses

In sections 245-125 to 245-135:

deductible net capital loss means a net capital loss that:

- (a) the debtor has for an income year earlier than the forgiveness year of income; and
- (b) apart from this Subdivision, could be applied in working out the debtor's net capital gain for the forgiveness year of income (assuming the debtor had enough capital gains).

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses.

245-130 Residual forgiven amount to be applied in reduction of net capital losses

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of deductible net capital losses (if any).

245-135 Allocation of residual forgiven amount in respect of deductible net capital losses

- (1) The debtor may choose:
 - (a) the order in which the deductible net capital losses are to be reduced; and
 - (b) the amount by which each of those losses is to be reduced; provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of deductible net capital losses.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

Operative provisions relating to reduction of deductible expenditure

245-140 Definitions applicable to provisions reducing deductible expenditure

- (1) In sections 245-140 to 245-160:

deductible expenditure means expenditure (other than excluded expenditure):

 - (a) that is of a kind referred to in the table of deductible expenditure and was incurred before the forgiveness year of income; and
 - (b) in respect of which a deduction would, apart from this Subdivision, be allowable to the debtor in respect of income of the forgiveness year of income or a later year of income if no event or circumstance (other than a recoupment of the expenditure in the forgiveness year of income) occurred that would affect the allowance of the deduction.

excluded expenditure has the meaning given by subsections (2), (3) and (4).

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses and deductible net capital losses.

table of deductible expenditure means the following table.

Table of deductible expenditure		
	Column 1	Column 2
Item	General description of expenditure	Provision under which a deduction is allowable in respect of the expenditure
2	Expenditure deductible under Division 40 (capital allowances) of the <i>Income Tax Assessment Act 1997</i>	Division 40 of that Act
4	Expenditure incurred in borrowing money to produce assessable income	Section 25-25 of the <i>Income Tax Assessment Act 1997</i>
7	Expenditure on scientific research	Subsection 73A(2)
8	Expenditure on research and development activities	Sections 73B or 73BH, 73BA, 73BH, 73QA and 73QB
14	Advance revenue expenditure	Subdivision H of Division 3 of Part III
20	Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1)
22	Expenditure on Australian films	Section 124ZAF
23	Expenditure on assessable income producing buildings and other capital works	Section 43-10 of the <i>Income Tax Assessment Act 1997</i>

- (2) Expenditure is *excluded expenditure* if:
- (a) it was incurred in respect of an asset that has been disposed of by the debtor to a person who was dealing at arm's length with the debtor in respect of the disposal; and
 - (b) the disposal occurred during the forgiveness year of income before the forgiveness of any debt owed by the debtor, being a forgiveness that resulted in a net forgiven amount; and

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Section 245-145

- (c) no provision of this Act includes an amount in the debtor's assessable income, or allows a deduction to the debtor, as a result of the disposal.
- (3) Expenditure is *excluded expenditure* if the asset in respect of which the expenditure was incurred was disposed of by the debtor, or was lost or destroyed, on or before the commencement day.
- (4) Expenditure is *excluded expenditure* to the extent (if any) to which the expenditure was recouped on or before the commencement day.

245-145 Residual forgiven amount to be applied in reduction of deductible expenditures

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with sections 245-150 and 245-155, of deductible expenditures (if any).

245-150 Allocation of residual forgiven amount in respect of deductible expenditures

- (1) The debtor may choose:
 - (a) the order in which deductible expenditures are to be subject to reduction; and
 - (b) the amount to be applied in reduction of each of those expenditures;provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of deductible expenditures.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

245-155 How a reduction of a deductible expenditure is to be effected

- (1) The following paragraphs apply in respect of the reduction of any deductible expenditure if the deduction that would be allowable to the debtor, apart from this Subdivision, in respect of the deductible expenditure is a percentage, fraction or proportion of an amount (the *base amount*) that is worked out without regard to any amount

or amounts previously allowed as a deduction or deductions in respect of the deductible expenditure:

- (a) any amount that is to be applied in reduction of the deductible expenditure is taken to reduce the base amount for the purpose of working out the deduction in respect of the forgiveness year of income and later years of income;
 - (b) the amount of the reduction is taken to have been a deduction allowed to the debtor in respect of the deductible expenditure before the forgiveness year of income for the purposes of the operation of any provision of this Act that includes an amount in the debtor's assessable income or allows a deduction to the debtor:
 - (i) because of the disposal, loss or destruction of the asset in respect of which the deductible expenditure was incurred; or
 - (ii) because of the recoupment of any of the expenditure; or
 - (iii) because use of the asset for a particular purpose has been otherwise terminated;
 - (iv) because a balancing adjustment event within the meaning of the former Division 42, or Division 40, of the *Income Tax Assessment Act 1997* occurs for that asset;

as the case may be;
 - (c) the total amount of the deductions allowed or allowable otherwise than under paragraph (b) in respect of the deductible expenditure for all years of income (including years of income before the forgiveness year of income) must not exceed the base amount as reduced under paragraph (a).
- (2) If the deduction that would be allowable to the debtor, apart from this Subdivision, in respect of any deductible expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount or amounts previously allowed as a deduction or deductions in respect of the deductible expenditure, any amount to be applied in reduction of the deductible expenditure is taken to have been a deduction allowed to the debtor in respect of the deductible expenditure before the forgiveness year of income.

245-160 Amount applied in reduction of deductible expenditure to be included in assessable income in certain circumstances

If:

- (a) an amount of deductible expenditure is recouped after the forgiveness year of income; and
- (b) as a result of the recoupment, this Act applies to disallow any deduction previously allowed to the debtor in respect of the expenditure;

an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the deductible expenditure is included in the debtor's assessable income of the year of income in which the expenditure is recouped.

Operative provisions relating to reduction of cost bases of assets

245-165 Definitions applicable to provisions reducing cost bases

- (1) In sections 245-165 to 245-190:

excluded asset has the meaning given by section 245-170.

reducible asset means a CGT asset (other than an excluded asset) of the debtor at the beginning of the forgiveness year of income.

relevant cost base, in relation to a CGT asset, means the cost base or the reduced cost base, of the asset.

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses, deductible net capital losses and deductible expenditures.

245-170 Excluded assets

The following CGT assets of a debtor are excluded assets:

- (a) a CGT asset acquired by the debtor before 20 September 1985;
- (b) a CGT asset that the debtor no longer owned at the end of the commencement day;
- (c) a personal use asset (within the meaning of the *Income Tax Assessment Act 1997*);

- (d) a dwelling (within the meaning of the *Income Tax Assessment Act 1997*) that was the debtor's main residence at any time before the forgiveness year of income;
- (e) goodwill;
- (f) a right covered by section 118-305 of the *Income Tax Assessment Act 1997* (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);
- (g) a CGT asset that, throughout the period before the forgiveness year when it was owned by the debtor, constituted trading stock of the debtor;
- (h) a CGT asset:
 - (i) the cost of which is deductible expenditure in relation to the debtor under section 245-140; and
 - (ii) a CGT event in relation to which would result in an amount being included in the debtor's assessable income, or in the debtor being able to deduct an amount; and
- (i) if the debtor is a non-resident at the beginning of the forgiveness year of income—an asset that is not a taxable Australian asset.

245-175 Residual forgiven amount to be applied in reduction of cost bases of assets

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the relevant cost bases of reducible assets (if any).

245-180 Allocation of residual forgiven amount among relevant cost bases of assets

- (1) Subject to section 245-185, the debtor may choose:
 - (a) the reducible assets whose relevant cost bases are to be subject to reduction; and
 - (b) the amount to be applied in reduction of the relevant cost base of each of those assets;

provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of the relevant cost bases of reducible assets.

- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

245-185 Relevant cost bases of investments in associated entities to be reduced last

- (1) If a debtor's reducible assets include investments in, or in relation to, entities that are associates of the debtor, the relevant cost bases of those investments are not subject to reduction under section 245-175 until the residual forgiven amount has been applied, to the maximum extent possible, in reduction of the relevant cost bases of reducible assets other than such investments.
- (2) In this section:

entity means a natural person, a partnership, a trustee of a trust or a company.

investment includes:

- (a) in respect of an entity that is a partnership—an interest as a partner in a partnership; and
- (b) in respect of an entity that is a trustee of a trust—a beneficial interest under the trust; and
- (c) in respect of an entity that is a company—a share in the company; and
- (d) in respect of any entity—a debt owed to the debtor by the entity.

245-190 How a reduction of the relevant cost bases of an asset is to be effected

- (1) Subject to subsection (3), if the debtor chooses to apply an amount in reduction of the relevant cost bases of a particular CGT asset, each relevant cost base of the asset, as at any time on or after the beginning of the forgiveness year of income, is taken to be reduced by that amount.
- (2) The reduction by a particular amount of each of the relevant cost bases of a particular CGT asset is, for the purpose of working out the amount by which the residual forgiven amount is applied in making the reduction, taken to be a reduction in that residual

forgiven amount by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).

- (3) The maximum amount by which each of the relevant cost bases of a CGT asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if a CGT event had happened to the asset:
- (a) subject to paragraph (b), on the first day of the forgiveness year of income; or
 - (b) if, after the beginning of that year of income, an event occurred that would cause the reduced cost base of the asset to be reduced—on the day on which the event occurred; and to have been so disposed of at its market value on the day concerned.

Operative provision relating to unapplied total net forgiven amount

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

- (1) If any part of the total net forgiven amount remains after the application of that amount in making reductions under the preceding provisions of this Subdivision, the remaining part is disregarded.
- (2) This section has effect subject to section 245-215.

Subdivision 245-F—Special rules relating to partnerships

Guide to Subdivision 245-F

245-200 What this Subdivision is about

This Subdivision provides that the preceding Subdivisions apply to a partnership in relation to debts owed by the partnership that are forgiven.

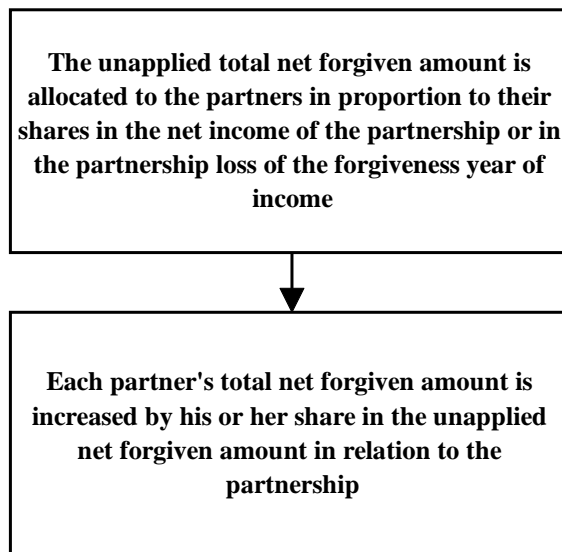
Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-201

However, if the total net forgiven amount in relation to a partnership is not able to be fully applied under those provisions as they apply to the partnership, the remainder is treated as being net forgiven amounts of debts of the partners in proportion to their respective shares in the net income, or the partnership loss, of the partnership of the forgiveness year of income.

245-201 Map of this Subdivision



Operative provisions

245-205 This Subdivision does not apply to corporate limited partnerships

- (1) This Subdivision does not apply to a corporate limited partnership.
- (2) This Division, other than this Subdivision, applies to a corporate limited partnership as if the partnership were a company.
- (3) In this section:

corporate limited partnership has the meaning given by section 94D.

245-210 Subdivisions 245-A to 245-E to apply to partnerships

- (1) Subdivisions 245-A to 245-D apply to a partnership in respect of the partnership's debts, and references in those Subdivisions to a debtor include a reference to a partnership in respect of the partnership's debts.
- (2) Subject to section 245-215, Subdivision 245-E applies to a partnership in respect of the total net forgiven amount calculated in relation to the partnership under Subdivisions 245-A to 245-D as they apply under subsection (1).

245-215 Unapplied total net forgiven amount of a partnership to be transferred to partners

- (1) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.
- (2) This section applies if any part (the *residual amount*) of the total net forgiven amount in relation to a partnership in respect of the forgiveness year of income remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.

- (3) If there is a net income in relation to the partnership in respect of the forgiveness year of income, each partner is taken to have had a debt forgiven during the forgiveness year of income and there is taken to be, in respect of the debt of each partner, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

- (4) If there is a partnership loss in relation to the partnership in respect of the forgiveness year of income, each partner is taken to have had a debt forgiven during the forgiveness year of income and there is taken to be, in respect of the debt of each partner, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

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Division 245 Forgiveness of commercial debts

Section 245-220

- (5) In the formulas in subsections (3) and (4):

partner's share of net income means the part of the net income of the partnership of the forgiveness year of income that is included in the partner's assessable income.

partner's share of partnership loss means the part of the partnership loss that is allowable as a deduction to the partner.

net income means the net income of the partnership of the forgiveness year of income.

partnership loss means the partnership loss of the forgiveness year of income.

residual amount has the meaning given by subsection (2).

- (6) The total net forgiven amount of a partner for the forgiveness year of income as worked out under subsection 245-105(1) includes the net forgiven amount worked out in relation to the partner under this section.

Subdivision 245-G—Special rules affecting related companies

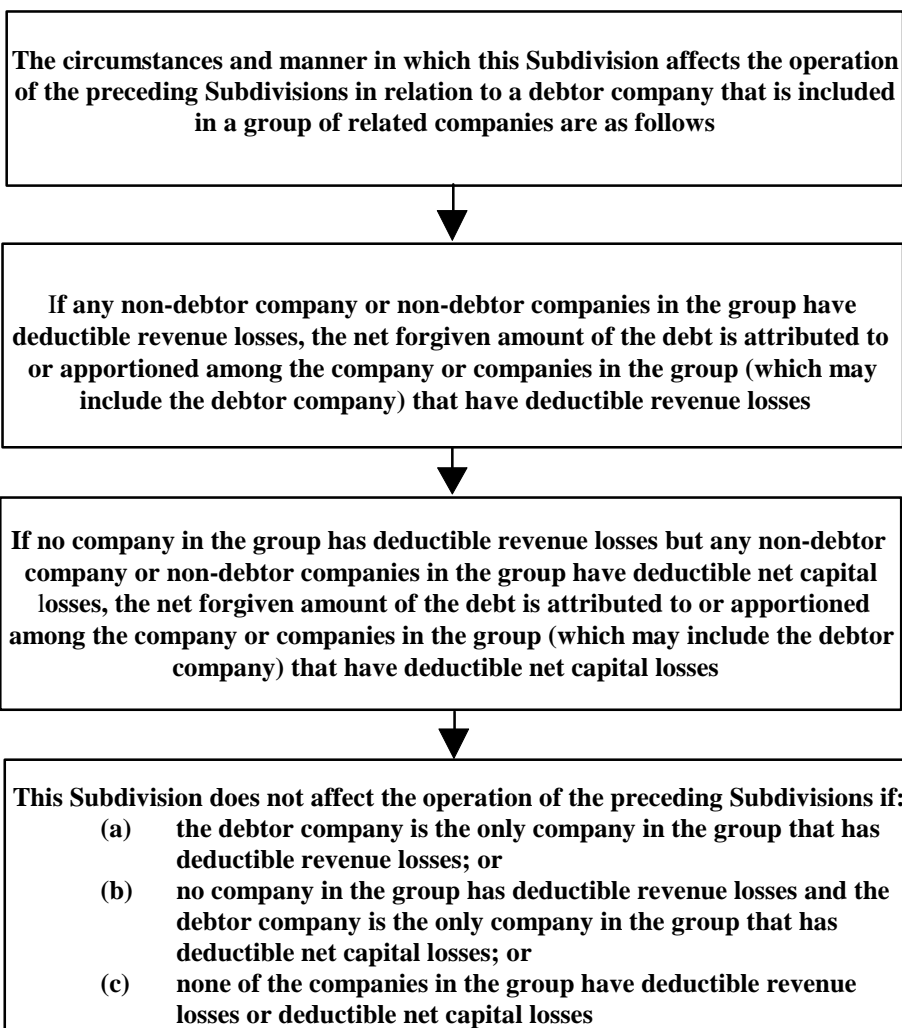
Guide to Subdivision 245-G

245-220 What this Subdivision is about

This Subdivision applies in certain circumstances if, at the time when a debt incurred by a company is forgiven, the company and another company or other companies constituted a group of related companies.

The forgiven amount of the debt is treated in those circumstances as having been used to generate amounts that would otherwise be taken into account in reducing the taxable incomes of the debtor company and other company or companies in the group.

245-221 Map of this Subdivision



Operative provisions

245-225 Application of Subdivision

- (1) This Subdivision applies in respect of a debt (the *relevant debt*) incurred by a company (the *debtor company*) if, and only if:
 - (a) the relevant debt has been forgiven; and

Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-225

- (b) there is a net forgiven amount in respect of the relevant debt;
and
 - (c) the debtor company and another company or other companies constitute a group of related companies in respect of the relevant debt.
- (2) The debtor company and another company or other companies constitute a group of related companies in respect of the relevant debt for the purposes of this section if the companies concerned were under common ownership:
- (a) at the time when the relevant debt was forgiven; and
 - (b) at any time on the last day of the year of income that immediately preceded the forgiveness year of income in respect of the relevant debt.
- (3) If:
- (a) the debtor company and another company were not under common ownership at the times mentioned in subsection (2);
and
 - (b) the 2 companies had been under common ownership at any time within:
 - (i) the 2 years of income that immediately preceded the forgiveness year of income in respect of the relevant debt; or
 - (ii) the part of the forgiveness year of income that occurred before the relevant debt was forgiven; and
- the other company is taken to be included in the group of related companies referred to in subsection (2) in respect of the relevant debt if:
- (c) a taxpayer who was a controller of the other company immediately before, and immediately after, the 2 companies ceased to be under common ownership was also:
 - (i) a controller of the other company at the time when the relevant debt was forgiven; and
 - (ii) a controller of the debtor company at that time; or
 - (d) immediately before, and immediately after, the 2 companies ceased to be under common ownership and at the time when the relevant debt was forgiven:
 - (i) the debtor company was a controller of the other company; or

- (ii) the other company was a controller of the debtor company.

245-230 If any non-debtor companies in a group of related companies have deductible revenue losses

- (1) This section applies in relation to the relevant debt if, and only if, any one or more of the non-debtor companies in the group of related companies in respect of the relevant debt have deductible revenue losses for the purposes of the application of this Division in relation to the forgiveness year of income in respect of the relevant debt (the *relevant year of income*).
- (2) The net forgiven amount of the relevant debt (the *disregarded net forgiven amount*) is disregarded for the purposes of this Division other than this Subdivision.
- (3) However, each company in the group that has deductible revenue losses for the purposes mentioned in subsection (1) (including the debtor company if it has deductible revenue losses for those purposes) is taken to have had a debt forgiven during the relevant year of income and there is taken to be, in respect of each such debt, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Company's deductible revenue losses}}{\text{Total deductible revenue losses}} \times \text{Disregarded net forgiven amount}$$

where:

company's deductible revenue losses means the total of the company's deductible revenue losses for the purposes of the application of this Division in relation to the relevant year of income.

total deductible revenue losses means the total of the deductible revenue losses of all the companies in the group of related companies for the purposes of the application of this Division in relation to the relevant year of income.

- (4) In this section:

deductible revenue loss of a company does not include an amount of a tax loss transferred to the company by another company if the other company incurred the tax loss in the relevant year of income.

Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-235

Note: Subdivision 170-A of the *Income Tax Assessment Act 1997* provides for the transfer of tax losses within wholly-owned groups of companies.

245-235 If any non-debtor companies in a group of related companies have deductible net capital losses

- (1) This section applies in relation to the relevant debt if, and only if, for the purposes of the application of this Division in relation to the forgiveness year of income in respect of the relevant debt (the *relevant year of income*):
 - (a) none of the companies in the group of related companies in respect of the relevant debt have deductible revenue losses; but
 - (b) any one or more of the non-debtor companies in the group of related companies in respect of the relevant debt have deductible net capital losses.
- (2) The net forgiven amount of the relevant debt (the *disregarded net forgiven amount*) is disregarded for the purposes of this Division other than this Subdivision.
- (3) However, each company in the group that has deductible net capital losses for the purposes mentioned in subsection (1) (including the debtor company if it has deductible net capital losses for those purposes) is taken to have had a debt forgiven during the relevant year of income and there is taken to be, in respect of each such debt, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Company's deductible net capital losses}}{\text{Total deductible net capital losses}} \times \text{Disregarded net forgiven amount}$$

where:

company's deductible net capital losses means the total of the company's deductible net capital losses for the purposes of the application of this Division in relation to the relevant year of income.

total deductible net capital losses means the total of the deductible net capital losses of all the companies in the group of related companies for the purposes of the application of this Division in relation to the relevant year of income.

245-240 If neither section 245-230 nor 245-235 applies

If neither section 245-230 nor 245-235 applies in respect of the relevant debt, this Subdivision does not affect the application of the preceding Subdivisions in relation to the net forgiven amount of the debt.

Subdivision 245-H—General

245-245 Definitions

- (1) In this Division, unless the contrary intention appears:

associate has the meaning given by section 318.

commencement day means the day on which this Schedule commences.

debt includes a part of a debt.

debtor company, in relation to a group of companies that are related companies in respect of a debt incurred by one of those companies, means the company in the group that incurred the debt.

deductible net capital loss, subject to subsection (2), has the meaning given by section 245-125.

deductible revenue loss, subject to subsection (2), has the meaning given by section 245-110.

extinguished, in relation to a debt, does not include payment of the whole of the debt in cash.

forgive, in relation to a debt, has the meaning given by section 245-35.

forgiveness year of income has the meaning given by subsection 245-105(1).

moneylending debt means a debt resulting from a loan of money to the debtor made by the creditor in the ordinary course of a business of lending money carried on by the creditor.

net forgiven amount, in relation to a debt, has the meaning given by Subdivision 245-D.

Schedule 2C Forgiveness of commercial debts

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Section 245-250

non-debtor company, in relation to a group of companies that are related companies in respect of a debt incurred by one of those companies, means a company in the group other than the company that incurred the debt.

pay includes repay.

related group of companies has the meaning given by section 245-225.

total net forgiven amount, in relation to a debtor in respect of a forgiveness year of income, has the meaning given by subsection 245-105(1).

- (2) In determining for the purposes of this Division whether a non-debtor company in a group of companies that are related companies in respect of a debt has a **deductible revenue loss** or a **deductible net capital loss**, the relevant definitions of those expressions as set out in sections 245-110 and 245-125, respectively, are to be applied as if the company were the debtor company.

245-250 Companies under common ownership

For the purposes of this Division, the question whether 2 companies were under common ownership at a particular time is to be determined in the same way as that question would be determined under the definition of **under common ownership** in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

245-255 Controller of company

For the purposes of this Division, the question whether a taxpayer was a controller of a company at a particular time is to be determined in the same way as the question whether an entity is a controller (for CGT purposes) of a company is determined under section 140-20 of the *Income Tax Assessment Act 1997*.

245-260 Time of incurring debt

- (1) Subject to subsection (2), if a debt resulted from the debtor's drawing from time to time on an established line of credit, the debt is taken, for the purposes of this Division, to have been incurred at the time when the debtor first drew on the line of credit.

- (2) If, at any time after a debtor made a drawing or drawings on a line of credit, the debtor repaid the only previous drawing or all the previous drawings, as the case may be, the reference in subsection (1) to the time when the debtor first drew on the line of credit is taken to be a reference to the time of the first drawing after the repayment.

245-265 Keeping and retention of records

- (1) A person (the *debtor*) who incurs a commercial debt must keep any records that are necessary to enable the following matters to be readily found out:
- (a) the date on which the debt was incurred;
 - (b) the identity of the creditor;
 - (c) the amount of the debt;
 - (d) the terms of repayment of the debt;
 - (e) if the debt is not a moneylending debt and the debtor and the creditor were not dealing with each other at arm's length in respect of the incurring of the debt—the debtor's capacity at the time when the debt was incurred to pay the debt when it falls due;
 - (f) if the debtor's obligation to pay the debt is forgiven—the date of the forgiveness and the consideration (if any) in respect of the forgiveness.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) If a company and another company that are under common ownership cease to be under common ownership, each company must keep any records that are necessary to enable the following matters to be readily found out:
- (a) the date on which the companies ceased to be under common ownership;
 - (b) the identity of each person who was a controller of the company immediately before the companies ceased to be under common ownership;
 - (c) the identity of each person who was a controller of the company immediately after the companies ceased to be under common ownership.

Schedule 2C Forgiveness of commercial debts

Division 245 Forgiveness of commercial debts

Section 245-265

- (3) A person who is required by subsection (1) or (2) to keep records must keep them in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.
- (4) Subject to subsection (5), a person who keeps any records, relating to a debt incurred by the person, as required by subsection (1) must retain the records until:
 - (a) if paragraph (b) does not apply—the end of 5 years after the debt was forgiven; or
 - (b) if the period (the *assessment period*) within which the Commissioner may, under section 170, amend an assessment in respect of the person's income of the year of income to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7):
 - (i) the end of the period of 5 years referred to in paragraph (a); or
 - (ii) the end of the assessment period as so extended;whichever is the later.
- (5) Subsection (4) does not require records in respect of a debt that has been wholly paid in cash to be retained after the debt was so paid.
- (6) Subject to subsection (7), each company referred to in subsection (2) that keeps any records relating to the company as required by subsection (2) must retain the records until the end of the second year of income after the year of income in which the company and the other company referred to in subsection (2) ceased to be under common ownership.
- (7) If a debt of one of the companies referred to in subsection (2) was forgiven at any time after the companies ceased to be under common ownership and before the end of the second year of income after the year of income in which the cessation occurred, each of the companies that keeps any records relating to the company as required by that subsection must retain the records until:
 - (a) if paragraph (b) does not apply—the end of 5 years after the debt was forgiven; or
 - (b) if the period (the *assessment period*) within which the Commissioner may, under section 170, amend an assessment

in respect of the company's income of the year of income to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7):

- (i) the end of the period of 5 years referred to in paragraph (a); or
 - (ii) the end of the assessment period as so extended;
- whichever is the later.

(8) A person who contravenes a provision of this section is guilty of an offence punishable on conviction by a penalty of not more than 30 penalty units.

(8A) Subsection (8) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (8A), see subsection 13.3(3) of the *Criminal Code*.

(9) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

Schedule 2D Tax exempt entities that become taxable

Division 57 Tax exempt entities that become taxable

Schedule 2D—Tax exempt entities that become taxable [see Note 2]

Division 57—Tax exempt entities that become taxable

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Guide to Division 57

57-1 What this Division is about

This Division is about the income tax treatment of a taxpayer whose income ceases to be wholly exempt. Broadly, income, outgoings, gains and losses are attributed to the periods before and after the loss of full exemption.

Subdivision 57-A—Key concepts

57-5 Entities to which this Division applies

If:

- (a) at a particular time, all of the income of a taxpayer is wholly exempt from income tax; and
- (b) immediately after that time, the taxpayer's income becomes to any extent assessable income;

then:

- (c) the taxpayer is a *transition taxpayer*; and
- (d) the time when the taxpayer's income becomes to that extent assessable is the *transition time*; and
- (e) the year of income in which the transition time occurs is the *transition year* for the taxpayer.

Subdivision 57-B—Predecessors of the transition taxpayer

57-10 Activities of transition taxpayer's predecessor attributed to transition taxpayer

(1) If:

- (a) at the transition time, the transition taxpayer performs particular functions or carries on particular activities; and
- (b) during any period before the transition taxpayer first began to perform the functions or carry on the activities, an exempt government entity performed those same functions or carried on those same activities; and

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- (c) at the end of the period, responsibility for performing the functions or carrying on the activities was transferred, either directly or through one or more other exempt government entities, to the transition taxpayer;

this Division applies as if, during that period, anything done by or to the exempt government entity in performing those functions or carrying on those activities had instead been done by or to the transition taxpayer.

Note: As a result of this provision, the transition taxpayer may for example be able to deduct after the transition time, under Division 40 of the *Income Tax Assessment Act 1997* as modified by Subdivision 57-J of this Schedule, a portion of allowable capital expenditure incurred before the transition time by an exempt government entity whose functions were transferred to the transition taxpayer.

- (2) An *exempt government entity* is:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an STB, within the meaning of Division 1AB of Part III, that is exempt from tax under that Division.

Subdivision 57-C—Time when income derived

57-15 Time when income derived

- (1) To the extent that income derived by the transition taxpayer before the transition time is in respect of:
 - (a) services rendered; or
 - (b) goods provided; or
 - (c) the doing of any other thing;at or after the transition time, the income is treated for the purposes of this Act as having been derived at the time the services were rendered, the goods were provided or the thing was done, as the case requires.
- (2) To the extent that income derived by the transition taxpayer at or after the transition time is in respect of:
 - (a) services rendered; or
 - (b) goods provided; or
 - (c) the doing of any other thing;before the transition time, the income is treated for the purposes of this Act as having been derived before that time.

Subdivision 57-D—Time when losses and outgoings incurred

57-20 Time when losses and outgoings incurred

- (1) To the extent that a loss or outgoing (within the meaning of section 51 of this Act or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate) incurred by the transition taxpayer before the transition time is in respect of:
 - (a) services rendered; or
 - (b) goods provided; or
 - (c) the doing of any other thing;at or after the transition time, the loss or outgoing is treated for the purposes of this Act as having been incurred at the time the services were rendered, the goods were provided or the thing was done, as the case requires.
- (2) To the extent that a loss or outgoing (within the meaning of section 51 of this Act or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate) incurred by the transition taxpayer at or after the transition time is in respect of:
 - (a) services rendered; or
 - (b) goods provided; or
 - (c) the doing of any other thing;before the transition time, the loss or outgoing is treated for the purposes of this Act as having been incurred before that time.

Subdivision 57-E—Assets and liabilities

57-25 Deemed disposal and re-acquisition of assets

- (1) This section applies to:
 - (a) the disposal of an asset by the transition taxpayer after the transition time; and
 - (b) a CGT event that happens after the transition time in relation to an asset owned by the transition taxpayer;where the transition taxpayer owned the asset at all times from the transition time until the disposal or the CGT event.

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Deemed disposal and re-purchase

- (2) Subject to subsection (5), in determining for the purposes of this Act (other than the excluded provisions mentioned in subsection (4)) whether an amount is included in, or allowable as a deduction from, the assessable income of the transition taxpayer in respect of the disposal, the transition taxpayer is taken:
- (a) to have sold, immediately before the transition time, each of its assets; and
 - (b) to have purchased each of its assets again at the transition time for consideration equal to the asset's adjusted market value at the transition time.
- (2A) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), in determining whether the transition taxpayer makes a capital gain or capital loss from a CGT event that happens after the transition time in relation to an asset referred to in subsection (1), the cost base and reduced cost base of the asset (at the transition time) is its adjusted market value at that time.
- (3) An asset's **adjusted market value** at the transition time is the asset's market value at that time:
- (a) reduced by any amount of income received or receivable by the transition taxpayer in respect of the asset at or after the transition time that:
 - (i) because of subsection 57-15(2); or
 - (ii) because all of the income of the transition taxpayer was wholly exempt from income tax before the transition time;is not included in the transition taxpayer's assessable income; and
 - (b) increased by any amount of income received or receivable by the transition taxpayer in respect of the asset before the transition time that:
 - (i) because of subsection 57-15(1); or
 - (ii) because the transition taxpayer's income ceased to be exempt from income tax at the transition time;is included in the transition taxpayer's assessable income.

Excluded provisions

- (4) For the purposes of subsection (2), the *excluded provisions* are:
- (e) Division 10B of Part III of this Act (about industrial property); and
 - (f) Division 10BA of Part III of this Act (about Australian films); and
 - (ga) Division 40 of the *Income Tax Assessment Act 1997* (about capital allowances); and
 - (i) Division 43 of the *Income Tax Assessment Act 1997* (about deductions for capital works); and
 - (j) section 70-120 of the *Income Tax Assessment Act 1997* (about deducting capital costs of acquiring trees);
 - (la) Division 373 of the *Income Tax Assessment Act 1997* (about intellectual property).

Listed provisions not affected

- (5) If the transition taxpayer:
- (a) acquired an asset (whether before the transition time or otherwise) before the commencement of a provision listed in subsection (6); and
 - (b) after acquiring the asset, owned the asset at all times before the transition time;
- the deemed acquisition of the asset under subsection (2) does not affect the operation of the listed provision.

Listed provisions

- (6) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Listed provisions	
Item	Provision
1	section 26BB
2	section 26C
3	section 70B
4	the former Division 3B of Part III

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Listed provisions	
Item	Provision
5	Division 16E of Part III
6	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under the former subsection 82Z(1) .
7	Division 775
8	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under section 775-30

- (6A) For the purposes of the application of subsection (5) to the transition taxpayer, a provision covered by item 7 or 8 of the table in subsection (6) is taken to have commenced at the start of the taxpayer's applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*).

Note: For *applicable commencement date*, see section 775-155 of the *Income Tax Assessment Act 1997*.

- (6B) The rule in subsection (5) does not apply, and is taken never to have applied, to the transition taxpayer in relation to a provision covered by item 7 or 8 of the table in subsection (6) if the taxpayer makes an election under section 775-150 of the *Income Tax Assessment Act 1997*.

Avoidance of doubt—debt write-off

- (7) To avoid doubt, an effect of subsection (2) is that the sum of all allowable deductions (if any) in respect of the writing off as bad of the whole or part of a debt to which that subsection applies will not exceed the market value of the debt at the transition time.

Avoidance of doubt—disposal need not involve an alienation

- (8) To avoid doubt, an asset may be **disposed of** for the purposes of this section whether or not the disposal involves alienating the asset.

57-30 Deemed cessation and re-assumption of liabilities

- (1) Subject to subsection (3), for the purposes of determining a deduction allowable to, or an amount included in the assessable income of, the transition taxpayer after the transition time in respect of the satisfaction of a liability owed by the transition taxpayer immediately before the transition time, the transition taxpayer is taken:
 - (a) to have ceased immediately before the transition time to have any liabilities; and
 - (b) to have assumed each of its liabilities again at the transition time in return for consideration equal to the adjusted market value (see subsection (2)) at that time of the right or other asset, corresponding to the liability, that was held by the person to whom the liability was owed.
 - (2) The *adjusted market value* of the corresponding right or other asset is the market value of that right or asset at the transition time:
 - (a) reduced by any amount paid or that becomes payable by the transition taxpayer in respect of the liability at or after the transition time, where:
 - (i) because of subsection 57-20(2); or
 - (ii) because all of the transition taxpayer's income was wholly exempt from income tax before the transition time;
the amount is not an allowable deduction; and
 - (b) increased by any amount paid or that became payable by the transition taxpayer in respect of the liability before the transition time, where:
 - (i) because of subsection 57-20(1); or
 - (ii) because the transition taxpayer's income ceased to be exempt from income tax at the transition time;
the amount is an allowable deduction.
 - (3) A provision listed in subsection (4) only applies to a liability of the transition taxpayer at the transition time if the liability first came into existence after the day on which Division 3B of Part III commenced.
 - (4) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The
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other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Listed provisions	
Item	Provision
1	the former Division 3B of Part III
2	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under the former subsection 82Z(1) .

- (5) A provision listed in subsection (6) only applies to a liability of the transition taxpayer at the transition time if the taxpayer first assumed the liability on or after the taxpayer's applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*).

Note: For **applicable commencement date**, see section 775-155 of the *Income Tax Assessment Act 1997*.

- (6) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text.

Listed provisions	
Item	Provision
1	Division 775
2	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under section 775-30.

- (7) The rule in subsection (5) does not apply, and is taken never to have applied, to the transition taxpayer if the taxpayer makes an election under section 775-150 of the *Income Tax Assessment Act 1997*.

57-35 Interpretation

In this Subdivision:

asset means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (e) a CGT asset; but does not include trading stock.

liability includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

Subdivision 57-F—Superannuation deductions

57-40 Contributions under defined benefit superannuation schemes

- (1) This section applies to a deduction allowable apart from this Subdivision to the transition taxpayer under section 290-60 of the *Income Tax Assessment Act 1997* for a contribution made to a fund in relation to a person if:
 - (a) the person was an employee of the transition taxpayer at any time before or after the transition time; and
 - (b) the contribution was made under a defined benefit superannuation scheme (within the meaning of section 6A of the *Superannuation Guarantee (Administration) Act 1992*).

Deduction allowable only if sum of all deductions exceeds defined benefit threshold amount

- (2) The deduction is not allowable for a year of income if the sum of all deductions of the transition taxpayer to which this section applies for the year of income is less than or equal to the defined benefit threshold amount (see subsection (4)) for the year of income.

Amount of deduction not allowable

- (3) If the sum is greater than that amount, so much of the deduction as is worked out using the following formula is not allowable:

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$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions of the transition taxpayer to which this section applies for the year of income}} \times \text{Defined benefit threshold amount for the year of income}$$

Meaning of defined benefit threshold amount

- (4) The **defined benefit threshold amount** for a year of income is:
- (a) if the year of income is the transition year—the unfunded liability amount (see subsection (5)); or
 - (b) in any other case—that amount as reduced by the total amount of deductions to which this section applies, that, because of subsection (2) or (3), have not (disregarding section 57-55) been allowable to the transition taxpayer for all previous years of income.

Meaning of unfunded liability amount

- (5) The **unfunded liability amount** is the value, worked out as at the transition time in accordance with actuarial principles, of the liabilities of the transition taxpayer to provide superannuation benefits for, or for dependants of, employees of the transition taxpayer, where the liabilities:
- (a) had accrued as at the transition time; and
 - (b) were, according to actuarial principles, unfunded at that time; and
 - (c) were liabilities only under defined benefit superannuation schemes.

57-45 Deduction for surplus to meet defined benefit superannuation scheme liabilities

If:

- (a) at the transition time, according to a particular defined benefit superannuation scheme's accounts, an amount is available to meet liabilities of the transition taxpayer under the scheme to provide superannuation benefits for, or for dependants of, employees of the transition taxpayer; and
- (b) the amount exceeds the total value (as worked out according to actuarial principles) of the liabilities of that kind that have accrued as at the transition time; and

- (c) before the transition time, the transition taxpayer makes a written election that the excess is to be used solely to meet liabilities of that kind accruing after the transition time, and the excess is later used solely to meet such liabilities;
 the excess is an allowable deduction of the transition taxpayer for the transition year.

57-50 Contributions generally

- (1) This section applies to a deduction allowable apart from this Subdivision to the transition taxpayer under section 290-60 of the *Income Tax Assessment Act 1997* for a contribution made to a fund in relation to a person if the person was an employee of the transition taxpayer at any time before or after the transition time.

Deduction allowable only if sum of all deductions exceeds general superannuation threshold amount

- (2) The deduction is not allowable for a year of income if the sum of all deductions of the transition taxpayer to which this section applies for the year of income is less than or equal to the general superannuation threshold amount (see subsection (4)) for the year of income.

Amount of deduction not allowable

- (3) If the sum is greater than the general superannuation threshold amount, so much of the deduction as is worked out using the following formula is not allowable:

$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions of the transition taxpayer to which this section applies for the year of income}} \times \text{General superannuation threshold amount}$$

Meaning of general superannuation threshold amount

- (4) The **general superannuation threshold amount** for a year of income is:
- (a) if the year of income is the transition year—the undischarged superannuation liability amount (see subsection (5)); or
 - (b) in any other case—the amount applicable under paragraph (a), reduced by the total amount of deductions to which this section applies that, because of subsection (2) or

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(3), have not (disregarding section 57-55) been allowable to the transition taxpayer for all previous years of income.

Meaning of undischarged superannuation liability amount

(5) This is how to work out the transition taxpayer's ***undischarged superannuation liability amount***:

- Step 1. For each person who was an employee of the transition taxpayer at any time before the transition time, take the sum of:
- (a) if the whole or any part of the person's period of employment with the transition taxpayer took place before the beginning of the superannuation guarantee period (see subsection (6)) and there were one or more required award etc. contribution amounts (see subsection (7)) in respect of any of that whole or part—that amount or those amounts; and
 - (b) if, for the whole or any part or parts of the superannuation guarantee period, there were one or more required award etc. contribution amounts that were greater than the required superannuation guarantee contribution amount or amounts (see subsection (8))—that greater amount or those greater amounts; and
 - (c) if, for the whole or any part or parts of the superannuation guarantee period, either there was no required award etc. contribution amount or there was such an amount but it was not greater than the required superannuation guarantee contribution amount—the required superannuation guarantee contribution amount for the whole or the part of the period, or the sum of the required superannuation guarantee contribution amounts for the parts of the period, as the case may be.

Step 2. Reduce the sum from Step 1 by the sum of amounts that the transition taxpayer actually contributed before the start of the transition year:

- (a) in payment of required award etc. contribution amounts or required superannuation guarantee contribution amounts for the employee that are included in the sum in Step 1; or
- (b) voluntarily to a superannuation fund for the purpose of providing superannuation benefits for the employee, or dependants of the employee;

in respect of any period of employment of the employee with the transition taxpayer before the transition time.

Step 3. If the result after applying Step 2 for a particular employee is less than nil, it is nil instead.

Step 4. Add up the results for all of the employees. This final sum is the transition taxpayer's ***undischarged superannuation liability amount***.

Meaning of superannuation guarantee period

- (6) The ***superannuation guarantee period*** is the period beginning on 1 July 1992 and ending at the transition time.

Meaning of required award etc. contribution amount

- (7) A ***required award etc. contribution amount*** is an amount required to be contributed to a superannuation fund by an employer for the benefit of an employee:
- (a) by an industrial award; or
 - (b) by an occupational superannuation arrangement; or
 - (c) by a law of the Commonwealth, a State or a Territory; or
 - (d) otherwise.

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Meaning of required superannuation guarantee contribution amount

- (8) A **required superannuation guarantee contribution amount** is an amount that an employer would need to contribute in respect of a period so as not to have a superannuation guarantee shortfall under the *Superannuation Guarantee (Administration) Act 1992* in respect of that period.

Note: The relevant periods for which shortfalls are or were calculated under that Act are quarters (from 1 July 1993 onwards) or half-years (from 1 July 1992 to 30 June 1993).

57-52 Section 57-50 does not apply if there is a surplus at transition time

Section 57-50 does not apply to a deduction of the kind mentioned in subsection 57-50(1) if:

- (a) at the transition time, according to the accounts of the fund concerned, an amount is available to meet liabilities of the transition taxpayer in relation to the fund to provide superannuation benefits for, or for dependants of, employees of the transition taxpayer; and
- (b) the amount exceeds the value (as worked out according to actuarial principles) of the liabilities of that kind that have accrued as at the transition time.

57-55 Deductions reduced under both sections 57-40 and 57-50

If the amount of a deduction otherwise allowable to the transition taxpayer in respect of a contribution to a fund is required to be reduced under both sections 57-40 and 57-50:

- (a) if the reduction is of a different amount—the amount is reduced only under that section that requires the greater reduction; or
- (b) if the reduction is of the same amount—the amount is reduced only under section 57-40.

Subdivision 57-G—Denial of certain deductions**57-60 Effect of pre-transition time accrued leave entitlements**

- (1) This section applies to a deduction otherwise allowable to the transition taxpayer for a year of income under subsection 51(1) of this Act or section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997* in respect of long service leave payments or annual leave payments to a person who was an employee of the transition taxpayer at any time before or after the transition time.

Note: Subsection 51(3) of this Act or section 26-10 of the *Income Tax Assessment Act 1997* (as appropriate) contains additional requirements for certain leave payments to be deductible.

Deduction allowable only if sum of all deductions exceeds leave threshold amount

- (2) The deduction is not allowable if the sum of all deductions of the transition taxpayer to which this section applies for the year of income is less than or equal to the leave threshold amount (see subsection (4)) for the year of income.

Amount of deduction not allowable

- (3) If the sum is greater than the leave threshold amount, so much of the deduction as is worked out using the following formula is not allowable:

$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions of the transition taxpayer to which this section applies for the year of income}} \times \text{Leave threshold amount for the year of income}$$

Meaning of leave threshold amount

- (4) The **leave threshold amount** for a year of income is:
- (a) if the year of income is the transition year—the (pre-transition time service) leave amount (see subsection (5)) of the transition taxpayer; or
 - (b) in any other case—that amount as reduced by the total amount of deductions to which this section applies that, because of subsection (2) or (3), have not been allowable to the transition taxpayer for all previous years of income.

Meaning of (pre-transition time service) leave amount

- (5) The *(pre-transition time service) leave amount* of the transition taxpayer is the sum of the following amounts:
- (a) the amount that would be payable by the transition taxpayer in respect of annual leave and long service leave if, at the transition time, all employees of the transition taxpayer began to take all leave of that kind that they were eligible to take; and
 - (b) if the transition taxpayer elects, in accordance with subsection (6), that this paragraph applies—the amount that, according to actuarial principles, would need to be set aside at the transition time to meet all obligations of the transition taxpayer that might reasonably be expected to arise after that time to make annual leave payments and long service leave payments (other than in respect of leave taken into account under paragraph (a)) for periods of service of employees occurring before the transition time; and
 - (c) if paragraph (b) does not apply—the present value, at the transition time, of all annual leave payments and long service leave payments (other than in respect of leave taken into account under paragraph (a)) that the transition taxpayer would become liable to make after that time in respect of periods of service of employees occurring before that time if all such leave became eligible to be taken.

Election

- (6) The election mentioned in paragraph (5)(b) must be made in writing before:
- (a) the day by which the transition taxpayer's return of income for the transition year is due to be lodged; or
 - (b) such later day as the Commissioner allows.

57-65 Treatment of bad debts

- (1) This section applies to a deduction otherwise allowable to the transition taxpayer for a year of income under this Act for the writing off as bad of the whole or part of a debt owing to the transition taxpayer.

Deduction allowable only if sum of all deductions exceeds doubtful debt provision limit

- (2) The deduction is not allowable if the sum of all deductions of the transition taxpayer to which this section applies for the year of income is less than or equal to the doubtful debt provision limit (see subsection (4)) for the year of income.

Amount of deduction not allowable

- (3) If the sum is greater than that limit, so much of the deduction as is worked out using the following formula is not allowable:

$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions of the transition taxpayer to which this section applies for the year of income}} \times \frac{\text{Doubtful debt provision limit for the year of income}}{\text{of income}}$$

Meaning of doubtful debt provision limit

- (4) The **doubtful debt provision limit** for a year of income is:
- if the year of income is the transition year—the pre-transition doubtful debt limit (see subsection (5)); or
 - in any other case—that limit as reduced by the total amount of deductions to which this section applies that, because of subsection (2) or (3), have not been allowable to the transition taxpayer for all previous years of income.

Meaning of pre-transition doubtful debt limit

- (5) The **pre-transition doubtful debt limit** is the total of the amounts that, under generally accepted accounting principles, would be the appropriate doubtful debt provisions in relation to all debts owed to the transition taxpayer as at the transition time.

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Reduction of limit for excess recovery

- (6) If:
- (a) at the transition time, a debt is owed to the transition taxpayer; and
 - (b) the sum of:
 - (i) the amount (if any) that, under generally accepted accounting principles, would be the appropriate doubtful debt provision in relation to the debt as at the transition time; and
 - (ii) any amounts later recovered in respect of the debt; exceeds the amount of the debt;
- the ***pre-transition doubtful debt limit*** is reduced by the amount of the excess.

Reduction of limit if debt later disposed of

- (7) If:
- (a) at the transition time, a debt is owed to the transition taxpayer; and
 - (b) there is an amount (the ***debt provision amount***) greater than nil that, under generally accepted accounting principles, would be the appropriate doubtful debt provision in relation to the debt as at the transition time; and
 - (c) after the transition time, the transition taxpayer disposes of the debt to another person;
- the ***pre-transition doubtful debt limit*** is reduced by:
- (d) if, after the transition time, the transition taxpayer wrote off part of the debt as bad—the excess (if any) of the debt provision amount over the amount or amounts so written off; or
 - (e) in any other case—the debt provision amount.

57-70 Treatment of superannuation lump sums and employment termination payments

- (1) This section applies to a deduction otherwise allowable to the transition taxpayer for a year of income under section 8-1 (about general deductions) or 25-50 (about pensions, gratuities or retiring allowances) of the *Income Tax Assessment Act 1997* for a superannuation lump sum or an employment termination payment
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for a person who was an employee of the transition taxpayer at any time before the transition time (regardless of whether the person was an employee at or after the transition time).

- (2) So much (if any) of the deduction as relates to a period of service of the employee before the transition time is not allowable.
- (3) This section does not apply to an early retirement scheme payment (within the meaning of the *Income Tax Assessment Act 1997*), or a genuine redundancy payment (within the meaning of that Act).

Subdivision 57-H—Domestic losses

57-75 Domestic losses

In applying section 36-15 or 36-17 of the *Income Tax Assessment Act 1997* (about how to deduct tax losses) to the transition taxpayer:

- (a) only exempt income derived at or after the transition time is taken into account as exempt income of the transition taxpayer; and
- (b) the transition taxpayer's deductions are taken into account only so far as they are in respect of:
 - (i) services rendered; or
 - (ii) goods provided; or
 - (iii) the doing of any other thing;
 at or after the transition time.

Subdivision 57-J—Capital allowances and certain other deductions

57-85 What are the *modified deduction rules and corresponding deduction provisions*?

- (1) A ***modified deduction rule*** is a provision listed in column 3 of an item in the table in subsection (3). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text, while provisions of the *Income Tax Assessment Act 1936* are **in bold**.
- (2) The ***corresponding deduction provision*** (if any) for a modified deduction rule listed in column 3 of an item in the table in

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subsection (3) is the provision of the *Income Tax Assessment Act 1936* listed in column 4 of the item.

(3) The table is as follows:

Modified deduction rules and corresponding deduction provisions			
Column 1	Column 2	Column 3	Column 4
Item	Description	Modified deduction rule	Corresponding deduction provision
1	Borrowing expenses	Section 25-25	Former section 67
5	Films, Australian	Division 10BA of Part III	
7	Industrial property (copyright in Australian film)	Division 10B of Part III	
9	Gifts	Section 25-50 and Division 30	Former section 78
13	Research and development (“R&D”)	Sections 73B, 73BA, 73BH, 73QA and 73QB	
14	Scientific research	Section 73A	
18	Cost of acquiring trees	Section 70-120	Former section 124J
19	Capital allowances	Division 40	

57-90 Post-transition deductions—assume that the transition taxpayer had never been exempt

In working out the transition taxpayer’s allowable deductions under a modified deduction rule for the transition year or a later year of income, assume that the modified deduction rule had applied at all times before the transition time as if the transition taxpayer’s income had never been exempt from income tax.

57-95 Amount of deduction not allowable for transition year

- (1) If, apart from this section, an amount would be an allowable deduction under a modified deduction rule for the transition year in respect of expenditure incurred before the transition time (whether or not during the transition year), only so much of the amount as is worked out using the following formula is so allowable:

$$\frac{\text{Number of whole days in transition year after transition time}}{\text{Post-expenditure part}} \times \text{Amount of deduction}$$

where:

post-expenditure part means:

- (a) if the expenditure was incurred before the transition year—the number of days in the transition year; or
 - (b) otherwise—the number of days in the period from the beginning of the day on which the expenditure is incurred until the end of the transition year.
- (2) This section does not apply to an amount to which paragraph 57-110(1)(b) (which deals with balancing adjustments) applies.

57-100 No elections etc. before transition time

In working out the transition taxpayer's allowable deductions under a modified deduction rule:

- (a) assume that the transition taxpayer did not, at any time, make any election or declaration, or give any notice, under the rule in relation to a year of income before the transition year; and
- (b) any election or declaration (other than one under subsection 124ZADA(1)) the transition taxpayer makes, or any notice the transition taxpayer gives, under the rule in relation to the transition year has no effect in so far as it relates to expenditure incurred before the transition time.

57-105 Special rules for mining and quarrying

Exploration and prospecting—assume no expenditure

- (1) In working out the transition taxpayer's allowable deductions under the former Subdivision 330-A or 330-C or Division 40 of the *Income Tax Assessment Act 1997*, assume that the transition taxpayer incurred no expenditure on exploration and prospecting before the transition time.

Assume that no excess deductions available

- (2) In working out the transition taxpayer's allowable deductions under the former Subdivision 330-A or 330-C of the *Income Tax Assessment Act 1997*, assume that, for each year of income before the transition year, the transition taxpayer's assessable income would have exceeded the total of the transition taxpayer's deductions for the year.

Note: This means that the transition taxpayer can have no excess deductions remaining from years of income before the transition year.

Subdivision 57-K—Balancing adjustments

57-110 Apportionment of balancing adjustments

- (1) If, apart from this subsection, a balancing adjustment provision (see subsection (2)) would:
 - (a) require an amount to be included in the transition taxpayer's assessable income for the transition year or a later year of income in respect of particular expenditure; or
 - (b) allow an amount as a deduction from the transition taxpayer's assessable income for the transition year or a later year of income in respect of particular expenditure;

then only so much of the amount as is worked out using the following formula is so included or allowable:

$$\frac{\text{Actual deductions}}{\text{Actual deductions} + \text{Notional deductions}} \times \text{Amount concerned}$$

where:

actual deductions is the sum of all deductions actually allowed or allowable to the transition taxpayer for the expenditure under the

deduction rule to which the balancing adjustment provision relates (see subsection (2)).

notional deductions is the sum of all deductions for the expenditure that would have been allowable to the transition taxpayer under the deduction rule to which the balancing adjustment provision relates, if the transition taxpayer had never been wholly exempt from income tax.

- (2) Each *balancing adjustment provision* and its related *deduction rule* are shown in an item of the table. Provisions of the *Income Tax Assessment Act 1997* are shown in ordinary text, and provisions of the *Income Tax Assessment Act 1936* are shown in **bold**.

Balancing adjustment provisions and related deduction rules

Item	Topic	Balancing adjustment provision	Deduction rule to which the balancing adjustment provision relates
1	Capital works: buildings, structural improvements, environment protection earthworks and extensions, alterations or improvements	Section 43-40	Division 43 and whichever of former Divisions 10C and 10D of Part III is appropriate
2A	Capital allowances	Section 40-285	Division 40
5	Industrial property (copyright in Australian film)	Sections 124N and 124P	Division 10B of Part III
7	Research and development (“R&D”)	Subsections 73B(23), (24), (25), (26) and (27) and sections 73BF and 73BM	Section 73B, 73BA or 73BH
8	Scientific research	Subsection 73A(4)	Section 73A

Subdivision 57-L—Trading stock

57-115 Modification of trading stock provisions

- (1) For the purposes of applying Division 70 of the *Income Tax Assessment Act 1997* in relation to the transition year, the only trading stock of the transition taxpayer that is to be taken into account under section 70-35 of that Act as being on hand at the beginning of the transition year is such trading stock as was on hand at the transition time.
- (2) For the purpose of working out the value at which the trading stock is to be taken into account, the year of income preceding the transition year is taken to have ended immediately before the transition time.

Note: The value of trading stock on hand at the beginning of the transition year will, under section 70-40 of the *Income Tax Assessment Act 1997*, be the same as at the end of the preceding year of income.

- (3) If:
 - (a) the basis of valuation of the trading stock at the end of the transition year is cost; and
 - (b) the basis of valuation at the beginning of the transition year is different;then, for the purposes of the valuation at the end of the transition year, the cost of the trading stock for the purposes of Division 70 of the *Income Tax Assessment Act 1997* is taken to be equal to the value at which it was taken into account at the beginning of the transition year.

Subdivision 57-M—Imputation

57-120 Cancellation of franking surplus, credit or debit

Cancellation of surplus

- (1) Subject to subsections (3) and (4), if, immediately before the transition time, the transition taxpayer or a subsidiary (see section 57-125) of the transition taxpayer has a franking surplus, then the surplus is reduced to nil at the transition time.

Cancellation of credit/debit

- (2) Subject to subsections (3) and (4), if:
- (a) at any time after the transition time, there arises a franking credit or a franking debit of the transition taxpayer or of a subsidiary of the transition taxpayer; and
 - (b) the franking credit or franking debit is to any extent attributable to a period, or to an event taking place, before the transition time;
- the franking credit or franking debit is to that extent taken not to have arisen.

Cases where subsections (1) and (2) do not apply to the transition taxpayer

- (3) If:
- (a) one or more franking debits of the transition taxpayer arise after the transition time; and
 - (b) any of the debits is to an extent (the amount of which is the ***pre-transition time component*** of the debit) attributable to the period, or to an event taking place, before the transition time; and
 - (c) immediately before the transition time:
 - (i) there was a franking surplus of the transition taxpayer that was less than the total of the pre-transition time components of all of the debits; or
 - (ii) there was no franking surplus of the transition taxpayer;
- then:
- (d) in a case covered by subparagraph (c)(i)—subsection (1) does not apply to the surplus; and
 - (e) in any case—subsection (2) does not apply to the debits.

Cases where subsections (1) and (2) do not apply to a subsidiary

- (4) If:
- (a) one or more franking debits of a subsidiary of the transition taxpayer arise after the transition time; and
 - (b) any of the debits is to an extent (the amount of which is the ***pre-transition time component*** of the debit) attributable to the period, or to an event taking place, before the transition time; and

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- (c) immediately before the transition time:
 - (i) there was a franking surplus of the subsidiary that was less than the total of the pre-transition time components of all of the debits; or
 - (ii) there was no franking surplus of the subsidiary;
- then:
 - (d) in a case covered by subparagraph (c)(i)—subsection (1) does not apply to the surplus; and
 - (e) in any case—subsection (2) does not apply to the debits.

57-125 Subsidiary

- (1) A company (the *subsidiary company*) is a *subsidiary* of another company (the *holding company*) if all the shares in the subsidiary company are beneficially owned by:
 - (a) the holding company; or
 - (b) one or more subsidiaries of the holding company; or
 - (c) the holding company and one or more subsidiaries of the holding company.
- (2) A company (other than the subsidiary company) is a *subsidiary* of the holding company if, and only if:
 - (a) it is a subsidiary of the holding company; or
 - (b) it is a subsidiary of a subsidiary of the holding company;because of any other application or applications of this section.

Subdivision 57-N—Division not applicable in respect of certain plant

57-130 Plant or depreciating assets covered by Subdivision 58-B of the *Income Tax Assessment Act 1997*

- (1) Subdivision 57-J, and Subdivision 57-K in so far as it applies to balancing adjustments for plant or depreciating assets, do not apply in respect of an asset to which Subdivision 58-B of the *Income Tax Assessment Act 1997* applies.
- (2) Despite subsection (1), Subdivision 57-J applies for the purposes of section 40-35 of the *Income Tax (Transitional Provisions) Act 1997* to capital expenditure incurred by a transition taxpayer before 1 July 2001 that relates to property that is not a depreciating asset.

Schedule 2E—Leases of luxury cars [see Note 2]

Division 42A—Leases of luxury cars

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- 42A-A Notional sale of car, and notional loan, to lessee
- 42A-B Amounts to be included in lessor's assessable income
- 42A-C Deductions allowable to lessee
- 42A-D Adjustments if total amount assessed to lessor differs from amount of finance charge
- 42A-E What happens when the lease expires
- 42A-F What happens if the lease is terminated before the end of the lease term
- 42A-G Interpretation

Guide to Division 42A

42A-1 What this Division is about

This Division provides for leases of luxury cars to be treated as notional sale and loan transactions.

The lessor under such a lease is taken to have notionally sold the car to the lessee and made a loan to the lessee to finance the cost of the notional acquisition of the car.

The lessor's assessable income of a year of income in which any part of the lease term falls is to include a proportion of the finance charge for the notional loan.

A proportion of the finance charge for the notional loan is allowable as a deduction to the lessee for a year of income to the extent that the lease payments made for the year of income would have been deductible.

As the lessee is taken to be the owner of the car, the lessee is the person entitled to any deductions for depreciation in accordance with the rules applying under this Act to the owners of luxury cars.

Subdivision 42A-A—Notional sale of car, and notional loan, to lessee

Guide to Subdivision 42A-A

42A-5 What this Subdivision is about

This Subdivision:

- (a) sets out the circumstances in which a leased car that is a luxury car is taken to be sold by the lessor to the lessee; and
- (b) provides that the lease is taken to constitute a loan by the lessor to the lessee to finance the cost of the acquisition of the car.

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42A-10	Application of this Division
42A-15	Notional sale of car by lessor and notional acquisition of car by lessee
42A-20	Consideration for notional sale, cost of notional acquisition, and depreciated value, of car
42A-25	Notional loan by lessor to lessee

Operative provisions

42A-10 Application of this Division

- (1) This Division applies to a motor car:
 - (a) that is a leased car; and
 - (b) that is a luxury car; and
 - (c) that is not trading stock of the lessee; and

- (d) the lease of which was granted after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996.
- (2) If:
 - (a) a lease of a car was granted before the time referred to in paragraph (1)(d); and
 - (b) an extension of the lease was granted after that time, whether the extension took effect before or after that time;
the extension is taken for the purposes of that paragraph to be a new lease granted after that time.
- (3) This Division has effect for the purposes of this Act (including, to avoid doubt, the *Income Tax Assessment Act 1997*) other than Division 11A of Part III.

42A-15 Notional sale of car by lessor and notional acquisition of car by lessee

- (1) The car is taken to have been disposed of by the lessor by way of sale to the lessee, and to have been acquired by the lessee, at the start of the lease term.
- (2) The lessee is taken to be the owner of the car until the lease term ends or the lease is terminated before that time, as the case may be.
- (3) However, the lessee ceases to be taken to be the owner of the car if:
 - (a) the lessee enters into, in respect of the car, an arrangement of a kind mentioned in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) this Division applies to the car in respect of that arrangement.

42A-20 Consideration for notional sale, cost of notional acquisition, and depreciated value, of car

- (1) The consideration for the sale of the car by the lessor, and the cost of the acquisition of the car by the lessee, are each taken to have been:
 - (a) if the lease states an amount as the cost or value of the car for the purposes of the lease and the lessor and the lessee were dealing with each other at arm's length in connection with the lease—the amount so stated; or

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Section 42A-25

- (b) otherwise—the amount that could reasonably have been expected to have been paid by the lessee for the purchase of the car if:
 - (i) the lessor had actually sold the car to the lessee when the lease was granted; and
 - (ii) the lessor and lessee were dealing with each other at arm's length in connection with the sale.
- (2) If:
 - (a) the lease is an arrangement of a kind referred to in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) the lessee is an associate of the lessor;
the cost of the car for the purpose of calculating its depreciated value at the time (the *acquisition time*) when it is taken to have been acquired by the lessee is taken, for the purposes of the application of this Act to the lessee, to be the sum of:
 - (c) the amount that would have been the depreciated value of the car at the acquisition time for the purposes of the application of this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and
 - (d) any amount that is included in the lessor's assessable income under former subsection 59(2) because the lessor is taken to have disposed of the car.

42A-25 Notional loan by lessor to lessee

- (1) On the grant of the lease, the lessor is taken to have made a loan (the *notional loan*) to the lessee:
 - (a) for a period equal to the lease term; and
 - (b) of an amount (the *notional loan principal*) equal to the consideration for the sale of the car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the lease term, for the cost of the car; and
 - (c) subject to payment of a charge (the *finance charge*).
- (2) The notional loan principal is taken to be repaid, and the finance charge is taken to be paid, by the making of the lease payments.

Subdivision 42A-B—Amounts to be included in lessor’s assessable income

Guide to Subdivision 42A-B

42A-30 What this Subdivision is about

This Subdivision provides for the inclusion in the lessor’s assessable income of:

- (a) amounts (accrual amounts) on account of the finance charge for the notional loan that the lessor is taken to have made to the lessee; and
- (b) any profit made by the lessor:
 - (i) on the notional sale of the car to the lessee; or
 - (ii) on a sale of the car after any notional re-acquisition of the car by the lessor.

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Operative provisions

- 42A-35 Amounts to be included in lessor’s assessable income
- 42A-40 Treatment of lease payments

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42A-35 Amounts to be included in lessor’s assessable income

Accrual amounts

- (1) The lessor’s assessable income of a year of income includes:
 - (a) if an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee occurs wholly during that year of income—the accrual amount for that accrual period; and
 - (b) if part of an accrual period for that notional loan occurs during that year of income—so much of the accrual amount

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for that accrual period as may appropriately be related to that year of income in accordance with generally accepted accounting principles.

Profit on notional sale

- (2) If the consideration for the sale of the car by the lessor that is taken under this Division to have been made exceeds the cost of the acquisition of the car by the lessor, the excess is included in the lessor's assessable income of the year of income in which the sale is taken to have occurred.

Profit on actual sale after notional re-acquisition

- (3) If:
- (a) the lessor is taken under this Division to have re-acquired the car from the lessee; and
 - (b) the lessor afterwards sells the car; and
 - (c) the consideration for the sale exceeds the cost of the re-acquisition;
- the excess is included in the lessor's assessable income of the year of income in which the sale occurred.

42A-40 Treatment of lease payments

- (1) The lease payments that the lessor receives, or is entitled to receive, under the lease:
- (a) are not to be included in the lessor's assessable income of any year of income; but
 - (b) are not taken to be exempt income of the lessor.
- (2) However, those lease payments are taken into account in calculating accrual amounts that are included in the lessor's assessable income under section 42A-35.
- (3) A loss or outgoing incurred by the lessor in deriving any such lease payments is not taken to be a loss or outgoing incurred by the lessor in relation to gaining or producing exempt income.

Subdivision 42A-C—Deductions allowable to lessee**Guide to Subdivision 42A-C****42A-45 What this Subdivision is about**

This Subdivision provides that the lessee may, in certain circumstances, be entitled to deductions for the finance charge for the notional loan that the lessor is taken to have made to the lessee.

Table of sections**Operative provisions**

- 42A-50 Extent to which deductions are allowable to lessee
42A-55 Lease payments not to be allowable deductions

Operative provisions**42A-50 Extent to which deductions are allowable to lessee**

- (1) If an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee occurs wholly during a year of income of the lessee, the accrual amount for that accrual period is allowable as a deduction to the lessee for that year of income.
- (2) If part of an accrual period for that notional loan occurs during a year of income of the lessee, so much of the accrual amount for that accrual period as may appropriately be related to that year of income in accordance with generally accepted accounting principles is allowable as a deduction to the lessee for that year of income.
- (3) An accrual amount, or part of an accrual amount, for an accrual period is allowable as a deduction under subsection (1) or (2) to the lessee for a year of income of the lessee only to the extent that the lease payments made for that year of income would, apart from this Division, be allowable as deductions to the lessee for that year of income.

42A-55 Lease payments not to be allowable deductions

The lease payments that the lessee makes under the lease are not allowable as deductions to the lessee for any year of income, but they are taken into account in calculating accrual amounts that are allowable as deductions under section 42A-50.

Subdivision 42A-D—Adjustments if total amount assessed to lessor differs from amount of finance charge

Guide to Subdivision 42A-D

42A-60 What this Subdivision is about

This Subdivision provides for adjustments if the sum of the amounts included in the lessor's assessable income are greater or less than the finance charge, worked out at the end of the lease term, for the notional loan.

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Operative provisions

42A-65	Adjustments for lessor
42A-70	Adjustments for lessee

Operative provisions

42A-65 Adjustments for lessor

- (1) This section applies at the following times (*adjustment times*):
 - (a) the end of the lease term;
 - (b) if the lease is terminated before that time—when the termination takes place;
 - (c) if the lease term is extended—when the extension takes effect;
 - (d) if the lease is renewed—when the renewal takes effect.
 - (2) If the sum of all amounts (whether lease payments, a termination amount or any other payments) that were paid or payable to the lessor under the lease exceeds the amount worked out using the
-

formula in subsection (4), the excess is included in the lessor's assessable income of the year of income in which the relevant adjustment time occurs.

Note: Subsection 42A-80(9) deems the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

- (3) If the amount worked out using the formula in subsection (4) exceeds the sum of all amounts (whether lease payments, a termination amount or any other payments) that were paid or payable to the lessor under the lease, the excess is allowable as a deduction to the lessor for the year of income in which the relevant adjustment time occurs.

Note: Subsection 42A-80(9) deems the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

- (4) The formula for the purposes of subsections (2) and (3) is:

Notional loan principal + Assessed accrual amounts

where:

notional loan principal means the notional loan principal for the notional loan that is taken under this Division to have been granted by the lessor to the lessee.

assessed accrual amounts means the sum of the accrual amounts that have been or are to be included in the lessor's assessable income of any year of income.

42A-70 Adjustments for lessee

- (1) If:
- (a) an amount is included in the lessor's assessable income of a year of income under subsection 42A-65(2); or
 - (b) an amount would have been so included if the lessor had been subject to tax on assessable income;
- a corresponding amount is allowable as a deduction to the lessee for the lessee's year of income.
- (2) If:
- (a) an amount is allowable as a deduction to the lessor for a year of income under subsection 42A-65(3); or

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- (b) an amount would have been so allowable if the lessor had been subject to tax on assessable income;
a corresponding amount is included in the lessee's assessable income of the lessee's year of income.
- (3) An amount is not to be allowed as a deduction to the lessee for any year of income under subsection (1), or to be included in the lessee's assessable income of any year of income under subsection (2), except to the extent (if any) that the lease payments made would, apart from this Division, be allowable as deductions to the lessee.

Subdivision 42A-E—What happens when the lease expires

Guide to Subdivision 42A-E

42A-75 What this Subdivision is about

This Subdivision sets out what happens at the end of the lease term. The situations dealt with are:

- (a) the lease is extended or renewed;
- (b) the lessee buys the car;
- (c) the lessee ceases to have the right to use the car.

Table of sections

Operative provisions

- 42A-80 What happens if the lease term is extended or the lease is renewed
- 42A-85 What happens if an amount is paid by or on behalf of the lessee to acquire the car
- 42A-90 What happens if the lessee ceases to have the right to use the car

Operative provisions**42A-80 What happens if the lease term is extended or the lease is renewed**

- (1) If, after the end of the lease term, the lessee continues to have the right to use the car because the term is extended or the lease is renewed, the following provisions have effect.
- (2) The lessee is taken to continue to be the owner of the car until:
 - (a) the end of the period of extension; or
 - (b) the end of the lease term of the renewed lease;as the case may be.
- (3) However, the lessee ceases to be the owner of the car if:
 - (a) the lessee enters into, in respect of the car, an arrangement of a kind mentioned in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) this Division applies to the car in respect of that arrangement.
- (4) The notional loan that is taken under this Division to have been made because of the grant of the previous lease is taken to have been repaid and Subdivision 42A-D applies.
- (5) The lessor is taken to have made a loan (the *notional loan*) to the lessee:
 - (a) for the period of the extension of the lease term or the period of the renewed lease, as the case may be; and
 - (b) of an amount (the *notional loan principal*) equal to the amount worked out under subsection (7); and
 - (c) subject to the payment of a charge (the *finance charge*).
- (6) The notional loan principal is taken to be repaid, and the finance charge is taken to be paid, by the making of the lease payments under the lease as extended or under the renewed lease, as the case may be.
- (7) The notional loan principal is:
 - (a) if the lease as extended or renewed states an amount as the cost or value of the car for the purposes of the extension or renewal and the lessor and the lessee were dealing with each

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Section 42A-85

- other at arm's length in connection with the extension or renewal—the amount so stated; or
- (b) otherwise—the amount that could reasonably have been expected to have been paid by the lessee for the purchase of the car if:
- (i) the lessor had actually sold the car to the lessee when the lease was extended or renewed; and
 - (ii) the lessor and lessee were dealing with each other at arm's length in connection with the sale.
- (8) In determining whether subsection (1) applies to the lessee, any period after the end of the lease term and before the extension or renewal is granted during which the lessee did not have the right to use the car is disregarded if the extension or renewal:
- (a) has effect from the time immediately after the end of that term; or
 - (b) would otherwise result in substantial continuity of the leasing of the car to the lessee.
- (9) The amount of the notional loan is taken, for the purposes of section 42A-65, to be a termination amount paid to the lessor under the previous lease.

42A-85 What happens if an amount is paid by or on behalf of the lessee to acquire the car

If, at the end of the lease term or any extension of that term, an amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) a deduction is not allowable to the lessee because of the payment;
- (c) the lessee is taken to continue to be the owner of the car until the lessee disposes of it;
- (d) the transfer to the lessee of legal title to the car is not taken to be a disposal of the car by the lessor.

42A-90 What happens if the lessee ceases to have the right to use the car

- (1) If, at the end of the lease term:
 - (a) the lessee ceases to have the right to use the car because the term is not extended and the lease is not renewed; and
 - (b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;the following provisions have effect.
 - (2) The car is taken to have been disposed of by the lessee by way of sale to the lessor, and to have been acquired by the lessor, at the end of the lease term.
 - (3) The consideration for the sale of the car by the lessee, and the cost of the acquisition of the car by the lessor, are each taken to have been:
 - (a) the amount worked out in accordance with subsection (6); or
 - (b) if it is not practicable to work out an amount in accordance with that subsection—the market value of the car at the end of the lease term.
 - (4) If the car is afterwards acquired by an associate of the lessee, the cost of the car for the purpose of calculating its depreciated value at the time of the acquisition for the purposes of the application of this Act to the associate is taken to be whichever is the lesser of:
 - (a) the sum of:
 - (i) the amount that would have been the depreciated value of the car at that time for the purposes of the application of this Act to the lessee if the lessee were not taken under this Division to have disposed of the car; and
 - (ii) any amount that is included in the lessee's assessable income under former subsection 59(2) or under Subdivision 40-D, or the former Subdivision 42F or 42G, of the *Income Tax Assessment Act 1997* because the lessee is taken to have disposed of the car; or
 - (b) the cost of the acquisition of the car by the associate.
 - (5) For the purposes of paragraph (1)(a), the lessee is not taken to have ceased to have the right to use the car if:
 - (a) the lease term is extended, or the lease is renewed, at a time after, but not immediately after, the end of that term with
-

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Section 42A-95

effect from the time immediately after the end of that term;
or

(b) the extension or renewal would otherwise result in substantial continuity of the leasing of the car to the lessee.

(6) For the purposes of paragraph (3)(a), the amount of the consideration for the sale, and of the cost of the acquisition, is the amount worked out using the formula:

Balance of notional loan – Payable amount + Refundable amount

where:

balance of notional loan means the sum of:

- (a) the outstanding notional loan principal at the end of the lease term; and
- (b) any amounts payable by the lessee for the notional loan that were not paid at or before that time; and
- (c) any amounts (other than the payable amount) payable by the lessee because of the expiry of the lease.

payable amount means the amount (if any) payable to the lessor by the lessee because the value of the car at the end of the lease term was less than the balance of notional loan.

refundable amount means the amount (if any) payable to the lessee by the lessor because the value of the car at the end of the lease term was more than the balance of notional loan.

Subdivision 42A-F—What happens if the lease is terminated before the end of the lease term

Guide to Subdivision 42A-F

42A-95 What this Subdivision is about

This Subdivision sets out what happens if the lease is terminated before the end of the lease term.

The situations covered are:

- (a) the lessee buys the car;

(b) the lessee ceases to have the right to use the car.

Table of sections**Operative provisions**

- 42A-100 What happens if an amount is paid by or on behalf of the lessee to acquire the car
- 42A-105 What happens if the lessee ceases to have the right to use the car

Operative provisions**42A-100 What happens if an amount is paid by or on behalf of the lessee to acquire the car**

If, on the termination of the lease before the end of the lease term, an amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) a deduction is not allowable to the lessee because of the payment;
- (c) the lessee is taken to continue to be the owner of the car until the lessee disposes of it;
- (d) the transfer to the lessee of legal title to the car is not taken to be a disposal of the car by the lessor.

42A-105 What happens if the lessee ceases to have the right to use the car

- (1) If, on the termination of the lease before the end of the lease term, no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect.
- (2) The car is taken to have been disposed of by the lessee by way of sale to the lessor, and to have been acquired by the lessor, on the termination of the lease.
- (3) The consideration for the sale of the car by the lessee, and the cost of the acquisition of the car by the lessor, are each taken to have been:

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Section 42A-105

- (a) the amount worked out in accordance with subsection (5); or
 - (b) if it is not practicable to work out an amount in accordance with that subsection—the market value of the car on the termination of the lease.
- (4) If the car is afterwards acquired by an associate of the lessee, the cost of the car for the purpose of calculating its adjustable value, within the meaning of Division 40 of the *Income Tax Assessment Act 1997*, at the time of the acquisition for the purposes of the application of this Act to the associate is taken to be whichever is the lesser of:
- (a) the sum of:
 - (i) the amount that would have been the adjustable value of the car (within the meaning of the *Income Tax Assessment Act 1997*) at that time for the purposes of the application of this Act to the lessee if the lessee were not taken under this Division to have disposed of the car; and
 - (ii) any amount that is included in the lessee's assessable income under former subsection 59(2), under the former Subdivision 42F or 42G of the *Income Tax Assessment Act 1997* or under Subdivision 40-D of that Act because the lessee is taken under this Division to have disposed of the car; or
 - (b) the cost of the acquisition of the car by the associate.
- (5) For the purposes of paragraph (3)(a), the amount of the consideration for the sale, and of the cost of the acquisition, is the amount worked out using the formula:

Balance of notional loan – Payable amount + Refundable amount

where:

balance of notional loan means the sum of:

- (a) the outstanding notional loan principal at the termination of the lease; and
- (b) any amounts payable by the lessee for the notional loan that were not paid at or before that time; and
- (c) any amounts (other than the payable amount) payable by the lessee because of the termination of the lease.

payable amount means the amount (if any) payable to the lessor by the lessee because the value of the car at the termination of the lease was less than the balance of notional loan at that time.

refundable amount means the amount (if any) payable to the lessee by the lessor because the value of the car at the termination of the lease was more than the balance of notional loan at that time.

Subdivision 42A-G—Interpretation

Guide to Subdivision 42A-G

42A-110 What this Subdivision is about

This Subdivision explains the meanings of various expressions used in this Division.

Table of sections

Operative provisions

- 42A-115 General definitions
- 42A-120 Luxury car
- 42A-125 Consecutive short-term hiring agreements
- 42A-130 Finance charge
- 42A-135 Lease payment periods
- 42A-140 Accrual periods and accrual amounts
- 42A-145 Outstanding notional loan principal
- 42A-150 Implicit interest rate

Operative provisions

42A-115 General definitions

In this Division, unless the contrary intention appears:

accrual amount has the meaning given by section 42A-140.

accrual period has the meaning given by section 42A-140.

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Division 42A Leases of luxury cars

Section 42A-115

associate has the meaning given by section 318 but, in addition:

- (a) a person and any employer of the person are taken to be associates; and
- (b) a person and any employee of the person are taken to be associates.

extension of the lease term of a lease means (except in subsection 42A-10(2)) extension of the term on the same terms and conditions as applied under the lease before the extension.

finance charge means the finance charge referred to in section 42A-25 or 42A-80, as the case may be, as worked out under section 42A-130.

hire purchase agreement means:

- (a) an agreement for letting property on hire under which the hirer has an option to buy the property where:
 - (i) title in the property does not pass to the hirer until the option is exercised; and
 - (ii) amounts paid under the agreement are taken into account in working out the amount payable on the exercise of the option; or
- (b) an agreement to buy property by instalments, where title in the property does not pass to the hirer until the final instalment is paid.

implicit interest rate has the meaning given by section 42A-150.

lease of a motor car means:

- (a) any arrangement to let the car on hire under which a right to use the car is granted by the owner to another person for a monetary or other consideration; and
- (b) any arrangement to let the car on hire under which a right to use the car, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person for a monetary or other consideration;

and includes a renewal of such an arrangement, but does not include a short-term hiring agreement or a hire purchase agreement.

leased car means a motor car of which a lease has been granted.

lease payment means an amount that the lessee under a lease of a motor car is required to pay for the rental or hire of the car but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment for rental or hire on time; or
- (b) a termination amount.

lease payment period has the meaning given by section 42A-135.

lease term of a lease means the period:

- (a) starting on the day as from which the lease has effect; and
- (b) ending on the day on which the lease is to cease to have effect or, if the lease is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the lease, that the lease will cease to have effect.

lessee of a leased car means the person to whom the right to use the car was granted under the arrangement constituting the lease.

lessor of a leased car means the person by whom the right to use the car was granted under the arrangement constituting the lease.

luxury car has the meaning given by section 42A-120.

motor car or ***car*** means a car within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*, other than one mentioned in subsection 40-230(2) of that Act (about cars modified to carry disabled people).

notional loan has the meaning given by section 42A-25 or subsection 42A-80(5), as the case may be.

notional loan principal of a notional loan means the amount that was the notional loan principal under section 42A-25 or subsection 42A-80(5), as the case may be, of the notional loan at the time as at which that loan is taken under this Division to have been granted.

outstanding notional loan principal has the meaning given by section 42A-145.

right to use a car includes the right to possess the car.

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Division 42A Leases of luxury cars

Section 42A-120

short-term hiring agreement means, subject to section 42A-125, an agreement for taking a unit of property on hire where the agreement is of a kind ordinarily entered into by persons taking property on hire intermittently as the occasion requires on an hourly, daily, weekly, monthly or other short-term basis.

termination amount means an amount payable on the expiry, or termination before expiry, of a lease of a motor car and includes:

- (a) if, on the expiry or termination, the lessee acquires the car from the lessor—an amount payable to the lessor for the acquisition; or
- (b) otherwise—the value of the car at the time of the expiry or termination.

42A-120 Luxury car

A leased car is a ***luxury car*** for the purposes of this Division if, had the car:

- (a) been bought from the owner, at the first time when the owner granted a lease of the car, by the person who is the lessee for a price equal to the amount applying under paragraph 42A-20(1)(a) or (b), as the case may be; and
- (b) been first used by that person for any purpose in the financial year in which that time occurred;

the cost of the car, for the purpose of calculating the deductions allowable to that person for the decline in value of the car, would have been reduced because of the operation of former section 57AF, the former section 42-80 of the *Income Tax Assessment Act 1997* or section 40-230 of that Act.

42A-125 Consecutive short-term hiring agreements

- (1) If:
 - (a) 2 or more consecutive agreements have been or are entered into for the hiring of the same motor car; and
 - (b) the total of the periods for which the car was hired under the agreements exceeds 6 months; and
 - (c) the car was or is let on hire under the agreements by the same person or by persons who were associates of each other; and

- (d) the car was or is taken on hire under the agreements by the same person or by persons who were associates of each other; and
 - (e) each agreement would, apart from this section, be a short-term hiring agreement;
- each agreement is taken to have been or to be a lease of the car.
- (2) For the purposes of paragraph (1)(a), if an agreement takes effect after, but not immediately after, a previous agreement ceased to have effect, the agreements are taken to be *consecutive* if the effect of the agreements is to result in substantial continuity of the hiring of the car by the same person or by persons who were associates of each other.

42A-130 Finance charge

For the purposes of this Division, the *finance charge* for a notional loan that the lessor, under a lease of a motor car, is taken to have made to the lessee is the amount worked out using the formula:

Total lease payments + Other payments – Notional loan principal

where:

total lease payments means the sum of the lease payments under the lease.

other payments means the sum of the amounts (other than lease payments) that are required under the lease to be paid and includes any termination amount, less any of those amounts that are refunded by the lessor to the lessee.

notional loan principal means the notional loan principal of the notional loan that the lessor is taken under this Division to have made to the lessee.

42A-135 Lease payment periods

- (1) A *lease payment period* for a lease of a motor car, is a period for which a lease payment, under the lease, is allocated or expressed to be payable.
- (2) However, if a period (the *excessive period*) referred to in subsection (1) exceeds 6 months, the excessive period is not a lease

payment period but each of the following parts of the excessive period is a separate lease payment period:

- (a) the part of the excessive period beginning at the start of that period and ending 6 months later;
- (b) each part (a *later part*) of the excessive period:
 - (i) beginning immediately after a part of the excessive period that is a lease payment period under paragraph (a) or under a previous application of this paragraph; and
 - (ii) ending 6 months after the start of that later part or at the end of the excessive period, whichever first occurs.

42A-140 Accrual periods and accrual amounts

- (1) The *accrual periods* for a notional loan that the lessor, under a lease of a motor car, is taken under this Division to have made to the lessee are the lease payment periods under the lease.
- (2) The *accrual amount* for an accrual period for such a notional loan is the part of the finance charge that relates to the accrual period and is worked out using the formula:

$$\frac{\text{Outstanding notional loan principal}}{\text{loan principal}} \times \text{Implicit interest rate}$$

where:

outstanding notional loan principal means the outstanding notional loan principal at the start of the accrual period.

implicit interest rate means the implicit interest rate under the lease for the accrual period.

42A-145 Outstanding notional loan principal

The *outstanding notional loan principal* at a particular time (the *relevant time*) of a notional loan that the lessor, under a lease of a motor car, is taken under this Division to have made to the lessee is the amount worked out using the formula:

$$\text{Notional loan principal} + \text{Previous accrual amounts} - \frac{\text{Previous lease payments}}{\text{payments}}$$

where:

notional loan principal means the notional loan principal of the notional loan.

previous accrual amounts means the sum of the accrual amounts for accrual periods that occurred before the relevant time.

previous lease payments means the sum of the lease payments that the lessee paid or was required to pay under the lease at or before the relevant time.

42A-150 Implicit interest rate

- (1) The ***implicit interest rate***, under a lease of a motor car, for an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee, is the rate of compound interest for the accrual period at which the sum of:
 - (a) the present value of the lease payments; and
 - (b) the present values of any other amounts that are required under the lease to be paid by the lessee; and
 - (c) the present values of any termination amounts;equals the notional loan principal.
- (2) However, if an amount referred to in paragraph (1)(a), (b) or (c) is not known at the start of the term of the lease:
 - (a) if a reasonable estimate of the amount can be made at that time—such an estimate is to be made and is to be used for the purposes of the application of subsection (1) for each year of income of the lessor; or
 - (b) otherwise—an estimate of the amount is to be made at the end of each year of income of the lessor for the purposes of the application of subsection (1) to the lessor for that year of income.

Schedule 2F—Trust losses and other deductions

Division 265—Overview of Schedule

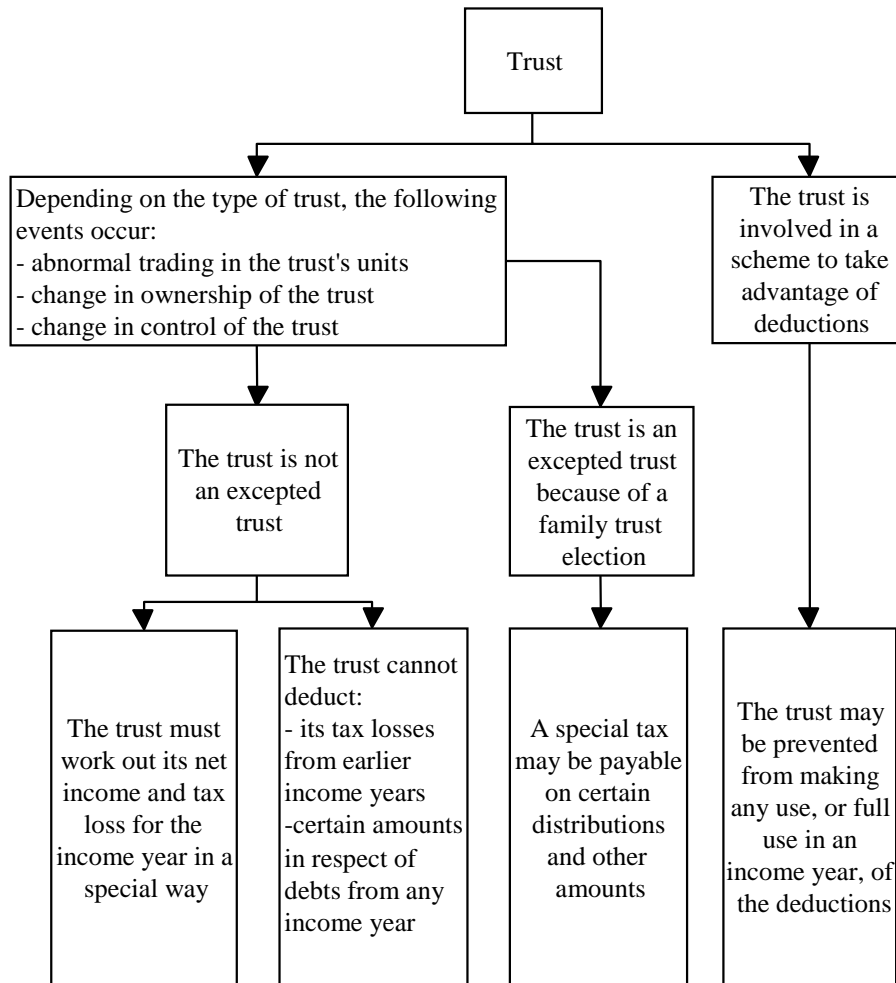
265-5 What this Schedule is about

If there is a change in ownership or control of a trust or an abnormal trading in its units, it:

- may be prevented from deducting its tax losses of earlier income years; and
- may have to work out in a special way its net income and tax loss for the income year; and
- may be prevented from deducting certain amounts in respect of debts incurred in the income year or earlier income years.

This will not be the case if the trust is an excepted trust. However, if it became one by making a family trust election, a special tax may be payable on certain distributions and other amounts.

If a trust is involved in a scheme to take advantage of deductions, it may be prevented from making full use of them.

265-10 Diagram giving overview of Schedule

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-5

Division 266—Income tax consequences for fixed trusts of abnormal trading or change in ownership

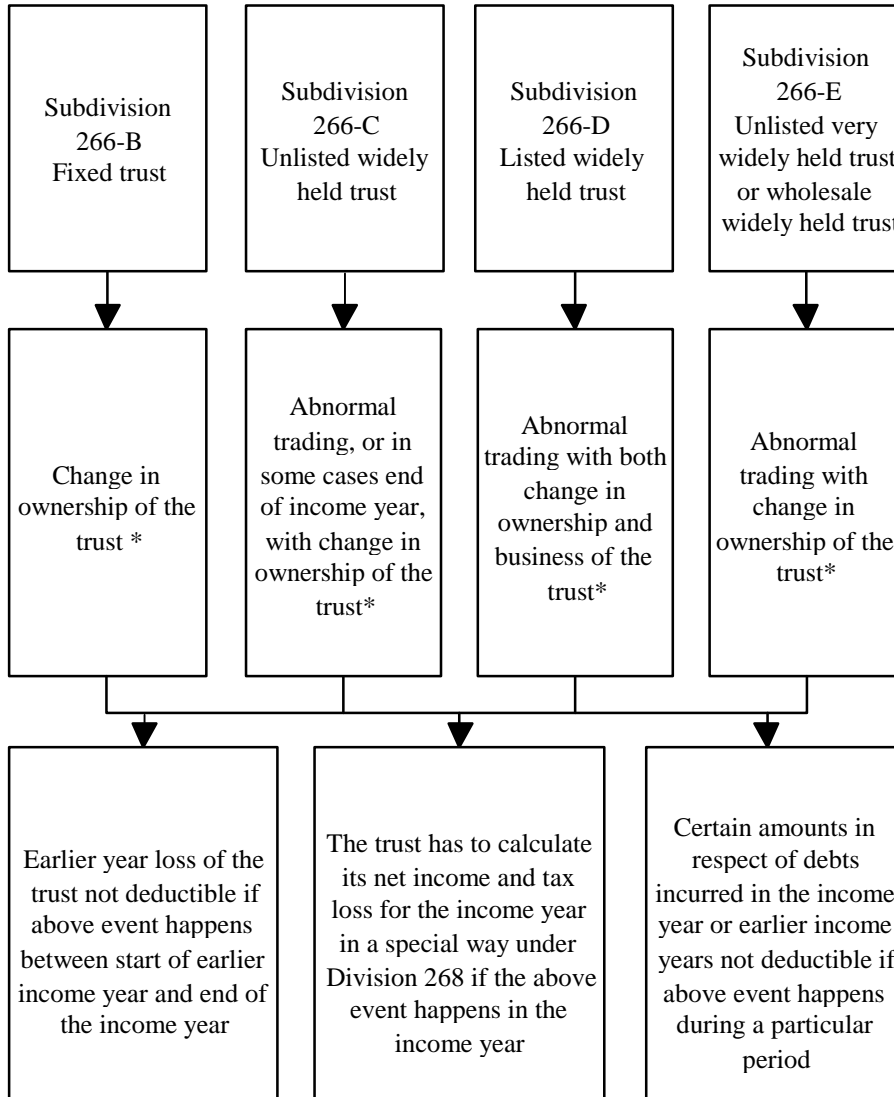
Subdivision 266-A—Overview of this Division

266-5 What this Division is about

This Division is about the income tax consequences, for various kinds of fixed trusts, of certain events:

- for an ordinary fixed trust, the event is a change in ownership (subject to a non-fixed trust exception);
- for an unlisted widely held trust, the event is an abnormal trading in its units, or the end of an income year, together with a change in ownership;
- for a listed widely held trust, the event is an abnormal trading in its units, together with a change in ownership and business;
- for an unlisted very widely held trust or a wholesale widely held trust, the event is an abnormal trading in its units, together with a change in ownership.

266-10 Diagram giving overview of this Division



* Under Subdivision 266-F, if certain information is not provided by the trust, the event is deemed to have happened.

Schedule 2F Trust losses and other deductions

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-15

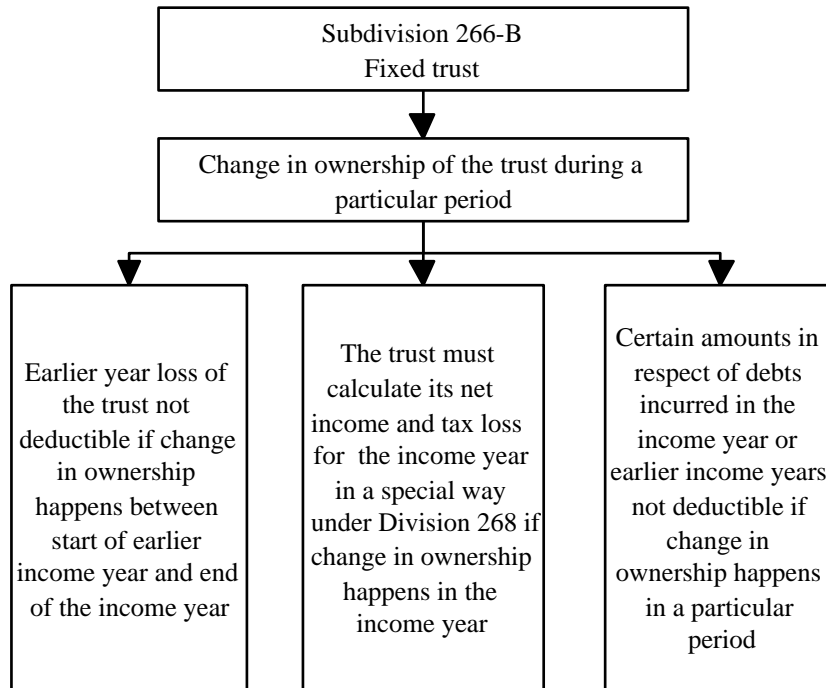
Subdivision 266-B—Effect of change in ownership of fixed trust

266-15 What this Subdivision is about

An ordinary fixed trust:

- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the income year or an earlier income year;

unless there has been continuity of ownership throughout a particular period or an exception relating to holdings by non-fixed trusts applies.

266-20 Diagram giving overview of this Subdivision**266-25 Fixed trust may be denied tax loss deduction**

Type of trust to which this section applies

- (1) This section applies to a trust that:
- (a) can deduct in the income year a tax loss from a loss year; and
 - (b) was a fixed trust at all times in the period (the *test period*) from the beginning of the loss year until the end of the income year; and
 - (c) was not a widely held unit trust at all times in the test period; and
 - (d) was not an excepted trust at all times in the test period.

To find out the meaning of *fixed trust*: see section 272-65.

To find out the meaning of *widely held unit trust*: see section 272-105.

To find out the meaning of *excepted trust*: see section 272-100.

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-30

Condition for deducting tax loss

- (2) The trust cannot deduct the tax loss unless it meets either:
- the condition in section 266-40; or
 - the conditions in section 266-45.

266-30 Fixed trust may be required to work out its net income and tax loss in a special way

A trust that:

- (a) was a fixed trust at all times in the income year (the *test period*); and
 - (b) was not a widely held unit trust at all times in the test period; and
 - (c) was not an excepted trust at all times in the test period;
- must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets either:

- the condition in section 266-40; or
- the conditions in section 266-45.

266-35 Fixed trust may be denied debt deduction

Type of trust to which this section applies

- (1) This section applies to a trust that:
- (a) can deduct in the income year an amount:
 - (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and
 - (b) was a fixed trust at all times in the period (the *test period*):
 - (i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or

Income tax consequences for fixed trusts of abnormal trading or change in ownership
Division 266

Section 266-40

- (ii) if the debt was incurred in the income year—consisting of the income year; and
- (c) was not a widely held unit trust at all times in the test period; and
- (d) was not an excepted trust at all times in the test period.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

Condition for deducting amount

- (2) The trust cannot deduct the amount unless it meets either:
 - the condition in section 266-40; or
 - the conditions in section 266-45.

266-40 The trust must pass 50% stake test

The fixed trust must pass the 50% stake test for the test period.

To find out whether the trust passes the 50% stake test for the period: see Subdivision 269-C.

266-45 The trust must meet non-fixed trust stake test

- (1) If the condition in section 266-40 is not met, the trust must satisfy the conditions in this section.

First condition

- (2) At all times during the test period:
 - (a) non-fixed trusts (other than family trusts) must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the trust; or
 - (b) both:
 - (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or indirectly, all of the fixed entitlements to income and capital of the trust; and

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-45

- (ii) non-fixed trusts (other than family trusts) must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

Second condition

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
 - (a) in a paragraph (2)(a) case—the trust; or
 - (b) in a paragraph (2)(b) case—the holding entity;at the beginning of the test period must have held those entitlements to those shares at all times during the test period.

Third condition

- (4) At the beginning of the test period:
 - (a) individuals must not have had more than a 50% stake in the income of the trust; or
 - (b) individuals must not have had more than a 50% stake in the capital of the trust.

Fourth condition

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the test period, held directly or indirectly a fixed entitlement to a share of the income or capital of the trust:
 - (a) if this section is being applied for the purposes of section 266-25—section 267-20 would not have prevented the non-fixed trust from deducting the tax loss concerned if it, rather than the fixed trust, had incurred the loss; or
 - (b) if this section is being applied for the purposes of section 266-30—section 267-60 does not require the non-fixed trust to work out its net income and tax loss for the income year under Division 268; or
 - (c) if this section is being applied for the purposes of section 266-35—section 267-25, or section 267-65, as the case requires, would not have prevented the non-fixed trust

from deducting the amount concerned if it, rather than the fixed trust, would otherwise be entitled to deduct the amount.

266-50 Deducting part of a tax loss

- (1) If section 266-25 prevents the fixed trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.
- (2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of sections 266-40 and 266-45, the trust would have been entitled to deduct the tax loss.

266-55 Information about non-fixed trusts with interests in fixed trust*Notice about non-resident non-fixed trust*

- (1) The Commissioner may give the trustee of a fixed trust a notice in accordance with section 266-60 if the requirements of subsections (2) to (5) of this section are met.

First requirement

- (2) In its return of income for an income year, the fixed trust:
 - (a) must have deducted a tax loss from an earlier income year; or
 - (b) must not have worked out its net income and tax loss for the income year under Division 268; or
 - (c) must have deducted an amount in relation to a debt; where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and tax loss under that Division, unless it met the conditions in section 266-45.

Second requirement

- (3) In order to determine whether it meets the conditions in section 266-45, the Commissioner must need information about a non-fixed trust mentioned in subsection 266-45(5).

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-60

Third requirement

- (4) When the Commissioner gives the notice:
- (a) a trustee of the non-fixed trust must be a non-resident; or
 - (b) the central management and control of the non-fixed trust must be outside Australia.

Fourth requirement

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the end of the income year mentioned in subsection (2); and
 - (b) the end of the period during which the trustee of the fixed trust is required by section 262A to retain records in relation to that income year.

266-60 Notices where requirements of section 266-55 are met

Information required

- (1) The notice that the Commissioner may give if the requirements of subsections 266-55(2) to (5) are met must require the trustee to give the Commissioner specified information that is relevant to determining whether the requirements of subsection 266-45(5) are satisfied in relation to the non-fixed trust mentioned in subsections 266-55(3) and (4).

Trustee knowledge

- (2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

- (3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

- (4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the fixed

trust is taken not to meet, and never to have met, the conditions in section 266-45.

Application of Division 268

- (5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 266-55(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into such periods as would result in the highest possible net income for the income year.

No offences or penalties

- (6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the fixed trust to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in its return.

Subdivision 266-C—Effect of change in ownership of unlisted widely held trust

266-65 What this Subdivision is about

An unlisted widely held trust:

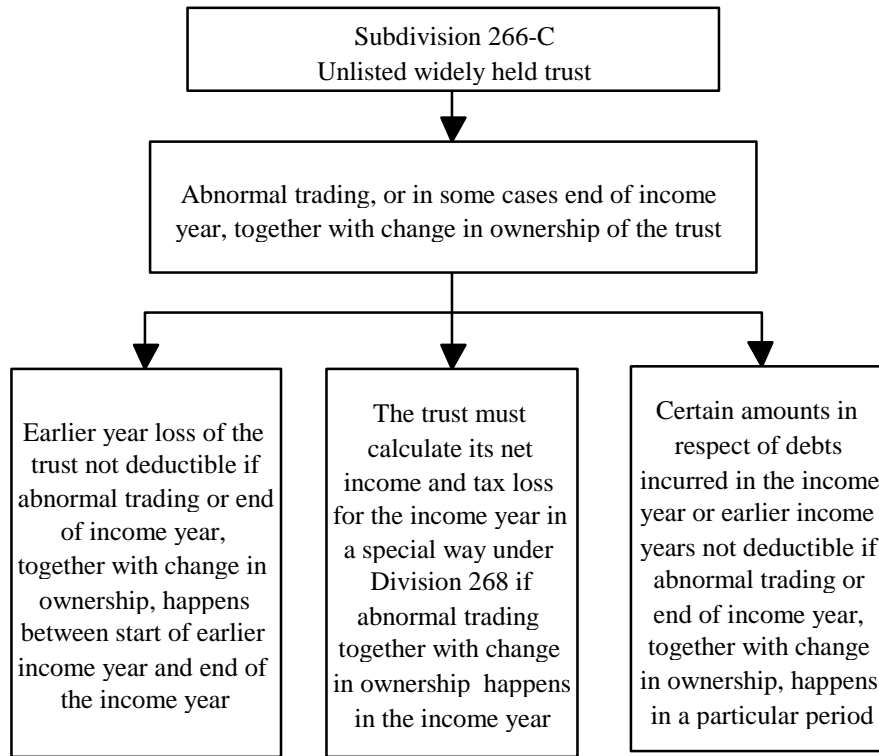
- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts;

unless its ownership has been the same after any abnormal trading in its units and at the end of income years, during a certain period.

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-70

266-70 Diagram giving overview of this Subdivision



266-75 Unlisted widely held trust may be denied tax loss deduction

Type of trust to which this section applies—case 1

- (1) This section applies to a trust that:
- (a) can in the income year deduct a tax loss from a loss year; and
 - (b) was an unlisted widely held trust at all times in the period (the *test period*) from the beginning of the loss year until the end of the income year; and
 - (c) was not a wholesale widely held trust at all times in the test period; and
 - (d) was not an unlisted very widely held trust at all times in the test period; and
 - (e) was not an excepted trust at all times in the test period.

To find out the meaning of *unlisted widely held trust*: see section 272-110.

Income tax consequences for fixed trusts of abnormal trading or change in ownership
Division 266**Section 266-80**

To find out the meaning of *wholesale widely held trust*: see section 272-125.

To find out the meaning of *unlisted very widely held trust*: see section 272-120.

To find out the meaning of *excepted trust*: see section 272-100.

Type of trust to which this section applies—case 2

- (2) This section also applies to a trust that:
- (a) can in the income year deduct a tax loss from a loss year; and
 - (b) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the period (the *test period*) from the beginning of the loss year until the end of the income year; and
 - (c) was a listed widely held trust at all other times in the test period; and
 - (d) was not an excepted trust at all times in the test period.

To find out the meaning of *listed widely held trust*: see section 272-115.

Condition for deducting tax loss

- (3) The trust cannot deduct the tax loss unless it meets the condition in section 266-90.

266-80 Unlisted widely held trust may be required to work out its net income and tax loss in a special way*Type of trust to which this section applies—case 1*

- (1) A trust that:
- (a) was an unlisted widely held trust at all times in the income year (the *test period*); and
 - (b) was not a wholesale widely held trust at all times in the test period; and
 - (c) was not an unlisted very widely held trust at all times in the test period; and
 - (d) was not an excepted trust at all times in the test period;
- must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets the condition in section 266-90.

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-85

Type of trust to which this section applies—case 2

- (2) A trust that:
- (a) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the income year (the *test period*); and
 - (b) was a listed widely held trust at all other times in the test period; and
 - (c) was not an excepted trust at all times in the test period;
- must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets the condition in section 266-90.

266-85 Unlisted widely held trust may be denied debt deduction

Type of trust to which this section applies—case 1

- (1) This section applies to a trust that:
- (a) can deduct in the income year an amount:
 - (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and
 - (b) was an unlisted widely held trust at all times in the period (the *test period*):
 - (i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or
 - (ii) if the debt was incurred in the income year—consisting of the income year; and
 - (c) was not a wholesale widely held trust at all times in the test period; and
 - (d) was not an unlisted very widely held unit trust at all times in the test period; and
 - (e) was not an excepted trust at all times in the test period.

Type of trust to which this section applies—case 2

- (2) This section also applies to a trust that:
- (a) can deduct in the income year an amount:
 - (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and
 - (b) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the period (the *test period*):
 - (i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or
 - (ii) if the debt was incurred in the income year—consisting of the income year; and
 - (c) was a listed widely held trust at all other times in the test period; and
 - (d) was not an excepted trust at all times in the test period.

Condition for deducting amount

- (3) The trust cannot deduct the amount unless it meets the condition in section 266-90.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

266-90 If abnormal trading or end of income year, trust must pass the 50% stake test

- (1) If this section is being applied for the purposes of section 266-75 or 266-85, on each occasion when either of the following events occurs:
- (a) an abnormal trading in the trust's units occurs during the test period;
 - (b) an income year of the trust ends during the test period (including at the end of the test period);

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Section 266-95

the trust must pass the 50% stake test in respect of the following times:

- (c) the beginning of the test period;
- (d) immediately after the event occurs.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

- (2) If this section is being applied for the purposes of section 266-80, on each occasion when an abnormal trading in the trust's units occurs during the test period, the trust must pass the 50% stake test in respect of the following times:
 - (a) the beginning of the test period; and
 - (b) immediately after the abnormal trading occurs.

266-95 Deducting part of a tax loss

- (1) If section 266-75 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.
- (2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-90, the trust would have been entitled to deduct the tax loss.

Subdivision 266-D—Effect of abnormal trading on listed widely held trust

266-100 What this Subdivision is about

A listed widely held trust:

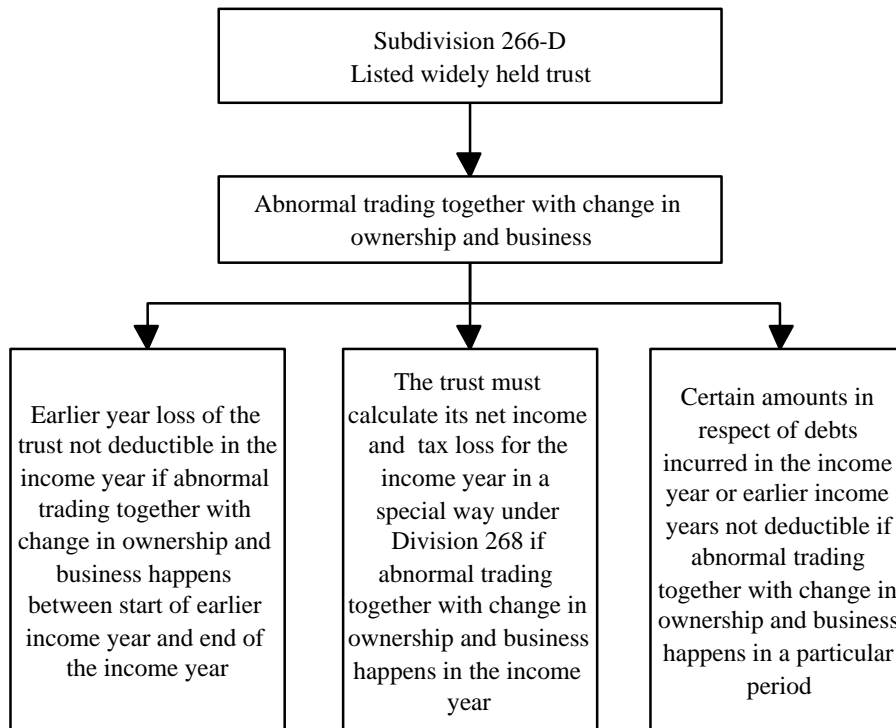
- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the same year or earlier income years;

unless either:

- there was no abnormal trading; or
- there was abnormal trading, but the trust's ownership and business did not change.

Also, it may still be prevented from deducting the tax loss to the extent that it is attributable to certain debt deductions.

266-105 Diagram giving overview of this Subdivision



266-110 Listed widely held trust may be denied tax loss deduction

Type of trust to which this section applies

- (1) This section applies to a trust that:
 - (a) can in the income year deduct a tax loss from a loss year; and

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Section 266-115

- (b) was a listed widely held trust at all times in the period (the *test period*) from the beginning of the loss year until the end of the income year; and
- (c) was not an excepted trust at all times in the test period.

To find out the meaning of *listed widely held trust*: see section 272-115.

To find out the meaning of *excepted trust*: see section 272-100.

Condition for deducting tax loss

- (2) The trust cannot deduct the tax loss unless it meets either:
 - the condition in subsection 266-125(1); or
 - the condition in subsection 266-125(2).

Additional restriction on deducting tax loss

- (3) Even if it meets either of the conditions, it still cannot deduct the tax loss, or part of the tax loss, if section 266-135 (which deals with certain debt deductions) prevents it from doing so.

266-115 Listed widely held trust may be required to work out its net income and tax loss in a special way

A trust that:

- (a) was a listed widely held trust at all times in the income year (the *test period*); and
 - (b) was not an excepted trust at all times in the test period;
- must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets either:
- the condition in subsection 266-125(1); or
 - the condition in subsection 266-125(2).

266-120 Listed widely held trust may be denied debt deduction

Type of trust to which this section applies

- (1) This section applies to a trust that:
-

- (a) can deduct in the income year an amount:
- (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and
- (b) was a listed widely held trust at all times in the period (the *test period*):
- (i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or
 - (ii) if the debt was incurred in the income year—consisting of the income year; and
- (c) was not an excepted trust at all times in the test period.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

Condition for deducting amount

- (2) The trust cannot deduct the amount unless it meets either:
- the condition in subsection 266-125(1); or
 - the condition in subsection 266-125(2).

266-125 There must be no abnormal trading (subject to 50% stake or same business exceptions)

- (1) There must be no abnormal trading in the trust's units during the test period.

To find out the meaning of *abnormal trading*: see Subdivision 269-B.

- (2) If there is abnormal trading on one or more occasions, then either:
- (a) for each abnormal trading, the trust must pass the 50% stake test in respect of the following times:
 - (i) the beginning of the test period;
 - (ii) immediately after the abnormal trading; or

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Section 266-130

- (b) if it does not, at all times after the first or only abnormal trading in respect of which the requirement in paragraph (a) is not satisfied and before the end of the test period, the trust must pass the same business test in relation to the time immediately before that abnormal trading.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

To find out whether the trust passes the same business test: see Subdivision 269-F.

266-130 Deducting part of a tax loss

- (1) If section 266-110 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.
- (2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-125, the trust would have been entitled to deduct the tax loss.
- (3) Also, the trust cannot deduct the part of the tax loss, or some of it, if section 266-135 (which deals with certain debt deductions) prevents it from doing so.

266-135 Listed widely held unit trust may be denied tax loss deduction otherwise allowable

Section applies after sections 266-110 and 266-130

- (1) This section applies if, after applying sections 266-110 and 266-130, a trust can deduct in the income year the whole or part (the ***otherwise-deductible loss***) of a tax loss from a loss year.

Trust must satisfy condition if debt deduction etc.

- (2) If:
 - (a) there would have been no otherwise-deductible loss, or its amount would have been smaller, if the trust had not (after applying section 266-120) been able to deduct in the loss year an amount:
 - (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

- (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and
- (b) the trust could only deduct the amount in respect of the debt because it passed the same business test as mentioned in paragraph 266-125(2)(b); and
- (c) the Commissioner considers that the trust passed the same business test as mentioned in that paragraph for the purpose, or for purposes including the purpose, of being able to deduct the amount because of that paragraph;
- the trust cannot deduct the otherwise-deductible loss, or can only deduct the smaller amount mentioned in paragraph (a) of this section, unless it meets the condition in subsection (3).

Condition

- (3) The condition is that, at all times after the abnormal trading mentioned in paragraph 266-125(2)(b) and before the end of the income year, the trust must pass the same business test in relation to the time immediately before the abnormal trading.

Subdivision 266-E—Effect of abnormal trading on unlisted very widely held trust or wholesale widely held trust**266-140 What this Subdivision is about**

An unlisted very widely held trust or a wholesale widely held trust:

- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the income year or earlier income years;

unless either:

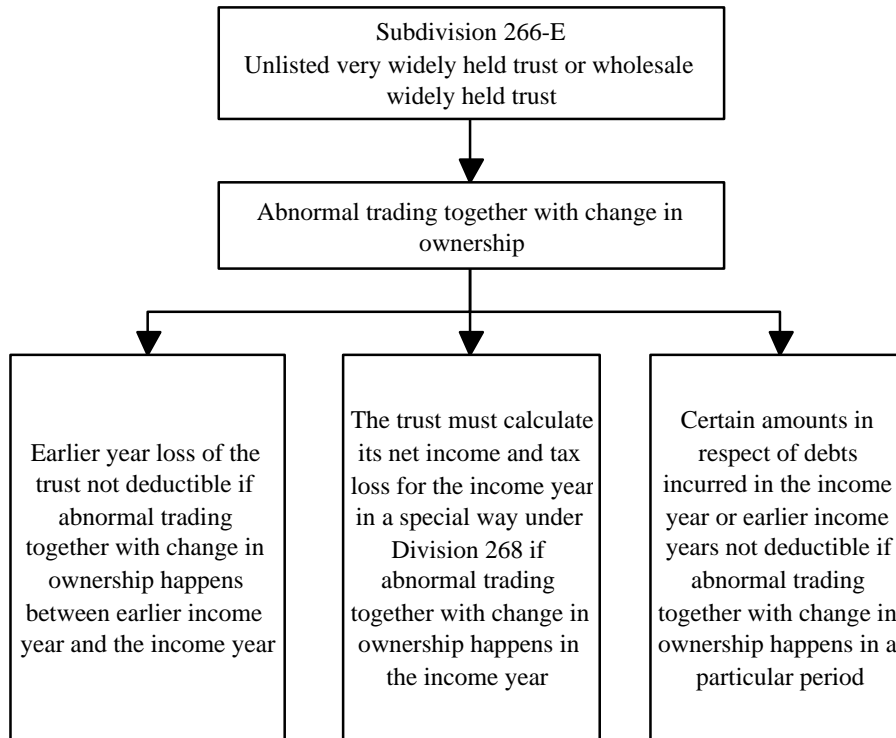
- there was no abnormal trading; or

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Section 266-145

- there was abnormal trading, but the trust's ownership did not change.

266-145 Diagram giving overview of this Subdivision



266-150 Unlisted very widely held trust or wholesale widely held trust may be denied tax loss deduction

- (1) If a trust is covered by subsection (2), it cannot deduct in the income year a tax loss from a loss year unless it meets either:
 - the condition in subsection 266-165(1); or
 - the condition in subsection 266-165(2).
- (2) A trust is covered by this subsection if:
 - (a) in the period (the *test period*) from the later of:

- (i) the beginning of the loss year; and
 - (ii) the end of any start-up period (within the meaning of subsection 272-120(3));
- until the end of the income year, the trust:
- (iii) was at all times an unlisted very widely held trust; or
 - (iv) was at all times a wholesale widely held trust; or
 - (v) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or
 - (vi) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and
- (b) in the test period, the trust was not at all times an excepted trust.

To find out the meaning of *unlisted very widely held trust*: see section 272-120.

To find out the meaning of *wholesale widely held trust*: see section 272-125.

To find out the meaning of *excepted trust*: see section 272-100.

To find out the meaning of *listed widely held trust*: see section 272-115.

266-155 Unlisted very widely held trust or wholesale widely held trust may be required to work out its net income and tax loss in a special way

- (1) If a trust is covered by subsection (2), it must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets either:
- the condition in subsection 266-165(1); or
 - the condition in subsection 266-165(2).
- (2) A trust is covered by this subsection if:
- (a) in the period (the *test period*) consisting of so much of the income year as occurs after the end of any start-up period (within the meaning of subsection 272-120(3)), the trust:
 - (i) was at all times an unlisted very widely held trust; or
 - (ii) was at all times a wholesale widely held trust; or

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- (iii) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or
 - (iv) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and
- (b) in the test period, the trust was not at all times an excepted trust.

266-160 Unlisted very widely held trust or wholesale widely held trust may be denied debt deduction

- (1) If a trust is covered by subsection (2), it cannot deduct in the income year an amount:
- (a) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or
 - (b) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt;
- unless it meets either:
- the condition in subsection 266-165(1); or
 - the condition in subsection 266-165(2).
- (2) A trust is covered by this subsection if:
- (a) in the period (the *test period*) from the later of the end of any start-up period (within the meaning of subsection 272-120(3)) and the beginning of:
 - (i) if the debt was incurred in an earlier income year—the day on which the debt was incurred; or
 - (ii) if the debt was incurred in the income year—the income year;until the end of the income year, the trust:
 - (iii) was at all times an unlisted very widely held trust; or
 - (iv) was at all times a wholesale widely held trust; or
 - (v) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or

- (vi) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and
- (b) in the test period, the trust was not at all times an excepted trust.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

266-165 There must be no abnormal trading (subject to 50% stake exception)

- (1) There must be no abnormal trading in the units of the trust during the test period.

To find out the meaning of *abnormal trading*: see Subdivision 269-B.

- (2) If there is abnormal trading on one or more occasions, then for each abnormal trading the trust must pass the 50% stake test in respect of the following times:
 - (a) the beginning of the test period;
 - (b) immediately after the abnormal trading.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

266-170 Deducting part of a tax loss

- (1) If section 266-150 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.
- (2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-165, the trust would have been entitled to deduct the tax loss.

Division 266 Income tax consequences for fixed trusts of abnormal trading or change in ownership

Section 266-175

Subdivision 266-F—Information about family trusts with interests in other trusts

266-175 What this Subdivision is about

If a trust would only avoid the tax consequences of this Division because of interests held by a non-resident family trust, the Commissioner may require the trust to give certain information about the non-resident family trust. If it is not given, the trust does not avoid the tax consequences of this Division.

266-180 Information about family trusts with interests in other trusts

Notice about family trust

- (1) The Commissioner may give the trustee of a trust (the *primary trust*) a notice in accordance with section 266-185 if the requirements of subsections (2) to (5) of this section are met.

First requirement

- (2) In its return of income for an income year, the primary trust:
 - (a) must have deducted a tax loss from an earlier income year; or
 - (b) must not have worked out its net income and tax loss for the income year under Division 268; or
 - (c) must have deducted an amount in relation to a debt; where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and tax loss under that Division, if it did not meet a condition or conditions as mentioned in section 266-40, 266-45, 266-90, 266-125 or 266-165 (the *conditions provision*).

Second requirement

- (3) The Commissioner must be satisfied that the primary trust would not meet the condition or conditions if one or more trusts were not family trusts.

Third requirement

- (4) When the Commissioner gives the notice, for at least one of the family trusts:
 - (a) a trustee of the trust must be a non-resident; or
 - (b) the central management and control of the trust must be outside Australia.

Fourth requirement

- (5) The Commissioner must give the notice before the later of:
 - (a) 5 years after the end of the income year to which the return relates; and
 - (b) the end of the period during which the trustee of the primary trust is required by section 262A to retain records in relation to that income year.

266-185 Notices where requirements of section 266-180 are met

Information required

- (1) The notice that the Commissioner may give if the requirements of subsections 266-180(2) to (5) are met must require the trustee of the primary trust to give the Commissioner specified information about conferrals of present entitlements to, and distributions of, income and capital, since the start of the test period mentioned in the conditions provision, by all of the family trusts meeting the requirements of paragraph 266-180(4)(a) or (b).

Trustee knowledge

- (2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

- (3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

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Consequence of not giving the information

- (4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the primary trust is taken not to meet, and never to have met, the condition or conditions in the conditions provision.
- (5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 266-180(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into such periods as would result in the highest possible net income for the income year.

No offences or penalties

- (6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the primary trust to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in the trust's return.

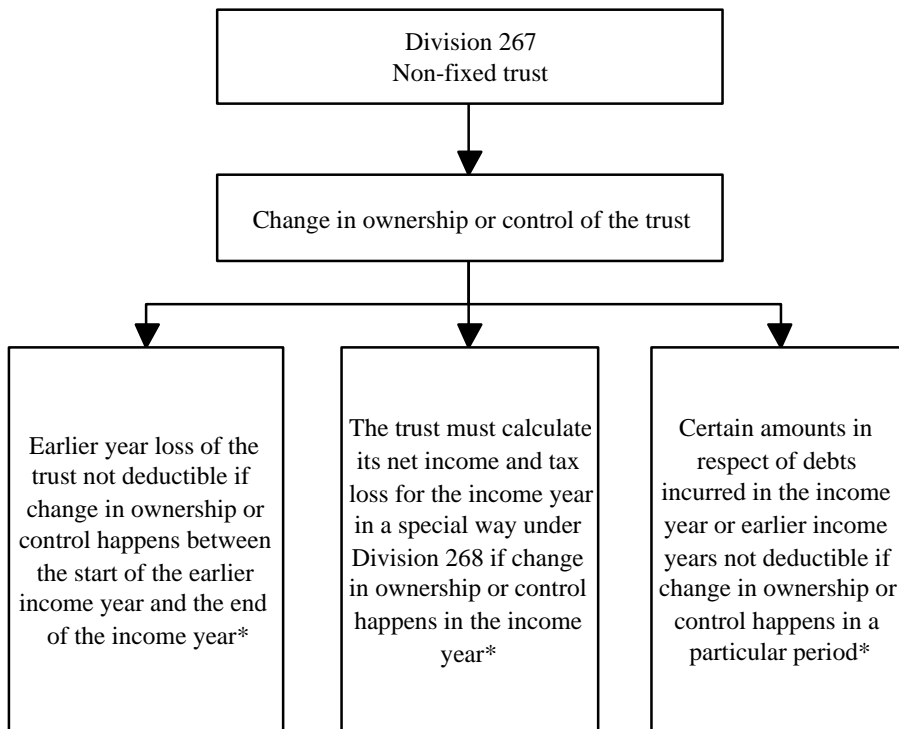
Division 267—Income tax consequences for non-fixed trusts of change in ownership or control

Subdivision 267-A—Overview of this Division

267-5 What this Division is about

This Division is about the income tax consequences for a non-fixed trust if its ownership or control changes.

267-10 Diagram giving overview of this Division



* Under Subdivision 267-D, if certain information is not provided by the trust, the change in ownership or control is deemed to have happened.

Division 267 Income tax consequences for non-fixed trusts of change in ownership or control

Section 267-15

Subdivision 267-B—Deducting tax losses, and certain amounts in respect of debts, from earlier years

267-15 What this Subdivision is about

A non-fixed trust cannot deduct:

- a tax loss from a loss year; or
- certain amounts in respect of debts incurred in earlier income years;

unless:

- if applicable, it meets an ownership test based on income and capital distributions; and
- it did not fail that test in a previous year; and
- if applicable, it meets an ownership test based on fixed entitlements to income and capital; and
- its control has stayed the same.

267-20 Non-fixed trust may be denied tax loss deduction

Type of trust to which this Subdivision applies

- (1) This section applies to a trust that:
 - (a) can deduct in the income year a tax loss from a loss year; and
 - (b) was a non-fixed trust at any time in the period (the *test period*) from the beginning of the loss year until the end of the income year; and
 - (c) was not an excepted trust at all times in the test period.

To find out the meaning of *non-fixed trust*: see section 272-70.

To find out the meaning of *excepted trust*: see section 272-100.

Conditions for deducting tax loss

- (2) The trust cannot deduct the tax loss unless it meets:
- the condition in subsection 267-30(2) (if applicable); and
 - the condition in section 267-35; and
 - the condition in subsection 267-40(2) (if applicable); and
 - the condition in section 267-45.

267-25 Non-fixed trust may be denied debt deduction*Type of trust to which this section applies*

- (1) This section applies to a trust that:
- (a) can deduct in the income year an amount:
 - (i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt, incurred in an earlier income year, as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt incurred in an earlier income year; and
 - (b) was a non-fixed trust at any time in the period (the *test period*) beginning on the day the debt was incurred and ending at the end of the income year; and
 - (c) was not an excepted trust at all times in the test period.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

Condition for deducting amount

- (2) The trust cannot deduct the amount unless it meets:
- the condition in subsection 267-30(2) (if applicable); and
 - the condition in section 267-35; and

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Section 267-30

- the condition in subsection 267-40(2) (if applicable); and
- the condition in section 267-45.

267-30 If certain distributions are made, the trust must pass the pattern of distributions test

When trust must meet the condition

- (1) If either or both of the following happened, the trust must meet the condition in subsection (2):
 - (a) the trust distributed income:
 - (i) in the income year or within 2 months after its end; and
 - (ii) in at least one of the 6 earlier income years; or
 - (b) the trust distributed capital:
 - (i) in the income year or within 2 months after its end; and
 - (ii) in at least one of the 6 earlier income years.

The condition

- (2) The condition is that the trust must pass the pattern of distributions test for the income year.

To find out whether the trust passes the pattern of distributions test for the income year: see Subdivision 269-D.

267-35 The trust must not have previously failed to meet the condition in subsection 267-30(2)

The trust must not have been prevented from deducting the tax loss in an earlier income year because of a failure to meet the condition in subsection 267-30(2) or conditions that included that condition.

267-40 If there are individuals with more than a 50% stake in income or capital, more than a 50% stake in income or capital must be maintained*When trust must meet condition*

- (1) If at any time (the *test time*) in the test period, individuals (the *threshold group*) have more than a 50% stake in the income or capital of the trust, the trust must meet the condition in subsection (2).

To find out whether individuals have more than a 50% stake in the income or capital of the trust: see Subdivision 269-C.

Condition

- (2) The condition is that, during the period beginning at the test time and finishing at the end of the test period, the same individuals (who must be some or all of the threshold group) must have had more than a 50% stake in the income or the capital, respectively, of the trust.

Commissioner discretion

- (3) If:
- (a) after the test time, some or all of the threshold group cease to have a 50% stake in the income or capital of the trust at a particular time; and
 - (b) having regard to the likely manner of exercise of any discretion of the trustee to distribute income or capital of the trust after the particular time and to any other relevant matter, the Commissioner considers it fair and reasonable that the individuals should be taken to have the stake at the particular time and at all later times in the test period;
- the individuals are taken to have that stake at the particular time and at all later times in the test period.

267-45 Group must not begin to control the trust

A group must not, during the test period, begin to control the trust directly or indirectly.

To find out what it means for a group to control the trust: see Subdivision 269-E.

Division 267 Income tax consequences for non-fixed trusts of change in ownership or control

Section 267-50

267-50 Deducting part of a tax loss

- (1) If section 267-20 prevents a trust from deducting a tax loss because the trust does not meet the condition in section 267-40 or 267-45 or both conditions, it can deduct the part of the tax loss that is attributable to a part of the loss year.
- (2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of sections 267-40 and 267-45, the trust would have been entitled to deduct the tax loss.

Subdivision 267-C—Current year net income and tax loss, and certain debts incurred in current year

267-55 What this Subdivision is about

A non-fixed trust:

- must work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the income year;

unless:

- if applicable, it meets an ownership test relating to fixed entitlements to shares of income and capital; and
- its control has stayed the same.

267-60 Trust may be required to work out its net income and tax loss in a special way

Type of trust to which this Subdivision applies

A trust that:

- (a) was a non-fixed trust at any time in the income year (the *test period*); and

(b) was not an excepted trust at all times in the test period; must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets:

- the condition in subsection 267-70(2) (if applicable); and
- the condition in section 267-75.

To find out the meaning of *excepted trust*: see section 272-100.

267-65 Non-fixed trust may be denied debt deduction

Type of trust to which this section applies

- (1) This section applies to a trust that:
- (a) can deduct in the income year (the *test period*) an amount:
 - (i) under section 51 or 63 in respect of the writing off of the whole or part of a debt, incurred in the income year, as bad; or
 - (ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt incurred in the income year; and
 - (b) was a non-fixed trust at any time in the test period; and
 - (c) was not an excepted trust at all times in the test period.

Note: Subdivisions 709-D and 719-I of the *Income Tax Assessment Act 1997* also affect when a trust that used to be a member of a consolidated group or MEC group may deduct a debt that used to be owed to a member of the group and that the trust writes off as bad.

Condition for deducting amount

- (2) The trust cannot deduct the amount unless it meets
- the condition in subsection 267-70(2) (if applicable); and
 - the condition in section 267-75.

Division 267 Income tax consequences for non-fixed trusts of change in ownership or control

Section 267-70

267-70 If there are individuals with more than a 50% stake in income or capital, more than a 50% stake in income or capital must be maintained

When trust must meet condition

- (1) If at any time (the *test time*) in the test period, individuals (the *threshold group*) have more than a 50% stake in the income or capital of the trust, the trust must meet the condition in subsection (2).

To find out whether individuals have more than a 50% stake in the income or capital of the trust: see Subdivision 268-C.

Condition

- (2) The condition is that, during the period beginning at the test time and finishing at the end of the test period, the same individuals (who must be some or all of the threshold group) must have more than a 50% stake in the income or the capital, respectively, of the trust.

Commissioner discretion

- (3) If:
 - (a) after the test time, some or all of the threshold group cease to have a 50% stake in the income or capital of the trust at a particular time; and
 - (b) having regard to the likely manner of exercise of any discretion of the trustee to distribute income or capital of the trust after the particular time and to any other relevant matter, the Commissioner considers it fair and reasonable that the individuals should be taken to have the stake at the particular time and at all later times in the test period;the individuals are taken to have that stake at the particular time and at all later times in the test period.

267-75 Group must not begin to control trust

A group must not, during the test period, begin to control the trust directly or indirectly.

To find out what it means for a group to control the trust: see Subdivision 269-E.

Subdivision 267-D—Information about family trusts with interests in other trusts**267-80 What this Subdivision is about**

If a trust would only avoid the tax consequences of this Division because of interests held by a non-resident family trust, the Commissioner may require the trust to give certain information about the non-resident family trust. If it is not given, the trust does not avoid the tax consequences of this Division.

267-85 Information about family trusts with interests in other trusts*Notice about family trust*

- (1) The Commissioner may give the trustee of a trust (the **primary trust**) a notice in accordance with section 267-90 if the requirements of subsections (2) to (5) of this section are met.

First requirement

- (2) In its return of income for an income year, the primary trust:
- (a) must have deducted a tax loss from an earlier income year; or
 - (b) must not have worked out its net income and tax loss for the income year under Division 268; or
 - (c) must have deducted an amount in relation to a debt; where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and loss under that Division, if it did not meet a condition or conditions as mentioned in section 267-40 or 267-70 (the **conditions provision**).

Second requirement

- (3) The Commissioner must be satisfied that the primary trust would not meet the condition or conditions if one or more trusts were not family trusts.

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Third requirement

- (4) When the Commissioner gives the notice, for at least one of the family trusts:
 - (a) a trustee of the trust must be a non-resident; or
 - (b) the central management and control of the trust must be outside Australia.

Fourth requirement

- (5) The Commissioner must give the notice before the later of:
 - (a) 5 years after the end of the income year to which the return relates; and
 - (b) the end of the period during which the trustee of the primary trust is required by section 262A to retain records in relation to that income year.

267-90 Notices where requirements of section 267-85 are met

Information required

- (1) The notice that the Commissioner may give if the requirements of subsections 267-85(2) to (5) are met must require the trustee to give the Commissioner specified information about conferrals of present entitlements to, and distributions of, income and capital, since the start of the test period mentioned in the conditions provision, by all of the family trusts meeting the requirements of paragraph 267-85(4)(a) or (b).

Trustee knowledge

- (2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

- (3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

- (4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the primary trust is taken not to meet, and never to have met, the condition or conditions in the conditions provision.

Application of Division 268

- (5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 267-85(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into such periods as would result in the highest possible net income for the income year.

No offences or penalties

- (6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the primary trust to commit any offence or be liable to any penalty under Part VII for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in the trust's return.

Division 268—How to work out a trust's net income and tax loss for the income year

Subdivision 268-A—Overview of Division

268-5 What this Division is about

This Division requires a trust's net income and tax loss to be worked out in a special way. The income year is divided into periods as the basis for the calculation.

Subdivision 268-B—Dividing the income year into periods

268-10 Income year of fixed trust to be divided into periods—first case

- (1) If:
 - (a) a trust's net income and tax loss for the income year are required by section 266-30 to be worked out under this Division; and
 - (b) the trust did not meet the requirements of subsections 266-45(2) and (4);the income year is divided into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the latest time that would result in the trust passing the 50% stake test for the whole of the period.

268-15 Income year of fixed trust to be divided into periods—second case

- (1) If:
- (a) a trust's net income and tax loss for the income year are required by section 266-30 to be worked out under this Division; and
 - (b) the trust met the requirements of subsections 266-45(2) and (4);
- the income year is divided into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the earliest of:
- (a) the latest time that would result in the persons holding fixed entitlements to shares of the income or shares of the capital of:
 - (i) if the trust met the requirements of paragraph 266-45(2)(a)—the trust; or
 - (ii) if the trust met the requirements of paragraph 266-45(2)(b)—the holding entity mentioned in that paragraph;
 and the percentages of the shares that they hold, remaining the same during the whole of the period; and
 - (b) the times that, for all of the non-fixed trusts (other than excepted trusts) holding directly or indirectly a fixed entitlement to a share of the income or capital of the trust at any time during the income year, are the latest times that would result in individuals having more than a 50% stake in their income or capital; and
 - (c) the earliest time in the period when a group begins to control a non-fixed trust (other than an excepted trust) that holds directly or indirectly a fixed entitlement to a share of the income or capital of the trust at any time during the income year.

To find out when a group begins to control a trust: see Subdivision 269-E.

268-20 Income year of widely held unit trust to be divided into periods

- (1) If a trust's net income and tax loss for the income year are required by section 266-80, 266-115 or 266-155 to be worked out under this Division, the income year is divided into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the earliest time at which there is an abnormal trading in the trust's units, where the trust does not pass the 50% stake test in respect of the following times:
 - (a) the beginning of the period;
 - (b) immediately after the abnormal trading.
- (4) However, if the trust is a listed widely held trust, what would otherwise be 2 or more successive periods are treated as a single period if during all of them the trust passed the same business test in relation to the time immediately before the end of the first of the successive periods.

268-25 Income year of non-fixed trust to be divided into periods

- (1) If a trust's net income and tax loss for the income year are required by section 267-60 to be worked out under this Division, the income year is divided into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year.
- (4) If the condition in subsection 267-70(2) applies but the trust does not meet the condition, each period (except the last) ends at the earlier of:
 - (a) the latest time, after the test time mentioned in that section, that would result in the same individuals having more than a 50% stake in the income or the capital, as the case requires, of the trust during the whole of the period; or
 - (b) the earliest time when a group begins to control the trust directly or indirectly.

- (5) If the condition in subsection 267-70(2) does not apply, or does apply and the trust meets the condition, each period (except the last) ends at the earliest time when a group begins to control the trust directly or indirectly.

Subdivision 268-C—Other steps in working out the net income and tax loss

268-30 Calculate the notional loss or net income for each period

- (1) A notional loss or notional net income of the trust must be worked out for each period into which the income year has been divided in accordance with Subdivision 268-B.
- (2) The trust has a notional loss for a period if the deductions attributed to the period under section 268-35 exceed the assessable income attributed to the period under section 268-40. The *notional loss* is the amount of the excess.

For a period during which the trust was in partnership, the notional loss is worked out under Subdivision 268-D.

- (3) On the other hand, if that assessable income exceeds those deductions, the trust has a *notional net income* for the period, equal to the excess.

For a period during which the trust was in partnership, the notional net income is worked out under Subdivision 268-D.

- (4) If the trust has a notional loss for *none* of the periods in the income year, this Subdivision has no further application, and the trust's net income for the income year is calculated in the usual way.

The usual way of working out net income is set out in section 95.

268-35 How to attribute deductions to periods

- (1) The trust's deductions for the income year are attributed to periods in the income year as follows.
- (2) The following deductions are attributed to each period in proportion to the length of the period:
- (aa) deductions for the decline in value of a depreciating asset;

See Division 40 of the *Income Tax Assessment Act 1997*.

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- (c) deductions for expenditure, deductions for which are spread over 2 or more years, but not full year deductions (see subsection (5));
- (d) deductions for expenditure of capital monies in connection with an Australian film.

See section 124ZAFA.

- (3) All other deductions (except full year deductions) are attributed to periods as if each period were an income year.
- (4) Full year deductions are not attributed to any of the periods. They are brought in at a later stage of the process of calculating the trust's net income for the income year.
- (5) These are **full year deductions**:
 - (a) deductions for bad debts under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;
 - (b) deductions for bad debts under section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*, or for losses on debt/equity swaps under section 63E;
 - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997*, because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;
 - (d) deductions allowable under Division 30 of the *Income Tax Assessment Act 1997*;
 - (e) deductions for payments of pensions, gratuities or retiring allowances under section 25-50 of the *Income Tax Assessment Act 1997*;
 - (f) deductions for tax losses of earlier income years;

See Division 36 of the *Income Tax Assessment Act 1997*.
 - (j) deductions for Farm Management Deposits.

See Schedule 2G to the *Income Tax Assessment Act 1936*.
- (6) However, a deduction for the balance of capital expenditure is *not* a full year deduction if the deduction results from the disposal, loss, lapse, termination of use or destruction of the property.

See Subdivision 40-D of the *Income Tax Assessment Act 1997*.

268-40 How to attribute assessable income to periods

- (1) The trust's assessable income for the income year is attributed to periods in the income year as follows.
- (2) The following amounts are attributed to periods so far as they are reasonably attributable to those periods:
 - (a) amounts included in the trust's assessable income under section 97 (Beneficiary of a trust estate not under a legal disability); or
 - (b) amounts included in the trust's assessable income under section 98A (Non-resident beneficiaries assessable in respect of certain income).
- (3) The following items of assessable income are attributed to each period in proportion to the length of the period:
 - (a) insurance recoveries for loss of livestock or trees;

*See section 385-130 of the *Income Tax Assessment Act 1997*.*
 - (b) amounts included in assessable income as a result of elections relating to the forced disposal of livestock;

*See Subdivision 385-E and section 385-160 of the *Income Tax Assessment Act 1997*.*
 - (c) recoupment of mains electricity connection expenditure.

*See item 1.25 in section 20-30, which lists deductions for which recoupments are assessable under Subdivision 20-A, of the *Income Tax Assessment Act 1997*.*
- (4) An amount included in the trust's assessable income under section 385-185 (Election to defer including profit on second wool clip) of the *Income Tax Assessment Act 1997* is attributed to the period when the wool would ordinarily have been shorn.
- (5) An amount included in the trust's assessable income that is a dividend under:
 - (a) section 65 (Payments to associated persons); or
 - (c) section 109 (Excessive payments to shareholders and associates); or
 - (d) Division 7A of Part III (Distributions to entities connected with a private company);
 is attributed to the period when the amount was paid or credited, whichever occurred first.

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- (6) All other items of assessable income (except full year amounts) are attributed to periods as if each period were an income year.
- (7) **Full year amounts** are amounts referred to in paragraphs (2)(a) and (b), so far as they are not reasonably attributable to a period. They are brought in at a later stage of the process of calculating the trust's net income for the income year.

268-45 How to calculate the trust's net income for the income year

- (1) The trust's **net income** for the income year is worked out as follows.
- (2) Add up the notional net incomes (if any) worked out under section 268-30 or 268-70.
 - Note: A notional **loss** for a period is *not* taken into account, but counts towards the trust's tax loss for the income year.
- (3) Add the full year amounts referred to in subsection 268-40(7) (if any).
- (4) Subtract the trust's full-year deductions of these kinds:
 - (a) deductions for bad debts under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;
 - (b) deductions for bad debts under section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*;
 - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997* because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;unless they exceed the total of the notional net incomes and the full year amounts. (If they equal or exceed that total, the trust does not have a net income for the income year.)
- (5) If an amount remains, subtract from it the trust's other full year deductions, in the order shown in subsection 268-35(5), unless they exceed the amount remaining. (If they equal or exceed that amount, the trust does not have a net income for the income year.)
- (6) The amount (if any) remaining is the trust's **net income** for the income year.

268-60 How to work out the trust's section 36-10 tax loss for the income year

- (1) For the purposes of Division 36 (Tax losses of earlier income years) of the *Income Tax Assessment Act 1997*, instead of working out the trust's tax loss for the year under section 36-10 of that Act, it is worked out as follows.
- (2) Total the notional losses.
- (3) Add the amount (if any) by which the trust's full year deductions of these kinds:
 - (a) deductions for bad debts under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;
 - (b) deductions for bad debts under section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*;
 - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997* because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;
 exceed the total of:
 - (d) the notional net incomes (if any); and
 - (e) the full year amounts referred to in section 268-40 (if any).
- (4) If the trust derived exempt income, subtract its net exempt income as defined in section 36-20 of the *Income Tax Assessment Act 1997*.
- (5) Any amount remaining is the trust's tax loss for the income year.

To find out *how much* of the tax loss can be deducted in later income years, see Division 266 or 267.

To find out *how* to deduct it, see section 36-15 or 36-17 of the *Income Tax Assessment Act 1997*.

Subdivision 268-D—Rules that supplement Subdivision 268-C if the trust is in partnership

268-70 How to calculate the trust's notional loss or net income for a period when the trust was a partner

- (1) This section applies if at any time during a period the trust was a partner in one or more partnerships.
- (2) The trust has a notional loss for the period if the total (the *loss total*) of:
 - (a) the deductions attributed to the period under section 268-35; and
 - (b) the trust's share of each notional loss (if any) of a partnership for the period;exceeds the total (the *income total*) of:
 - (c) the assessable income attributed to the period under section 268-40; and
 - (d) the trust's share of each notional net income (if any) of a partnership for the period.

The *notional loss* is the amount of the excess.

Note: A notional loss is taken into account in working out the trust's tax loss under section 268-60.

- (3) On the other hand, if the income total exceeds the loss total, the trust has a *notional net income* for the period, equal to the excess.

Note: A notional net income is taken into account in working out the trust's net income under section 268-45.

- (4) If the trust has a notional net income for *all* periods in the income year, this Subdivision has no further application, and the trust's net income for the income year is worked out in the usual way.

The usual way of working out net income is set out in section 95.

268-75 How to calculate the trust's share of a partnership's notional loss or notional net income for a period if both entities have the same income year

- (1) This section applies if at any time during a period the trust is a partner in a partnership that has an income year that starts and ends when the trust's income year starts and ends.

- (2) The partnership's notional loss or notional net income for the period is worked out in the same way as the notional loss or notional net income of a trust.
- (3) The trust's share is calculated by dividing:
 - (a) the trust's interest in the partnership's net income or partnership loss of the income year;
 by:
 - (b) the amount of that net income or partnership loss;
 and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the trust's share is a percentage that is fair and reasonable having regard to the extent of the trust's interest in the partnership.

268-80 How to calculate the trust's share of a partnership's notional loss or notional net income for a period if the entities have different income years

- (1) This section applies if at any time during a period the trust is a partner in a partnership that has an income year that starts and ends at a different time from when the trust's income year starts and ends.
- (2) So much of the partnership's net income or partnership loss of an income year as was derived during the period is a notional net income or notional loss of the partnership for the period. (For the purposes of this subsection, the partnership's net income or partnership loss is calculated without taking account of the partnership's full year deductions for that income year.)

Note: The partnership's full year deductions are dealt with in section 268-85.
- (3) The trust's share is calculated by dividing:
 - (a) the trust's interest in the partnership's net income or partnership loss of the income year;
 by:
 - (b) the amount of that net income or partnership loss;
 and expressing the result as a percentage.

268-85 Trust's full year deductions include a share of partnership's full year deductions

- (1) This section applies if at any time during the income year the trust is a partner in a partnership that has one or more full year deductions for the income year of the partnership that corresponds to the income year of the trust.
- (2) The partnership's full year deductions are treated as full year deductions of the trust, but only to the extent of the trust's share.
- (3) If the partnership's income year is the same as the trust's, the trust's share is calculated by dividing:
 - (a) the trust's interest in the partnership's net income or partnership loss of the income year;by:
 - (b) the amount of that net income or partnership loss;and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the trust's share is a percentage that is fair and reasonable having regard to the extent of the trust's interest in the partnership.
- (5) If the partnership's income year does not start and end at the same time as the trust's income year, the trust's share is a percentage that is fair and reasonable having regard to all relevant circumstances.

Division 269—Concepts and tests applied in Divisions 266 and 267

Subdivision 269-A—Overview of Division

269-5 What this Division is about

This Division explains the following concepts or tests that are used in preceding Divisions of this Schedule:

- abnormal trading;
- 50% stake test etc.;
- pattern of distributions test;
- control;
- same business test.

Subdivision 269-B—Abnormal trading

269-10 Trading

A *trading* in units in a unit trust occurs if there is an issue, redemption or transfer of, or other dealing in, the units.

269-15 Abnormal trading—general

- (1) There is an *abnormal trading* in units in a unit trust if there is a trading in the units that is abnormal having regard to all relevant factors, including:
 - (a) the timing of the trading, when compared to the normal timing for trading in its units; and
 - (b) the number of units traded, when compared to the normal number of units traded; and
 - (c) any connection between the trading and any other trading in units in the trust; and

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- (d) any connection between the trading and a tax loss or other deduction of the trust.
- (2) There may also be an *abnormal trading* under any of the following provisions.

269-20 Abnormal trading—suspected acquisition or merger

There is an *abnormal trading* in units in a unit trust if a trading occurs in its units that the trustee knows or reasonably suspects is part of an acquisition of the trust or merger of the trust with another trust.

269-25 Abnormal trading—5% of units in a single transaction

There is an *abnormal trading* in units in a unit trust (other than a wholesale widely held trust) if 5% or more of the units are traded in one transaction.

269-30 Abnormal trading—suspected 5% of units in a series of transactions

- (1) There is an *abnormal trading* in units in a unit trust (other than a wholesale widely held trust) if the trustee knows or reasonably suspects that a person, or a person and one or more associates of the person, have acquired or redeemed 5% or more of the units in 2 or more transactions and would not have done so if the trust did not have a tax loss or other deduction.
- (2) For the purposes of other provisions of this Schedule, the abnormal trading occurs at the time of the particular transaction that causes the 5% figure to be exceeded.

269-35 Abnormal trading—20% of units traded, issued or redeemed over 60 day period

- (1) There is an *abnormal trading* in units in a unit trust (other than a wholesale widely held trust) if more than 20% of the units on issue at the end of any 60 day period were traded during the period.
- (2) For the purposes of other provisions of this Schedule, the abnormal trading occurs at the end of the 60 day period.

269-40 Abnormal trading—50% stake not maintained

- (1) There is an **abnormal trading** in units in a wholesale widely held trust during a period if the trustee knows or reasonably suspects that the same persons did not hold more than 50% of its units at the beginning and end of the period.
- (2) For the purposes of other provisions of this Schedule, the abnormal trading occurs immediately before the end of the period.

269-45 Time at which trustee to have knowledge or suspicion

For the purposes of section 269-20, 269-30 or 269-40, the trustee must have the knowledge or reasonable suspicion mentioned in that section:

- (a) if the section is being applied in determining for the purposes of section 268-20 whether an abnormal trading occurred—at some time during the income year mentioned in that section; or
- (b) if it is being applied in determining for the purposes of any other provision whether an abnormal trading occurred during a period—at some time during the period.

269-47 Abnormal trading where holding trust

Holding trust and subsidiary trust

- (1) If a unit trust has fixed entitlements directly or indirectly to all of the income and capital of another unit trust:
 - (a) the first trust is a **holding trust** of the second; and
 - (b) the second is a **subsidiary trust** of the first.

Abnormal trading causing or ending holding-subsidiary relationship

- (2) The transaction that causes a trust to become, or to cease to be, a holding trust of a subsidiary trust (the **bottom subsidiary trust**) is an **abnormal trading** in units in the bottom subsidiary trust unless:
 - (a) the holding trust is itself a subsidiary trust of one or more holding trusts (each of which is a **higher holding trust**); and

- (b) immediately before and after the transaction, the bottom subsidiary trust is a subsidiary trust of one or more of the higher holding trusts.

Abnormal trading while holding-subsidiary relationship exists

- (3) While one or more trusts are holding trusts of the same subsidiary trust, there is an **abnormal trading** in units in the subsidiary trust if and only if, and at the time at which, there is an abnormal trading in units in the holding trust that is not itself a subsidiary trust of another holding trust.

269-49 No abnormal trading where proportionate issue of units

If the issue of units in a unit trust to existing unit holders does not cause each unit holder's proportion of the total fixed entitlements to shares of the income and capital of the trust to change, then, except for the purposes of section 269-20, the issue is disregarded in determining whether there has been an abnormal trading in units in the unit trust.

Subdivision 269-C—Passing the 50% stake test etc.

269-50 More than a 50% stake in income or capital

More than a 50% stake in income

- (1) If there are individuals who have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of a trust, those individuals have **more than a 50% stake** in the income of the trust.

More than a 50% stake in capital

- (2) If there are individuals who have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the trust, those individuals have **more than a 50% stake** in the capital of the trust.

269-55 Passing the 50% stake test

- (1) If, at all times during a period, or at 2 times:

- (a) the same individuals have more than a 50% stake in the income of a trust; and
 - (b) the same individuals (who may be different from those in paragraph (a)) have more than a 50% stake in the capital of the trust;
- the trust *passes the 50% stake test* for the period or in respect of the 2 times.
- (2) If a trust is a widely held unit trust it is taken to *pass the 50% stake test* for a period or in respect of 2 times if it is reasonable to assume that the requirements of paragraphs (1)(a) and (b) are satisfied in respect of the period or the 2 times.

Subdivision 269-D—Pattern of distributions test**269-60 Pattern of distributions test**

A trust *passes the pattern of distributions test* for an income year if, before the end of 2 months after the end of the income year:

- (a) the trust distributed directly or indirectly to the same individuals, for their own benefit, a greater than 50% share of all test year distributions of income (see subsection 269-65(1)); and
- (b) the trust distributed directly or indirectly to the same individuals (who may be different from those in paragraph (a)), for their own benefit, a greater than 50% share of all test year distributions of capital (see subsection 269-65(3)).

269-65 Test year distribution of income or capital*Test year distribution of income*

- (1) A *test year distribution of income* is the total of all distributions of income made by the trust in any of the following periods, provided the period does not start more than 6 years before the start of the income year:
- (a) the period from the start of the income year until 2 months after its end;

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- (b) if the trust distributed income before the trigger year (see subsection (2))—the income year, before the trigger year, that is closest to the trigger year;
- (c) if paragraph (b) does not apply and the trust distributed income in the trigger year—the trigger year;
- (d) if neither paragraph (b) nor paragraph (c) applies—the income year, closest to the trigger year, in which the trust distributed income;
- (e) each intervening income year (if any) between the one in paragraph (a) and the one in paragraph (b), (c) or (d).

Trigger year

- (2) If this Subdivision is being applied for the purposes of section 267-20, the **trigger year** is the loss year mentioned in that section. If it is being applied for the purposes of section 267-25, the **trigger year** is the year in which the debt mentioned in that section was incurred.

Test year distribution of capital

- (3) Subsection (1) applies in the same way to distributions of capital made by the trust, to determine what is a **test year distribution of capital**.

269-70 When individual receives different percentages

For the purposes of section 269-60, if the trust does not distribute to an individual the same percentage of income or capital for every test year distribution, the trust is taken to have distributed to the individual, for every test year distribution, the smallest percentage that it distributed to the individual for any of the test year distributions.

269-75 Incomplete distributions

For the purposes of section 269-60, if, before the end of 2 months after the end of the income year:

- (a) the trust has distributed directly or indirectly the whole or part of a test year distribution of income or test year distribution of capital to a company, partnership or trust (the **entity**); and

- (b) an amount (the *undistributed amount*) consisting of the whole or part of the income or capital so distributed to the entity satisfies the following requirements:
 - (i) the amount has not been distributed by the entity; and
 - (ii) an individual, directly or indirectly, and for his or her own benefit, has a fixed entitlement to a share of the amount;

the entity is taken to have distributed the share of the undistributed amount to the individual immediately before the end of 2 months after the end of the income year.

269-80 Where individual's death or breakdown of marriage or relationship

- (1) For the purposes of section 269-60, if:
 - (a) the trust distributes, directly or indirectly to an individual as mentioned in that section, income or capital that is included in a test year distribution; and
 - (b) a later distribution of income or capital is made that is included in the same or a different test year distribution; and
 - (c) either the individual dies before the later distribution is made or:
 - (i) before it is made, there is a breakdown in the marriage or relationship (see section 272-140) of the individual; and
 - (ii) after the breakdown, no distribution of income or capital of the trust, that is included in a test year distribution, is made directly or indirectly to the individual; and
 - (iii) it is reasonable to assume that the breakdown in the marriage or relationship is the reason for no such distribution being made;

then subsections (2) and (3) apply.
- (2) No income or capital distributed to the individual by the trust, directly or indirectly as mentioned in section 269-60, is to be included in any test year distribution.

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- (3) If:
- (a) the requirements of subsection (1) are met because the individual has died; and
 - (b) immediately before his or her death, the individual had directly or indirectly, and for his or her own benefit, a fixed entitlement to a share of the income or capital of the trust; and
 - (c) after the individual's death, the fixed entitlement is held by a person as trustee of the individual's estate or by a person who received it as a beneficiary of the estate;
- no income or capital distributed to the person as such a trustee or beneficiary, directly or indirectly as mentioned in section 269-60, is to be included in any test year distribution.

269-85 Arrangements to pass pattern of distributions test

- (1) The trust is taken for the purposes of section 269-60 not to have distributed, directly or indirectly to an individual, and for the individual's own benefit, a share of a test year distribution of income or capital of the trust if the condition in subsection (2) is met.
- (2) The condition is that an arrangement was entered into where:
 - (a) the arrangement in some way (directly or indirectly) related to, affected or depended for its operation on the share or its value; and
 - (b) the purpose, or one of the purposes, of the arrangement was to ensure that the trust would meet the condition in subsection 267-30(2).

Subdivision 269-E—Control a non-fixed trust

269-95 Control a non-fixed trust

Basic meaning

- (1) Subject to this section, a group (see subsection (5)) ***controls a non-fixed trust*** if:
 - (a) the group has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain

beneficial enjoyment (directly or indirectly) of the capital or income of the trust; or

- (b) the group is able (directly or indirectly) to control the application of the capital or income of the trust; or
- (c) the group is capable, under a scheme, of gaining the beneficial enjoyment in paragraph (a) or the control in paragraph (b); or
- (d) the trustee is accustomed, under an obligation or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the group; or
- (e) the group is able to remove or appoint the trustee; or
- (f) the group acquires more than a 50% stake in the income or capital of the trust.

Replacement group after death etc.

- (2) The consequences set out in subsection (3) apply if:
 - (a) a group (the **original group**) ceases to control a non-fixed trust only because of the death, incapacitation or breakdown in the marriage or relationship of the individual comprising, or an individual included in, the group; and
 - (b) another group (the **replacement group**) begins to control the trust within the following period (whether or not any other group controlled the trust in the interim):
 - (i) one year after the death, incapacitation or breakdown in the marriage or relationship; or
 - (ii) such longer period as the Commissioner determines in relation to the death, incapacitation or breakdown in the marriage or relationship; and
 - (c) the replacement group consists of:
 - (i) if the individual who died or became incapacitated or whose marriage or relationship broke down comprised the original group—one or more individuals who are members of the individual's family (see section 272-95); or
 - (ii) in any other case—one or more such individuals together with all of the persons who were members of the original group, other than any individual who has died or become incapacitated or whose marriage or relationship has broken down; and

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- (d) the replacement group began to control the trust only because of the death, incapacitation or breakdown in the marriage or relationship of the individual; and
- (e) disregarding any individual who died or became incapacitated or whose marriage or relationship broke down and the one or more individuals covered by paragraph (c)—the beneficiaries of the trust immediately before the original group ceased to control the trust are the beneficiaries of the trust immediately after the replacement group begins to control the trust.

Consequences of subsection (2)

- (3) For the purposes of subsection (2), the consequences are that:
 - (a) the replacement group is taken to have controlled the trust from the time when the original group began to control it until the time when the replacement group actually began to control it; and
 - (b) the original group is taken *not* to have controlled the trust; and
 - (c) if:
 - (i) a person or persons (other than a replacement group) began to control the trust at some time during the period from the time the original group ceased to control the trust until the replacement group began to do so; and
 - (ii) the person or persons began to control the trust only because of the death, incapacitation or breakdown in the marriage or relationship of the individual; and
 - (iii) the control did not continue after the replacement group began to control the trust;the person or persons are taken *not* to have controlled the trust.

Deemed absence of control

- (4) If:
 - (a) at a particular time, a group controls a non-fixed trust; and
 - (b) the Commissioner, having regard to:
 - (i) the identity of the beneficiaries of the trust at any time before and at any time after the group began to control the trust; and

(ii) all other relevant circumstances;
 considers that it is reasonable that the group be taken not to control the trust at the particular time;
 the group is taken *not* to control the trust at the particular time.

Group

- (5) A **group** is:
- (a) a person; or
 - (b) a person and one or more associates; or
 - (c) 2 or more associates of a person.

Subdivision 269-F—Same business test**269-100 Passing the same business test***Basic meaning*

- (1) A listed widely held trust **passes the same business test** during a period (the **same business test period**) in relation to a time (the **test time**) if throughout the same business test period it carries on the same business as it carried on immediately before the test time.

Relevance of being a trust

- (2) The mere fact of being a trust does not mean that the trust cannot carry on a business.

First exception

- (3) However, the trust does *not* pass the same business test if, at any time during the same business test period, it derives assessable income from:
- (a) a business of a kind that it did not carry on before the test time; or
 - (b) a transaction of a kind that it had not entered into in the course of its business operations before the test time.

Second exception

- (4) The trust also does *not* pass the same business test if, before the test time, it:

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- (a) started to carry on a business it had not previously carried on;
or
- (b) in the course of its business operations, entered into a transaction of a kind that it had not previously entered into; and did so for the purpose, or for purposes including the purpose, of being taken to have carried on throughout the same business test period the same business as it carried on immediately before the test time.

Third exception

- (5) So far as the test is applied for the purpose of section 266-115 (Listed widely held trust may be required to work out its net income and tax loss in a special way) and section 268-20 (Widely held unit trust's income year to be divided into periods), the trust also does *not* pass the test if, at any time during the same business test period, it incurs expenditure:
 - (a) in carrying on a business of a kind that it did not carry on before the test time; or
 - (b) as a result of a transaction of a kind that it had not entered into in the course of its business operations before the test time.

Division 270—Schemes to take advantage of deductions

270-5 What this Division is about

A trust may be prevented from making any use of deductions, or full use of deductions in an income year, if a scheme to take advantage of the deductions exists.

270-10 Schemes to take advantage of deductions

Basic case

- (1) The consequences set out in section 270-15 result if:
- (a) a deduction is allowable to a trust for the income year; and
 - (b) under a scheme, the following happen (in any order):
 - (i) the trust derives an amount of assessable income (the *scheme assessable income*) in the income year; and
 - (ii) an outsider to the trust (see section 270-25) directly or indirectly provides a benefit (see section 270-20) to the trustee, to a beneficiary in the trust or to an associate of the trustee or of a beneficiary; and

Note: The benefit may constitute all or any of the scheme assessable income.

 - (iii) the trustee, a beneficiary in the trust or an associate of the trustee or of a beneficiary, directly or indirectly provides a benefit to the outsider to the trust or to an associate of the outsider (other than an associate covered by any of paragraphs 270-25(1)(a) to (f)); and

Note: The benefit may constitute all or any of the deduction.
 - (c) it is reasonable to conclude that:
 - (i) the trust derived the scheme assessable income; or
 - (ii) the outsider provided the benefit as mentioned in subparagraph (b)(ii); or
 - (iii) the trustee, beneficiary or associate provided the benefit as mentioned in subparagraph (b)(iii);

wholly or partly, but not merely incidentally, because the deduction would be allowable; and

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- (d) the trust is not an excepted trust under paragraph 272-100(b), (c) or (d).

Special case

- (2) If:
 - (a) under a scheme, a person who, before the scheme was entered into, was an outsider to a trust becomes:
 - (i) the trustee of the trust; or
 - (ii) a person with a fixed entitlement to a share of the income or capital of the trust; and
 - (b) if the person had not ceased to be an outsider to the trust, the requirements of subsection (1) would have been satisfied in relation to the scheme;the requirements of subsection (1) are taken to have been satisfied in relation to the scheme.

270-15 Tax consequences of schemes

If the requirements of subsection 270-10(1) are satisfied, the consequences are that:

- (a) to the extent (if any) that the deduction mentioned in paragraph 270-10(1)(a) relates exclusively, or may appropriately be related, to the scheme assessable income, the deduction is not allowable; and
- (b) if the net income of the trust is less than the scheme assessable income or there is no net income—the trust has a net income equal to, or the net income is increased so that it equals, the scheme assessable income; and
- (c) paragraph (b) and the scheme assessable income are disregarded in working out any tax loss incurred by the trust in the income year; and
- (d) if paragraph (b) applies and the deduction mentioned in paragraph 270-10(1)(a) is for a tax loss—paragraph (b) and the scheme assessable income are disregarded in working out any deduction in respect of the tax loss allowable after the income year.

270-20 Benefit

A *benefit* is:

- (a) money, a dividend or property (whether tangible or intangible); or
- (b) a right or entitlement (whether or not property); or
- (c) services; or
- (d) the extinguishment, forgiveness, release or waiver of a debt or other liability; or
- (e) the doing of anything that results in the derivation of assessable income; or
- (f) anything that, disregarding the preceding paragraphs, is a benefit or advantage.

270-25 Outsider to trust

Outsider to family trust

- (1) If the trust mentioned in paragraph 270-10(1)(a) is a family trust, an *outsider to the trust* is a person other than:
 - (a) the trustee of the trust; or
 - (b) a person with a fixed entitlement to a share of the income or capital of the trust; or
 - (c) the individual specified in the trust's family trust election; or
 - (d) a member of the individual's family; or
 - (da) a trust with the same individual specified in its family trust election; or
 - (e) a company, partnership or trust that made an interposed entity election to be included in the individual's family group, where the election was in force (including before it was made) when the scheme mentioned in paragraph 270-10(1)(b) commenced; or
 - (f) a fixed trust, company or partnership (an *entity*) where, at all times while the scheme mentioned in paragraph 270-10(1)(b) was being carried out:
 - (i) the individual specified in the trust's family trust election; or
 - (ii) one or more members of the individual's family; or

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- (iii) the trustees of one or more family trusts, provided the individual is specified in the family trust election of each of those family trusts;
- or any combination of the above, had fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the entity.

Outsider to non-family trust

- (2) If the trust mentioned in paragraph 270-10(1)(a) is not a family trust, an ***outsider to the trust*** is a person other than:
 - (a) the trustee of the trust; or
 - (b) a person with a fixed entitlement to a share of the income or capital of the trust.

Division 271—Family trust distribution tax**271-5 What this Division is about**

Basically, if:

- the trustee of a trust makes a family trust election; or
- a company, the partners in a partnership or the trustee of a trust makes an election to be included in a family group in relation to a family trust;

and the company, partnership or trust concerned confers a present entitlement to, or distributes, income or capital other than upon or to a specified individual or members of his or her family group, a special tax is payable on the conferral or distribution.

If certain persons do not provide information about conferrals of present entitlements or distributions by non-residents connected with them, the persons may become liable to the special tax on their own conferrals or distributions.

If certain non-residents do not pay the special tax by the due date, other persons connected with them may also become liable to pay a special tax equal to the unpaid amount.

271-10 Family trust distribution tax

This Division provides for tax to be payable in specified circumstances. The tax is called *family trust distribution tax*.

271-15 Tax liability where family trust makes distribution etc. outside family group

- (1) This section applies if:
 - (a) a trustee makes a family trust election in relation to a trust;
and

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- (b) at any time while the election is in force (including a time before it was made), the trust confers a present entitlement to, or distributes, income or capital of the trust:
 - (i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or
 - (ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.
- (2) If this section applies:
 - (a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed; or
 - (b) if the trustee is a company—the trustee, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-20 Tax liability where interposed trust makes distribution etc. outside family group

- (1) This section applies if:
 - (a) the trustee of a trust makes an interposed entity election for the trust to be included in the family group of the individual specified in a family trust election; and
 - (b) at any time while the election is in force (including a time before it was made), the trust confers a present entitlement to, or distributes, income or capital of the trust:
 - (i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or

- (ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.
- (2) If this section applies:
- (a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed; or
 - (b) if the trustee is a company—the trustee, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-25 Tax liability where interposed partnership makes distribution etc. outside family group

- (1) This section applies if:
- (a) the partners in a partnership make an interposed entity election for the partnership to be included in the family group of the individual specified in a family trust election; and
 - (b) at any time while the interposed entity election is in force (including a time before it was made), the partnership confers a present entitlement to, or distributes, income or capital:
 - (i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or
 - (ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.
- (2) If this section applies, the partners, together with each person who at the time of the conferral or distribution was a director of any
-

partner that was a company, are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-30 Tax liability where interposed company makes distribution outside family group

- (1) This section applies if:
 - (a) a company makes an interposed entity election for the company to be included in the family group of the individual specified in a family trust election; and
 - (b) at any time while the interposed entity election is in force (including a time before it was made), the company confers a present entitlement to, or distributes, income or capital of the company:
 - (i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or
 - (ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.
- (2) If this section applies, the company, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-35 Avoidance of double-counting

If, after conferring a present entitlement to income or capital as mentioned in paragraph 271-15(1)(b), 271-20(1)(b), 271-25(1)(b) or 271-30(1)(b), the trust, partnership or company concerned distributes the income or capital in satisfaction of the entitlement, the distribution is disregarded for the purposes of that paragraph.

271-40 Exclusion of directors from liability to pay tax

- (1) This section applies to a director of a company who is included among persons who are jointly and severally liable to pay family trust distribution tax under section 271-15, 271-20, 271-25 or 271-30.

Director not taking part in distribution decision

- (2) If:
- (a) the director did not take part in any decision to confer the entitlement or make the distribution concerned; and
 - (b) if the director was aware of the proposal to make the decision or of the fact that it was made—the director took reasonable steps to prevent the making, or the implementation, of the decision;

the director is not included among the persons jointly and severally liable.

Director taking part in distribution decision

- (3) If:
- (a) the director took part in any decision to confer the entitlement or make the distribution; and
 - (b) the director voted against, or otherwise disagreed with the decision; and
 - (c) the director took reasonable steps to prevent the implementation of the decision;

the director is not included among the persons jointly and severally liable.

271-45 Requirements for section 271-55 notice to family trust

Notice about non-resident distributions

- (1) The Commissioner may give a notice in accordance with section 271-55 (which deals with information about distributions etc. by certain non-residents) to the trustee of a trust (the **primary entity**) who has made a family trust election, provided the requirements of subsections (2) to (4) of this section are met.

First requirement

- (2) At a time (the *test time*) while the election is in force (including a time before it was made), the primary entity must have conferred a present entitlement to, or distributed, income or capital upon or to a company, partnership or trust (the *secondary entity*) that at the time was, because of an interposed entity election, a member of the family group of the individual (the *primary individual*) specified in the family trust election.

Second requirement

- (3) When the Commissioner gives the notice:
- (a) if the secondary entity is a partnership—a partner must be a non-resident; and
 - (b) if the secondary entity is a company—the company must be a non-resident; and
 - (c) if the secondary entity is a trust—either:
 - (i) a trustee must be a non-resident; or
 - (ii) the central management and control of the trust must be outside Australia.

Third requirement

- (4) The Commissioner must give the notice before the later of:
- (a) 5 years after the conferral or distribution mentioned in subsection (2); and
 - (b) the end of the period during which the primary entity is required by section 262A to retain records in relation to the income year in which the conferral or distribution took place.

271-50 Requirements for section 271-55 notice to interposed entity

Notice about non-resident distributions

- (1) If:
- (a) a company, the trustee of a trust or the partners in a partnership (which company, trust or partnership is the *primary entity*) makes an interposed entity election to be included in the family group of an individual specified in a family trust election; and
 - (b) the requirements of subsections (2) to (4) are met;

the Commissioner may give the company, trustee or partners a notice in accordance with section 271-55 (which deals with information about distributions etc. by certain non-residents).

First requirement

- (2) At a time (the *test time*) while the election was in force (including a time before it was made), the primary entity must have conferred a present entitlement to, or distributed, income or capital upon or to a company, partnership or trust (a *secondary entity*), where the secondary entity:
- (a) was the family trust whose trustee made the family trust election; or
 - (b) was, because of an interposed entity election that was in force at the time, included in the family group of the individual (the *primary individual*) specified in the family trust election.

Second requirement

- (3) When the Commissioner gives the notice:
- (a) if the secondary entity is a partnership—a partner must be a non-resident; and
 - (b) if the secondary entity is a company—the company must be a non-resident; and
 - (c) if the secondary entity is a trust—either:
 - (i) a trustee must be a non-resident; or
 - (ii) the central management and control of the trust must be outside Australia.

Third requirement

- (4) The Commissioner must give the notice before the later of:
- (a) 5 years after the conferral or distribution mentioned in subsection (2); and
 - (b) the end of the period during which the primary entity is required by section 262A to retain records in relation to the income year in which the conferral or distribution took place.

271-55 Notice requiring information about non-resident distributions etc.

Information required

- (1) The notice that the Commissioner may give the company, partnership or trustee if the requirements of subsections 271-45(2) to (4) or 271-50(2) to (4) are met must require the company, partners or trustee to give the Commissioner specified information about conferrals of present entitlements to, or distributions of, income or capital since the test time by any company, partnership or trust covered by subsection (2) of this section.

Entities covered

- (2) The following are covered by this subsection:
 - (a) the secondary entity; and
 - (b) any company in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where the company was a non-resident, and the election was in force, when the conferral or distribution took place; and
 - (c) any partnership in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where any of the partners was a non-resident, and the election was in force, when the conferral or distribution took place; and
 - (d) any trust in respect of which a family trust election specifying the primary individual had been made or in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where, when the conferral or distribution took place, either a trustee was a non-resident or the trust's central management and control were outside Australia.

Information not within knowledge

- (3) The information need not be within the knowledge of the company, partners or trustee at the time the notice is given.

Period for giving information

- (4) The notice must specify a period within which the company, partners or trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Company's liability

- (5) If the company does not give the information within the period or within such further period as the Commissioner allows, it, together with each person who was a director of the company at the test time, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-50(2).

Partners' liability

- (6) If the partners do not give the information within the period or within such further period as the Commissioner allows, they, together with each person who at the test time was a director of any partner that was a company, are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-50(2).

Trustee's liability

- (7) If the trustee does not give the information within the period or within such further period as the Commissioner allows:
- (a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-45(2) or 271-50(2); or
 - (b) if the trustee is a company—the trustee, together with each person who was a director of the company at the test time, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-45(2) or 271-50(2).

271-60 Tax liability where non-resident family trust's tax unpaid

Conditions for tax liability

- (1) If:
- (a) tax under section 271-15 on the amount or value of income or capital of a family trust becomes due and payable; and
 - (b) the Commissioner determines, in writing, at or after the time when the tax became due and payable, that it is unlikely that the whole or part (the **unpaid amount**) of the tax will be paid; and
 - (c) when the Commissioner makes the determination:
 - (i) a trustee of the family trust is a non-resident; or
 - (ii) the central management and control of the family trust is outside Australia.

then the consequences set out in subsection (2) result.

Tax liability

- (2) The consequences are:
- (a) if there is only one person covered by subsection (3)—that person is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount; and
 - (b) if there are 2 or more persons covered by subsection (3)—those persons are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount.

Persons liable under subsection (2)

- (3) The persons covered by this subsection are:
- (a) the trustee of any trust to which subsection (4) applies; and
 - (b) if the trustee of any such trust is a company—any person who is a director of the company when the determination is made; and
 - (c) any company to which subsection (5) applies; and
 - (d) any person who is a director of such a company when the determination is made.

Trust mentioned in paragraph (3)(a)

- (4) This subsection applies to a trust if the trust would be:
- (a) prevented by Division 266 or 267 from deducting a tax loss or amount in respect of a debt; or
 - (b) required by Division 266 or 267 to work out its net income and tax loss under Division 268;
- in the income year in which the determination is made, or an earlier income year, if the family trust had not been a family trust.

Company mentioned in paragraph (3)(c)

- (5) This subsection applies to a company if, in its return of income for the income year in which the determination is made or an earlier income year:
- (a) the company deducted an amount in respect of a debt, where it was allowed to do so but, because of former section 63B or 63C, or Subdivision 165-C, 709-D or 719-I of the *Income Tax Assessment Act 1997*, it would not have been if the family trust had not been a family trust; or
 - (b) the company deducted a tax loss (within the meaning of the *Income Tax Assessment Act 1997*) where it was allowed to do so but, because of Subdivision 165-A of that Act, it would not have been if the family trust had not been a family trust; or
 - (c) the company applied a net capital loss (within the meaning of former Part IIIA of this Act) where it was allowed to do so but, because of former subsection 160ZC(5), it would not have been if the family trust had not been a family trust; or
 - (d) the company applied a net capital loss (within the meaning of the *Income Tax Assessment Act 1997*) where it was allowed to do so but, because of Subdivision 165-CA of that Act, it would not have been if the family trust had not been a family trust;
 - (e) the company did not calculate its taxable income in accordance with former section 50C of this Act where it was not required to do so but would have been if the family trust had not been a family trust; or
 - (f) the company calculated its taxable income in accordance with former section 50C and took into account an amount, by reason of former subsection 50D(2), in ascertaining the

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eligible notional loss of the company under former section 50D, where it was required to calculate its taxable income in accordance with former section 50C and entitled to take the amount into account but would not have been so entitled if the family trust had not been a family trust; or

- (g) the company did not calculate its taxable income and tax loss under Subdivision 165-B of the *Income Tax Assessment Act 1997* where it was not required to do so but would have been if the family trust had not been a family trust; or
- (h) the company did not calculate its net capital gain and net capital loss under Subdivision 165-CB of the *Income Tax Assessment Act 1997* where it was not required to do so but would have been if the family trust had not been a family trust.

271-65 Tax liability where non-resident interposed entity's tax unpaid

When section applies

- (1) This section applies if:
 - (a) a company, the partners in a partnership or the trustee of a trust makes an interposed entity election to be included in the family group of an individual (the **primary individual**); and
 - (b) while the interposed entity election is in force, the company, partnership or trust (the **primary interposed entity**) confers a present entitlement to, or distributes, income or capital; and
 - (c) family trust distribution tax becomes due and payable on the amount or value of the income or capital.

Determination about unpaid tax

- (2) If:
 - (a) the Commissioner determines, in writing, at or after the time when the tax became due and payable, that it is unlikely that the whole or part (the **unpaid amount**) of the tax will be paid; and
 - (b) at the time:
 - (i) if the primary interposed entity is a company—the company is a non-resident; and

- (ii) if the primary interposed entity is a partnership—a partner is a non-resident; and
 - (iii) if the primary interposed entity is a trust—either a trustee is a non-resident or the central management and control of the trust is outside Australia;
- then the consequences in subsection (3) result.

Consequences

- (3) The consequences are:
- (a) if there is only one person covered by subsection (4)—that person is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount; and
 - (b) if there are 2 or more persons covered by subsection (4)—those persons are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount.

Persons covered

- (4) The persons covered by this subsection are:
- (a) any company to which subsection (5) applies; and
 - (b) any person who is a director of such a company when the determination is made; and
 - (c) any partner in a partnership to which subsection (5) applies; and
 - (d) if any partner in any such partnership is a company—any person who is a director of the company when the determination is made; and
 - (e) the trustee of any trust to which subsection (5) applies; and
 - (f) if the trustee of any such trust is a company—any person who is a director of the company when the determination is made.

Entities making election and distribution etc.

- (5) This subsection applies to any company, partnership or trust (an **entity**), other than the primary interposed entity, meeting the following conditions:

- (a) the company, the partners in the partnership or the trustee of the trust made:
 - (i) an interposed entity election to be included in the family group of the primary individual; or
 - (ii) a family trust election specifying the primary individual; and
- (b) while that election and the interposed entity election made in respect of the primary interposed entity were in force, and before the Commissioner made the determination mentioned in paragraph (2)(a), the entity conferred a present entitlement to, or distributed, income or capital upon or to an eligible entity (see subsection (6)).

Eligible entities

- (6) Each of the following is an **eligible entity**:
 - (a) the primary interposed entity;
 - (b) a company in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where the company was a non-resident, and the election was in force, when the conferral or distribution took place;
 - (c) a partnership in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where any of the partners was a non-resident, and the election was in force, when the conferral or distribution took place;
 - (d) a trust:
 - (i) in respect of which an interposed entity election had been made to be included in the family group of the primary individual; or
 - (ii) in respect of which a family trust election had been made specifying the primary individual;where, when the conferral or distribution took place, the election was in force and either a trustee was a non-resident or the trust's central management and control were outside Australia.

271-70 Reduction of liability where tax paid

If family trust distribution tax (the *secondary tax*) becomes payable under section 271-60 or 271-65 on an amount of family trust distribution tax (the *primary tax*) that the Commissioner determined was unlikely to be paid:

- (a) if any of the primary tax is later paid—any liability to the secondary tax existing at the time of the payment is reduced by the amount of the payment; and
- (b) if any of the secondary tax is later paid—any liability to the primary tax existing at the time of the payment is reduced by the amount of the payment.

271-75 Payment of family trust distribution tax

Tax under sections 271-15 to 271-30

- (1) Family trust distribution tax under any of sections 271-15 to 271-30 is due and payable:
 - (a) in a case where the conferral or distribution on whose amount or value the tax is payable was made before the day on which the election was made—at the end of 21 days after the day on which the election was made; or
 - (b) in any other case—at the end of 21 days after the day on which the conferral or distribution, on whose amount or value the tax is payable, was made;or by the end of such later day as the Commissioner, in special circumstances, allows.

Tax under section 271-55

- (2) Family trust distribution tax under section 271-55 is due and payable at the end of 21 days after the end of the period or further period mentioned in subsection (5), (6) or (7), as the case requires, of that section.

Tax under section 271-60 or 271-65

- (3) Family trust distribution tax under section 271-60 or 271-65 is due and payable at the end of 21 days after the day, or the last day, on which the notice mentioned in subsection 271-90(2) is given.

Schedule 2F Trust losses and other deductions

Division 271 Family trust distribution tax

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Debt due

- (4) Family trust distribution tax, when it becomes due and payable, is a debt due to the Commonwealth and payable to the Commissioner.

Application

- (5) Subsection (4) does not apply in relation to any family trust distribution tax that becomes due and payable on or after 1 July 2000.

Note: For provisions about collection and recovery of family trust distribution tax and other amounts on or after 1 July 2000, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

271-80 Late payment of family trust distribution tax

If any of the family trust distribution tax which a person is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the 60th day after the day by which the family trust distribution tax was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the family trust distribution tax;
 - (ii) general interest charge on any of the family trust distribution tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

271-90 Notice of liability

Notice for purposes of section 271-15 etc.

- (1) The Commissioner may give a person or persons, by post or otherwise, a notice specifying:
- (a) the amount of any family trust distribution tax that the Commissioner has ascertained is payable under any of sections 271-15 to 271-30 and 271-55 by the person or persons; and

- (b) the day on which that tax became or will become due and payable.

Notice for purposes of section 271-60 or 271-65

- (2) The Commissioner must give persons, by post or otherwise, a notice specifying the amount of any family trust distribution tax that the Commissioner has ascertained is payable under section 271-60 or 271-65 by the persons.

Effect of notice on liability etc.

- (3) The liability of a person or persons to family trust distribution tax on the amount or value of a distribution, and (except in the case of a notice under subsection (2)) the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice in respect of the amount.

Amendment of notice

- (4) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

Inconsistency between notices

- (5) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

Objections

- (6) A person who is or persons who are dissatisfied with a notice made in relation to the person or persons may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

271-95 Request for notice of liability

- (1) A person or persons may make a written request to the Commissioner to be given a notice under subsection 271-90(1) or (2) in respect of specified circumstances in which family trust distribution tax may be payable.

Compliance with request for subsection 271-90(1) notice

- (2) In the case of a notice under subsection 271-90(1), the Commissioner must, subject to subsection (4) of this section, comply with the request if it is lodged with the Commissioner before the end of the 21 days mentioned in subsection 271-75(1) or (2), or before the end of such later day as the Commissioner allows.

Compliance with request for subsection 271-90(2) notice

- (3) In the case of a notice under subsection 271-90(2), the Commissioner must, subject to subsection (4) of this section, comply with the request regardless of when it is lodged.

Further information

- (4) If the Commissioner considers that the notice cannot be given unless the person making the request gives the Commissioner further information about the circumstances in which the family trust distribution tax may be payable, the Commissioner must request the person to give the Commissioner the information.

Failure to give information

- (5) If the person does not give the information, the Commissioner is not required to comply with the request to give the notice.

271-100 Evidentiary effect of notice of liability

- (1) The production of:
- (a) a notice given under section 271-90; or
 - (b) a document that is signed by the Commissioner and appears to be a copy of such a notice;
- is conclusive evidence that:
- (c) the notice was duly given; and
 - (d) in the case of a notice under subsection 271-90(1)—the amount of family trust distribution tax specified in the notice became due and payable by the person or persons to whom it was given on the day specified; and

- (e) in the case of a notice under subsection 271-90(2)—the amount of family trust distribution tax specified in the notice became payable by the persons to whom it was given.
- (2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

271-105 Amounts subject to family trust distribution tax not assessable

- (1) If:
- (a) family trust distribution tax (the *tax payable*) becomes payable under any of sections 271-15 to 271-30 and 271-55 on the amount or value of income or capital of a company, partnership or trust; and
 - (b) a payment (the *tax payment amount*) of the whole or part of the tax payable is made, or a reduction (also the *tax payment amount*) in the whole or part of the tax payable takes place under paragraph 271-70(b); and
 - (c) taking into account any previous application of this subsection, the whole or part of the amount or value of the income or capital is included in the assessable income of the company, partnership or trust or of any other person;
- the amount included in the assessable income is reduced by the amount worked out using the formula in subsection (2).

- (2) The formula is:

$$\frac{\text{Tax payment amount}}{\text{Tax payable}} \times \text{Original assessable amount}$$

The *original assessable amount* is so much of the amount or value of the income or capital as, disregarding any previous reductions under this section, is included in the assessable income of the company, partnership or trust or of any other person.

- (3) The amount of the reduction is not assessable income and is not exempt income.

Division 272—Interpretation

Subdivision 272-A—Fixed entitlement to share of income or capital

272-5 Fixed entitlement to share of income or capital of a trust

- (1) If, under a trust instrument, a beneficiary has a vested and indefeasible interest in a share of income of the trust that the trust derives from time to time, or of the capital of the trust, the beneficiary has a *fixed entitlement* to that share of the income or capital.

Case where interest not defeasible

- (2) If:
- (a) a person holds units in a unit trust; and
 - (b) the units are redeemable or further units are able to be issued; and
 - (c) if units in the unit trust are listed for quotation in the official list of an approved stock exchange—the units held by the person will be redeemed, or any further units will be issued, for the price at which other units of the same kind in the unit trust are offered for sale on the approved stock exchange at the time of the redemption or issue; and
 - (d) if the units are not listed as mentioned in paragraph (c)—the units held by the person will be redeemed, or any further units will be issued, for a price determined on the basis of the net asset value, according to Australian accounting principles, of the unit trust at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the person's interest, as a unit holder, in the income or capital of the unit trust is defeasible.

Deemed fixed entitlement

- (3) If:
- (a) a beneficiary with an interest in a share of income that the trust derives from time to time, or of the capital of a trust, does not have a fixed entitlement to the share; and
 - (b) the Commissioner considers that the beneficiary should be treated as having the fixed entitlement, having regard to:
 - (i) the circumstances in which the entitlement is capable of not vesting or the defeasance can happen; and
 - (ii) the likelihood of the entitlement not vesting or the defeasance happening; and
 - (iii) the nature of the trust;
- the beneficiary has the fixed entitlement.

272-10 Fixed entitlement to share of income or capital of a company

- (1) If a shareholder in a company holds shares carrying the right to receive some or all of the dividends that may be paid by the company, the shareholder has a *fixed entitlement* to a share of the income of the company equal to the percentage of the total dividends represented by the dividends that the shareholder has a right to receive.
- (2) If a shareholder in a company holds shares carrying the right to receive the whole or part of any distribution of the paid-up share capital of the company in the event of any return of capital to shareholders, the shareholder has a *fixed entitlement* to a share of the capital of the company equal to the percentage of the total distribution represented by the amount that the shareholder has a right to receive.

272-15 Fixed entitlement to share of income or capital of a partnership

- (1) If, under a partnership agreement:
 - (a) a partner is entitled to a share of income that the partnership derives from time to time, or of the capital of the partnership; and
 - (b) the share is not able to be varied;

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the partner has a **fixed entitlement** to that share of the income or capital.

Deemed fixed entitlement

- (2) If:
- (a) a partner does not have a fixed entitlement to a share of income that the partnership derives from time to time, or of the capital of a partnership, only because the partner's share of the income or capital is able to be varied; and
 - (b) the Commissioner considers that the partner should be treated as having the fixed entitlement, having regard to:
 - (i) the circumstances in which the share is able to be varied; and
 - (ii) the likelihood of the variation happening; and
 - (iii) the nature of the partnership;
- the partner has the fixed entitlement.

272-20 Fixed entitlement to share of income or capital held indirectly

A person holds a fixed entitlement to a share of the income or capital of a company, partnership or trust **indirectly** if the person holds the entitlement indirectly through fixed entitlements to shares of the income or capital, respectively, of interposed companies, partnerships or trusts.

272-25 Special cases of fixed entitlements held directly or indirectly

Coverage of section

- (1) This section affects references in this Schedule (other than in subparagraph 269-75(b)(ii) and section 272-30) to a person or individual having, **directly or indirectly**, a fixed entitlement to a share of the income or capital of a company, partnership or trust (the **main entity**) at a particular time (the **test time**).

Note: This section will not affect a reference to a person or individual having a fixed entitlement where the phrase "directly or indirectly" is not used.

Certain interposed government bodies and special companies

- (2) If at the test time a government body or a special company has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity, subsection (4) or (5) applies.

To find out the meaning of *government body* and *special company*: see section 272-140.

Certain interposed funds

- (3) If:
- (a) a fund is:
 - (i) a complying superannuation fund or complying approved deposit fund in relation to the income year in which the test time occurs; or
 - (ii) a superannuation fund for foreign residents at the test time; and
 - (b) at the test time the fund has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity;

subsection (4) or (5) applies.

Note: See subsection 6(1) for the meaning of *complying superannuation fund*, *complying approved deposit fund* and *superannuation fund for foreign residents*.

Government bodies, and funds or companies with more than 50 members

- (4) In the case of a government body, or a fund or company that has more than 50 members:
- (a) except where paragraph (b) applies—the body, fund or company is treated as if it had the fixed entitlement as an individual and for the individual's own benefit; and
 - (b) if the reference is in subsection 272-105(2)—the fixed entitlement is treated as if it were held instead by more than 20 individuals and for their own benefit.

Funds or companies with 50 members or fewer

- (5) In the case of a fund or company that has 50 members or fewer, the fund or company is treated as if it did not have the entitlement, but

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the members are treated as if they had the entitlement in equal proportions.

Mixed application of subsections (4) and (5) in certain provisions

(6) If, apart from this subsection:

(a) the following apply:

- (i) for the purposes of section 266-40 or subsection 267-40(2), 267-70(2), 268-10(3), 268-15(3) or 268-25(4), it is necessary to determine whether individuals had fixed entitlements during a period; and
- (ii) the consequences in subsection (4) would apply to a fund or company for part of the period and the consequences in subsection (5) would apply for the remainder of the period; or

(b) the following apply:

- (i) for the purposes of subsection 266-90(1) or (2), 266-125(2), 266-165(2) or 268-20(3), it is necessary to determine whether individuals had fixed entitlements at 2 times; and
- (ii) the consequences in subsection (4) would apply to a fund or company at one of the times and the consequences in subsection (5) would apply at the other time;

the consequences in subsection (5) instead apply to the fund or company for the whole of the period, or at both of the times, as the case may be.

Entities ceasing to be special companies

(7) If:

- (a) subsection (4) or (5) applies in relation to a special company during a period (the *special company period*); and
- (b) the special company period ends when the special company ceases to be a special company without ceasing to exist; and
- (c) having regard to the matters set out in subsection (8), the Commissioner considers it fair and reasonable to treat one or more of the persons who were members of the special company immediately after it ceased to be a special company as having held the fixed entitlement mentioned in

subsection (2) during the whole or part of the special company period;

then:

- (d) subsection (4) or (5) does not apply in relation to the special company during the whole or the part of the special company period; and
- (e) the one or more persons are, as mentioned in paragraph (c), treated as having the fixed entitlement instead of the company.

Matters for the purposes of paragraph (7)(c)

- (8) For the purposes of paragraph (7)(c), the matters are:
 - (a) the identity of its members before and after the special company ceases to be a special company; and
 - (b) the circumstances in which it ceases to be a special company; and
 - (c) the nature of the rights in the special company held by its members before and after it ceases to be a special company; and
 - (d) any other matter that the Commissioner considers relevant.

272-30 Additional special cases of fixed entitlements held directly or indirectly

Coverage of section

- (1) This section also affects references in this Schedule (other than in subparagraph 269-75(b)(ii) and section 272-25) to a person or individual having, ***directly or indirectly***, a fixed entitlement to a share of the income or capital of a company, partnership or trust (the ***main entity***) at a particular time (the ***test time***).

Note: This section will not affect a reference to a person or individual having a fixed entitlement where the phrase “directly or indirectly” is not used.

Interposed family trusts

- (2) If at the test time a family trust has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity, it is treated as if it had the fixed entitlement as an individual and for the individual’s own benefit.

Interposed listed public companies and widely held unit trusts

(3) If:

- (a) at the test time a listed public company or widely held unit trust has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity; and

To find out the meaning of *listed public company*: see section 272-135.

- (b) having regard to the matters set out in subsection (4), the Commissioner considers it fair and reasonable to treat the company or trust as holding, at the test time, the whole or part of its fixed entitlement as an individual and for the individual's own benefit;

the company or trust is treated as so holding the whole or the part of its fixed entitlement.

Matters for the purposes of paragraph (3)(b)

(4) For the purposes of paragraph (3)(b), the matters are:

- (a) the practicability of identifying any individuals who at the test time have fixed entitlements to a share of the income or capital of the main entity indirectly through the company or trust and for their own benefit; and
- (b) any change before or after the test time in the individuals who can be identified as having fixed entitlements of the kind mentioned in paragraph (a); and
- (c) any other matter that the Commissioner considers relevant.

272-35 Arrangements to pass fixed entitlement tests

- (1) If the operation of a provision of this Schedule depends on or is in any way affected by an individual having a fixed entitlement directly or indirectly, and for the individual's own benefit, to a share of the income or capital of a company, partnership or trust, an individual who would otherwise have that fixed entitlement is taken *not* to have it for the purposes of the operation of the provision if the condition in subsection (2) is met.
- (2) The condition is that an arrangement was entered into where:
 - (a) the arrangement in some way (directly or indirectly) related to, affected or depended for its operation on the fixed entitlement or its value; and

- (b) the purpose, or one of the purposes, of the arrangement was to ensure that, for the purposes of the operation of the provision, the individual would have the fixed entitlement.

272-40 Continued holding of fixed entitlement where death occurs

If, immediately before an individual dies, he or she has a fixed entitlement to a share of the income or capital of a trust, partnership or company directly or indirectly, and for his or her own benefit, the individual is taken to continue to have the entitlement for so long as:

- (a) it is held by someone as trustee of the individual's estate; or
- (b) it is held by someone who received it as a beneficiary of the estate.

Subdivision 272-B—Distribution of income or capital**272-45 Trust distribution to beneficiary**

A trust *distributes* income or capital of the trust to a person if it:

- (a) pays or credits the income or capital in the form of money to the person; or
- (b) transfers the income or capital in the form of property to the person; or
- (c) reinvests or otherwise deals with the income or capital on behalf of the person or in accordance with the directions of the person; or
- (d) applies the income or capital for the benefit of the person; in the person's capacity as a beneficiary of the trust.

272-50 Company distribution to shareholder*Distribution of income*

- (1) A company *distributes* income of the company to a person if the company pays a dividend or non-share dividend to the person.

Distribution of capital

- (2) A company *distributes* capital of the company to a person if:

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- (a) it pays or credits money, or transfers property, of the company to the person, where the amount paid or credited, or the amount or value of the property, is debited against an amount standing to the credit of the share capital account of the company; and
 - (b) the payment, crediting or transfer is not the payment of a dividend.
- (3) A company *distributes* capital of the company to a person if the company makes a non-share capital return to the person.

272-55 Partnership distribution to partner

A partnership *distributes* income or capital of the partnership to a person if it:

- (a) pays or credits the income or capital in the form of money to the person; or
- (b) transfers the income or capital in the form of property to the person; or
- (c) reinvests or otherwise deals with the income or capital on behalf of the person or in accordance with the directions of the person; or
- (d) applies the income or capital for the benefit of the person; in the person's capacity as a partner in the partnership.

272-60 Other distributions of income and capital

- (1) A company, partnership or trust (an *entity*) also *distributes* income or capital to a person in circumstances not covered by section 272-45, 272-50 or 272-55 if it:
- (a) pays (including by way of a loan) or credits money of the entity to the person, or reinvests such money for the person; or
 - (b) transfers property of the entity to, or allows use of property of the entity by, the person; or
 - (c) deals with money or property of the entity for or on behalf of the person or as the person directs; or
 - (d) applies money or property of the entity for the benefit of the person; or
 - (e) extinguishes, forgives, releases or waives a debt or other liability owed by the person to the entity.

Limit on distributions

- (2) However, subsection (1) only applies if, and to the extent that:
- (a) the amount paid, credited, reinvested or applied, the value of the property transferred, or the value of the other thing done; exceeds:
 - (b) the amount or value of any consideration given in return.

Character of distributions

- (3) Each thing that is a distribution because of subsection (1) is a distribution of income unless it is clear that the money or property concerned was capital, or that the debt or liability was attributable to capital, of the entity.

272-63 Distribute indirectly

A trust distributes income or capital *indirectly* to an individual if it distributes the income or capital to a company, partnership or trust (the *first interposed entity*) interposed between the trust and the individual and:

- (a) the first interposed entity distributes to the individual an amount or property attributable to the income or capital; or
- (b) another company, partnership or trust (the *final interposed entity*) distributes to the individual an amount or property that is attributable to the income or capital as a result of:
 - (i) the distribution of an amount or property attributable to the income or capital to the final interposed entity by the first interposed entity; or
 - (ii) successive distributions of amounts or property attributable to the income or capital to and by any companies, partnerships or trusts interposed between the first interposed entity and the final interposed entity.

Subdivision 272-C—Fixed trusts and non-fixed trusts**272-65 Fixed trust**

A trust is a *fixed trust* if persons have fixed entitlements to all of the income and capital of the trust.

272-70 Non-fixed trust

A trust is a *non-fixed trust* if it is not a fixed trust.

Subdivision 272-D—Family trust etc.

272-75 Family trust

A trust is a *family trust* at any time when a family trust election (see subsection 272-80(1)) in respect of the trust is in force.

272-80 Family trust election

Nature of election

- (1) Subject to this section, the trustee of the trust may make an election (the *family trust election*) in accordance with this section that the trust is a family trust for the purposes of this Schedule at all times after the beginning of a specified income year.

How election made

- (2) The election must be in writing and in the approved form.

Election to specify individual and certain information

- (3) The election must also specify an individual as the individual whose family group is to be taken into account in relation to the election, and must contain such other information as the Commissioner requires.

Trust must pass family control test

- (4) If the trust does not pass the family control test (see section 272-87) at the end of the specified income year, the trustee must not make the election.

Earlier year may be the specified year

- (4A) The specified income year may be a year before the one in which the election is made if:
 - (a) at all times in the period from the beginning of the specified income year until 30 June in the income year before the one

during which the election is made, the trust passes the family control test (see section 272-87); and

- (b) either:
- (i) any conferrals of present entitlement to income or capital of the trust made by the trustee during that period have been made on; or
 - (ii) any distributions of income or capital of the trust made by the trustee during that period have been made to; the individual specified in the election or members of that individual's family group.

Election generally cannot be varied or revoked

- (5) Subject to subsections (5A), (5B), (5C), (6) and (6A), the election cannot be varied or revoked.

Variation cases

- (5A) The trustee of a trust may, in respect of an income year during the period specified in subsection (6B), vary an election so that a different individual (the **new individual**) is specified for the purposes of subsection (3) as the individual whose family group is to be taken into account in relation to the election if:
- (a) the new individual was a member of the family of the individual originally specified in the election at the election commencement time; and
 - (b) any conferrals of present entitlement to income or capital of:
 - (i) the trust; and
 - (ii) an entity for which an interposed entity election has been made in relation to the trust;
 during the period in which the election has been in force have been made on the new individual or on persons who would have been members of the new individual's family group at the time of the conferral; and
 - (c) any distributions of income or capital of:
 - (i) the trust; and
 - (ii) an entity for which an interposed entity election has been made in relation to the trust;
 during the period in which the election has been in force have been made to the new individual or to persons who would

have been members of the new individual's family group at the time of the distribution.

- (5B) A variation of an election under subsection (5A) in relation to a trust can only be made once.
- (5C) The trustee of a trust may vary an election so that a different individual (the *new individual*) is specified for the purposes of subsection (3) as the individual whose family group is to be taken into account in relation to the election if:
- (a) an order; or
 - (b) an agreement; or
 - (c) an award;
- of a kind mentioned in paragraphs 126-5(1)(a) to (f) of the *Income Tax Assessment Act 1997* results in the new individual, or a group comprising the new individual and members of the new individual's family, having control of the trust under subsection (5D).
- (5D) The new individual, or a group comprising the new individual and members of the new individual's family, have control of the trust for the purposes of subsection (5C) if any of paragraphs 272-87(2)(a) to (g) are satisfied in relation to a group consisting of:
- (a) the new individual; or
 - (b) the new individual and members of the new individual's family.

Revocation cases

- (6) The trustee of a fixed trust may revoke the election if:
- (a) at the beginning of the specified income year:
 - (i) the individual specified in the election; or
 - (ii) one or more members of the individual's family; or
 - (iii) the trustee of another trust that is a family trust, provided the individual is specified in that trust's family trust election;or any combination of the above, had the fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the trust; and
 - (b) at a later time (whether before or after the return is furnished, but while the trust is still a fixed trust), an individual, other

than one of a kind mentioned in subparagraph (a)(i), (ii) or (iii), holds a fixed entitlement, directly or indirectly, and for his or her own benefit, to any of the income or capital of the trust.

- (6A) The trustee of a trust may, in respect of an income year during the period specified in subsection (6B), revoke the election unless:
- (a) the trust, or another entity, has incurred a tax loss and had its assessable income reduced by part or all of the loss in an income year or years during the period:
 - (i) starting at the beginning of the income year specified in the election; and
 - (ii) finishing at the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (8));
 and the trust, or the other entity, could not have had its assessable income so reduced had the election not been in force; or
 - (b) the trust, or another entity, has claimed a deduction for bad debts in an income year or years during the period specified in paragraph (a) and the trust, or the other entity, could not have claimed the deduction had the election not been in force; or
 - (c) a beneficiary of the trust in an income year during the period specified in paragraph (a) received a franked distribution indirectly through the trust and paragraph 207-150(1)(a) of the *Income Tax Assessment Act 1997* would have applied in relation to the distribution had the election not been in force.

Period to vary or revoke the election

- (6B) The trustee of a trust cannot vary or revoke the election under subsections (5A) or (6A) unless the variation or revocation is in respect of an income year that occurs during the period:
- (a) starting at the beginning of the income year specified in the election and finishing at the end of the fourth income year after the income year specified in the election; or
 - (b) starting at the beginning of the income year in which Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* commenced and finishing at the end of the subsequent income year.

How to vary or revoke the election

- (7) To revoke an election under subsection (6), the revocation must be made in the trust's return of income for the income year in which the later time occurs. If the trustee is not required to give a return for the income year, the revocation must:
- (a) be in writing and in the approved form; and
 - (b) specify the later time; and
 - (c) be given to the Commissioner before the end of:
 - (i) 2 months after the end of the income year in which the later time occurs; or
 - (ii) such later day as the Commissioner allows.
- (8) To vary or revoke an election under subsection (5A), (5C) or (6A), the variation or revocation must be made in the trust's return of income for the income year from which the variation or revocation is to be effective. If the trustee is not required to give a return for the income year, the variation or revocation must:
- (a) be in writing and in the approved form; and
 - (b) specify the income year from which the variation or revocation is to be effective; and
 - (c) be given to the Commissioner on or before:
 - (i) 2 months after the end of that income year; or
 - (ii) such later day as the Commissioner allows.

When election is in force

- (9) The election is in force:
- (a) if it is not revoked—at all times after the election commencement time (see subsection (10)); or
 - (b) if it is revoked under subsection (6)—at all times from the election commencement time until the later time specified in the revocation; or
 - (c) if it is revoked under subsection (6A)—at all times from the election commencement time until the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (8)).

Election commencement time

- (10) The *election commencement time* is:
-

- (a) if the trust does not pass the family control test (see section 272-87) at all times in the income year specified—the earliest time from which the trust does pass the family control test for the remainder of that income year; or
- (b) in any other case—the beginning of the income year specified.

Only one election

- (11) The trustee must not make more than one election under this section in relation to the trust.

272-85 Interposed entity election*Nature of election*

- (1) Subject to this section, if the trustee makes a family trust election, a company, the partners in any partnership or the trustee of any other trust may make an election (an ***interposed entity election***) in accordance with this section that the company, partnership or trust is to be included, at all times after a specified day in a specified income year, in the family group of the individual specified in the family trust election.

How election made

- (2) The election must be in writing and in the approved form.

Election to contain information

- (3) The election must contain such information as the Commissioner requires.

Family control test must be passed

- (4) The company, partnership or trust must pass the family control test (see section 272-87) at the end of the income year.

Earlier year may be the specified year

- (4A) The specified income year may be a year before the one in which the election is made if:

- (a) at all times in the period from the beginning of the specified income year until 30 June in the income year before the one during which the election is made, the company, partnership or trust passes the family control test (see section 272-87); and
- (b) either:
 - (i) any conferrals of present entitlement to income or capital of the trust made by the trustee during that period have been made on; or
 - (ii) any distributions of income or capital of the trust made by the trustee during that period have been made to; the individual specified in the family trust election or members of that individual's family group.

Election generally cannot be revoked

- (5) Subject to subsections (5A) and (5B), the election cannot be revoked.

Revocation cases

- (5A) A company, the partners in any partnership or the trustee of a trust may, in respect of an income year during the period specified in subsection (5C), revoke the election if at the election commencement time, or at a later time, the entity was, or becomes, a member of the family group (within the meaning of subsection 272-90(3A) or (5)) of the individual specified in the family trust election.
- (5B) The election is taken to be revoked if the family trust election to which it relates is revoked.

Period to revoke the election

- (5C) A company, the partners in any partnership or the trustee of a trust cannot revoke an election under subsection (5A) unless the revocation is in respect of an income year that occurs during the period:
 - (a) starting at the later of:
 - (i) the beginning of the income year specified in the election; and

- (ii) the beginning of the income year in which the entity became a member of the family group; and finishing at the end of the fourth income year after the income year referred to in subparagraph (i) or (ii); or
- (b) starting at the beginning of the income year in which Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* commenced and finishing at the end of the subsequent income year.

How revocation is made

- (6) A revocation must be made in the entity's return of income for the income year from which the revocation is to be effective. If the entity is not required to give a return for the income year, the revocation must:
 - (a) be in writing and in the approved form; and
 - (b) specify the income year from which the revocation is to be effective; and
 - (c) be given to the Commissioner on or before:
 - (i) 2 months after the end of that income year; or
 - (ii) such later day as the Commissioner allows.

When election is in force

- (6A) The election is in force:
 - (a) if it is not revoked—at all times after the election commencement time (see subsection (6B)); or
 - (b) if it is revoked under subsection (5A)—at all times from the election commencement time to the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (6)); or
 - (c) if the family trust election to which it relates is revoked under subsection 272-80(6)—at all times from the election commencement time until the later time specified in that revocation; or
 - (d) if the family trust election to which it relates is revoked under subsection 272-80(6A)—at all times from the election commencement time to the end of the income year immediately prior to the income year from which the family trust revocation is to be effective (see subsection 272-80(8)).

Election commencement time

- (6B) The ***election commencement time*** is:
- (a) if the company, partnership or trust does not pass the family control test at all times in the specified income year—the later of:
 - (i) the beginning of the specified day; and
 - (ii) the earliest time from which the company, partnership or trust does pass the family control test for the remainder of the specified income year; or
 - (b) in any other case—the beginning of the specified day.

Restriction on multiple elections

- (7) The company, partners or trustee must not make an election under this section that the company, partnership or trust is to be included in the family group of the individual specified in the family trust election in respect of more than one trust, unless the individual specified in each of the family trust elections is the same.
- (8) For the purposes of subsection (7) disregard an election that has been revoked under subsection (5A) or (5B).

272-87 Passing the family control test

Trusts

- (1) A trust in respect of which a family trust election or an interposed entity election is proposed to be made ***passes the family control test*** if:
 - (a) the requirement in any of the paragraphs of subsection (2) is satisfied in relation to a group consisting of:
 - (i) the individual (the ***primary individual***) who is to be specified in the family trust election or, in the case of an interposed entity election, who is specified in the family trust election to which the interposed entity election will relate; or
 - (ii) one or more members of the primary individual's family (see section 272-95); or
 - (iii) the primary individual and one or more members of the primary individual's family; or

- (b) the requirement in any of paragraphs (a) to (e) of subsection (2) is satisfied in relation to a group consisting of a person or persons covered by subparagraph (a)(i), (ii) or (iii) of this subsection and one or more legal or financial advisers to the primary individual or to a member of the primary individual's family; or
- (c) the requirement in paragraph (f) of subsection (2) is satisfied in relation to a group consisting of:
 - (i) the trustees of one or more family trusts, provided the primary individual is specified in the family trust election of each of those family trusts; or
 - (ii) such trustees and a person or persons covered by subparagraph (a)(i), (ii) or (iii).

Requirement for purposes of subsection (1)

- (2) The requirement for the purposes of subsection (1) is that:
 - (a) the group has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the trust; or
 - (b) the group is able (directly or indirectly) to control the application of the capital or income of the trust; or
 - (c) the group is capable, under a scheme, of gaining the beneficial enjoyment in paragraph (a) or the control in paragraph (b); or
 - (d) the trustee of the trust is accustomed, under an obligation or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the group; or
 - (e) the group is able to remove or appoint the trustee of the trust; or
 - (f) the group has more than a 50% stake in the income or capital of the trust; or
 - (g) persons in the group are the only persons who, under the terms of the trust, can obtain the beneficial enjoyment of the income and capital of the trust.

Companies and partnerships

- (3) A company or partnership in respect of which an interposed entity election is proposed to be made passes the family control test if a group consisting of:
- (a) the individual who is specified in the family trust election mentioned in subsection 272-85(1) in relation to the interposed entity election; or
 - (b) one or more members of the individual's family (see section 272-95); or
 - (c) the trustees of one or more family trusts, provided the individual is specified in the family trust election of each of those family trusts; or
 - (d) any persons covered by any combination of the above paragraphs;
- have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income or a greater than 50% share of the capital of the company or partnership.

272-90 Family group

- (1) This section states whether a person is a member of the *family group* of the individual (the *primary individual*) specified in the family trust election in relation to a conferral of a present entitlement to, or a distribution of, income or capital of a company, partnership or trust, upon or to the person.

Family member

- (2) A member of the primary individual's family (see section 272-95) is a member of the primary individual's family group in relation to the conferral or distribution.

Certain former family members

- (2A) The following persons are members of the primary individual's family group in relation to the conferral or distribution:
- (a) a person who was a spouse of either the primary individual or of a member of the primary individual's family before a breakdown in the marriage or relationship; and
 - (b) a person:

- (i) who was the spouse of either the primary individual or of a member of the primary individual's family immediately before the death of the primary individual or member of the primary individual's family; and
- (ii) who is now the spouse of a person who is not a member of the primary individual's family; and
- (c) a person who was a child of the spouse of either the primary individual or of a member of the primary individual's family before a breakdown in the marriage or relationship of the primary individual or the member of the primary individual's family.

Note: The fact that a person is a member of the family group of an individual under this subsection does not mean that the person is a member of the individual's family under section 272-95.

Trust covered by family trust election

- (3) The trust in respect of which the family trust election was made is a member of the primary individual's family group in relation to the conferral or distribution.

Trust with same primary individual

- (3A) A trust with the same primary individual specified in its family trust election is a member of the primary individual's family group in relation to the conferral or distribution.

Entity covered by interposed entity election

- (4) A company, partnership or trust is a member of the primary individual's family group in relation to the conferral or distribution if:
 - (a) the company, partners or trustee has made an interposed entity election to that effect; and
 - (b) the election is in force when the conferral takes place or the distribution is made.

Entity owned by family

- (5) A company, partnership or trust is a member of the primary individual's family group in relation to the conferral or distribution if, when the conferral takes place or the distribution is made:
 - (a) the primary individual; or

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- (b) one or more members of the primary individual's family; or
- (c) the trustees of one or more family trusts, provided the primary individual is specified in the family trust election of each of those family trusts;

or any combination of the above, have fixed entitlements directly or indirectly, and for their own benefit, to all of the income and capital of the company, partnership or trust.

Funds

- (6) A fund, authority or institution in Australia that is mentioned in item 1 or 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997* is a member of the primary individual's family group in relation to the conferral or distribution if, assuming that a deduction were allowable under Division 30 of that Act in respect of the conferral or distribution, section 78A of this Act would not prevent any of the deduction being allowable.

Certain tax exempt bodies

- (7) An institution, hospital, trustee, society, association, club, or fund, all of whose income is exempt under:
 - (a) section 50-5, 50-10 or 50-20 of the *Income Tax Assessment Act 1997*; or
 - (b) item 6.1 or 6.2 of the table in section 50-30, or item 9.1 or 9.2 of the table in section 50-45, of the *Income Tax Assessment Act 1997*;

is a member of the primary individual's family group in relation to the conferral or distribution if, assuming that a deduction were allowable under Division 30 of that Act in respect of the conferral or distribution, section 78A of this Act would not prevent any of the deduction being allowable.

Institutions etc. where no living beneficiaries

- (8) Either:
 - (a) an institution all of whose income is exempt under item 1.1, 1.2, 1.3 or 1.4 of the table in section 50-5 of the *Income Tax Assessment Act 1997*; or
 - (b) a fund, authority or institution in Australia that is mentioned in item 1 or 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*;

is a member of the primary individual's family group in relation to the conferral or distribution if, when the conferral takes place or the distribution is made, all of the beneficiaries of the trust, in respect of which the family trust election was made, who were individuals have died.

Estate of deceased family

- (9) If the primary individual and all of the members of his or her family are dead when the conferral takes place or the distribution is made, the estates of the individual and of the members are members of the primary individual's family group in relation to the conferral or distribution.

Interests in SMEs

- (10) A person is a member of the primary individual's family group in relation to the conferral or distribution if:
- (a) a company that is an SME (within the meaning of section 128TK) confers the entitlement or makes the distribution; and
 - (b) the SME had made an interposed entity election to be included in the family group of the primary individual and the election is in force when the conferral takes place or the distribution is made; and
 - (c) the person:
 - (i) had acquired a threshold interest (within the meaning of section 128TJ) in the SME on or after 1 July 1996; and
 - (ii) is an Australian financial institution (within the meaning of section 317) or a subsidiary (within the meaning of section 128TL) of another company that is an Australian financial institution; and
 - (iii) is not an associate of the SME; and
 - (d) the distribution to which the conferral of the entitlement relates or that is made consists of a dividend paid, or a return of paid-up share capital of the SME, on ordinary shares in the SME that were issued:
 - (i) on or after 1 July 1996; and
 - (ii) before or as part of the threshold share issue mentioned in paragraph 128TJ(c).

272-95 Family

- (1) The *family* of an individual (the *test individual*) consists of the test individual and all of the following (if applicable):
- (a) any parent, grandparent, brother or sister of the test individual or the test individual's spouse;
 - (b) any nephew, niece or child of the test individual or the test individual's spouse;
 - (c) any lineal descendant of a nephew, niece or child referred to in paragraph (b);
 - (d) the spouse of the test individual or of anyone who is a member of the test individual's family because of paragraphs (a), (b) and (c).

Note 1: *Child, parent* and *spouse* are defined in subsection 6(1).

Note 2: Section 960-255 may be relevant to determining relationships for the purposes of paragraph (1)(a).

- (2) A person does not cease to be a family member merely because of the death of any other family member.
- (3) In this section, an adopted child, step-child or ex-nuptial child of a person is taken to be a lineal descendant of that person for the purposes of determining the lineal descendants of that person or any other person.

Note: A person who is no longer a member of an individual's family under this section may still be a member of the individual's family group under subsection 272-90(2A).

Subdivision 272-E—Excepted trust

272-100 Excepted trust

A trust is an *excepted trust* at a particular time if:

- (a) it is a family trust at the particular time; or
- (b) it is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust in relation to the income year in which the particular time occurs; or
- (c) it is the trust of a deceased estate, where the particular time occurs during the period from the death of the individual until the end of the year of income in which the 5th anniversary of the death occurs; or

- (d) at the particular time it is a fixed trust that is a unit trust, and exempt entities have fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the trust; or
- (e) it is an FHSA trust at the particular time.

Subdivision 272-F—Widely held unit trust

272-105 Widely held unit trust

Basic meaning

- (1) A trust is a **widely held unit trust** if:
 - (a) it is a fixed trust that is a unit trust; and
 - (b) it is not closely held (see subsection (2)).

Closely held—income test

- (2) A trust is **closely held** if:
 - (a) an individual has, or up to 20 individuals have between them; or
 - (b) no individual has, or no individuals have between them; directly or indirectly and for their own benefit, fixed entitlements to a 75% or greater share of the income of the trust.

Closely held—capital test

- (2A) A trust is also **closely held** if:
 - (a) an individual has, or up to 20 individuals have between them; or
 - (b) no individual has, or no individuals have between them; directly or indirectly and for their own benefit, fixed entitlements to a 75% or greater share of the capital of the trust.

Single individual

- (3) For the purposes of subsection (2) or (2A), all of the following are taken to be a single individual:
 - (a) an individual, whether or not the individual holds units in the unit trust; and
 - (b) the individual's relatives; and

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- (c) in relation to any units in respect of which other individuals are nominees of the individual or of the individual's relatives—those other individuals.

Exception

- (4) A unit trust is *not* a **widely held unit trust** if, because of:
 - (a) any provision in the trust instrument, or in any contract, agreement or instrument:
 - (i) authorising the variation or abrogation of rights attaching to any of the units; or
 - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of the units; or
 - (b) any contract, agreement, arrangement, option or instrument under which a person has power to acquire any of the units; or
 - (c) any power, authority or discretion in a person in relation to the rights attaching to any of the units;

it is reasonable to conclude that the rights attaching to any of the units are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that directly or indirectly the requirement in paragraph (1)(b) would not be satisfied.

Subdivision 272-G—Unlisted widely held trust and listed widely held trust

272-110 Unlisted widely held trust

Subject to Subdivision 272-J, a unit trust is an **unlisted widely held trust** if it is a widely held unit trust whose units are *not* listed for quotation in the official list of an approved stock exchange.

272-115 Listed widely held trust

A unit trust is a **listed widely held trust** if it is a widely held unit trust whose units are listed for quotation in the official list of an approved stock exchange.

Subdivision 272-H—Unlisted very widely held trust**272-120 Unlisted very widely held trust**

- (1) Subject to Subdivision 272-J, a unit trust is an ***unlisted very widely held trust*** if:
- (a) it is an unlisted widely held trust; and
 - (b) it has at least 1,000 unit holders; and
 - (c) all of its units carry the same rights; and
 - (d) if its units are redeemable, they are redeemable for a price determined on the basis of its net asset value, according to Australian accounting principles; and
 - (e) it engages only in qualifying activities (see subsection (2)).

Qualifying activity

- (2) A ***qualifying activity*** is an activity that:
- (a) is an investment or business activity; and
 - (b) is conducted in accordance with the trust instrument or deed, and any prospectus, of the trust; and
 - (c) is conducted at arm's length.

Extended status

- (3) If:
- (a) at a particular time (the ***first qualifying time***), a trust for the first time becomes an unlisted very widely held trust; and
 - (b) at a time (the ***first unit issue time***) that is not more than 2 years earlier, units in the trust were first issued; and
 - (c) at no time during the period (the ***start-up period***) between the first unit issue time and the first qualifying time was there any abnormal trading, of a kind covered by subsection 269-15(1) or section 269-20, in the trust's units; and
 - (d) at all times in the part (if any) of the start-up period that occurred more than 90 days after it began, the trust was a widely held unit trust;

the trust is taken to have been an unlisted very widely held trust at all times from the formation of the trust until the end of the start-up period.

Subdivision 272-I—Wholesale widely held trust

272-125 Wholesale widely held trust

- (1) Subject to Subdivision 272-J, a unit trust is a *wholesale widely held trust* at a particular time (the *test time*) if:
- (a) it is an unlisted widely held trust at the test time; and
 - (b) it is not an unlisted very widely held trust at the test time; and
 - (c) at least 75% of its units are held at the test time by one or more qualifying holders (see subsection (2)); and
 - (d) at the test time, all of its units carry the same rights; and
 - (e) if at the test time its units are redeemable, they are redeemable for a price determined on the basis of its net asset value, according to Australian accounting principles; and
 - (f) the amount subscribed for units in the trust by each person to whom units have been issued was at least \$500,000; and
 - (g) at the test time, the unit trust engages only in qualifying activities (see subsection (3)).

Qualifying holder

- (2) Each of the following is a *qualifying holder*:
- (a) a listed widely held trust;
 - (b) an unlisted very widely held trust;
 - (c) a life assurance company;
 - (e) a fund that is a complying approved deposit fund in relation to the year of income in which the test time occurs;
 - (f) a fund that is a complying superannuation fund in relation to the year of income in which the test time occurs;
 - (g) a trust that is a pooled superannuation trust in relation to the year of income in which the test time occurs.

Qualifying activity

- (3) A *qualifying activity* is an activity that:
- (a) is an investment or business activity; and
 - (b) is conducted in accordance with the trust instrument or deed, and any prospectus, of the trust; and
 - (c) is conducted at arm's length.

Subdivision 272-J—Kind of trust can be affected by ownership by higher level trust**272-127 Kind of trust can be affected by ownership by higher level trust**

- (1) If:
 - (a) apart from this Subdivision, a trust is an unlisted widely held trust, an unlisted very widely held trust or a wholesale widely held trust; and
 - (b) each of one or more trusts of a higher level (see subsection (3)) has, directly or indirectly, fixed entitlements to all of the income and capital of the trust;
the trust is instead a trust of the same kind (see subsection (2)) as the trust of the highest level.
- (2) For the purposes of this Subdivision, trusts are of the following kinds:
 - (a) unlisted widely held trust;
 - (b) unlisted very widely held trust;
 - (c) wholesale widely held trust;
 - (d) listed widely held trust.
- (3) The kinds of trust are allocated levels in the following order (from lowest to highest): unlisted widely held trust, unlisted very widely held trust, wholesale widely held trust and listed widely held trust.

Subdivision 272-K—Trusts beginning or ceasing to exist**272-130 Trusts beginning or ceasing to exist**

- If:
- (a) under any provision of this Schedule, a trust is required to meet a condition at one or more times or at all times during a period; and
 - (b) the trust does not exist during a part of the period;
the period does not include that part.

Subdivision 272-L—Listed public company

272-135 Listed public company

Basic meaning

- (1) A **listed public company** is a company whose shares (except those that carry a right to a fixed rate of dividend) are listed for quotation in the official list of an approved stock exchange.

Exceptions

- (2) However, a company is *not* a **listed public company** if:
- (a) a person (who is not a company) controls, or is able to control, or up to 20 persons (none of them companies) between them control, or are able to control, 75% or more of the voting power in the company (whether directly, or indirectly through one or more interposed companies, partnerships or trusts); or
 - (b) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or indirectly through one or more interposed companies, partnerships or trusts) 75% or more of any dividends that the company may pay; or
 - (c) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or indirectly through one or more interposed companies, partnerships or trusts) 75% or more of any distribution of capital of the company.

Meaning of right to receive dividends or distribution of capital indirectly

- (3) For the purposes of subsection (2), persons have the right to receive dividends or a distribution of capital of a company indirectly for their own benefit if they would receive the dividends or capital for their own benefit if:
- (a) the company were to pay the dividends or distribute the capital; and

- (b) the dividends or capital were then successively paid or distributed by each company, partnership or trust interposed between the company and those persons.

Meaning of distribute

- (4) Section 272-50 is disregarded in determining the meaning of *distribute* in paragraphs (3)(a) and (b).

Subdivision 272-M—Various definitions

272-140 Definitions

- (1) In this Schedule:

abnormal trading has the meaning given by Subdivision 269-B.

approved stock exchange has the same meaning as in section 470.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

associate has the same meaning as in section 318.

benefit, in Division 270, has the meaning given by section 270-20.

breakdown in the marriage or relationship of an individual: this occurs if the individual is living with another individual on a genuine domestic basis in a relationship as a couple (whether the individuals are the same sex or different sexes and whether legally married or not) and ceases to do so.

complying approved deposit fund means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

control a non-fixed trust has the meaning given by Subdivision 269-E.

directly or indirectly has a meaning affected by sections 272-25 and 272-30.

distribute income or capital has a meaning affected by sections 272-45, 272-50, 272-55 and 272-60.

excepted trust has the meaning given by section 272-100.

family has the meaning given by section 272-95.

family group has the meaning given by section 272-90.

family trust has the meaning given by section 272-75.

family trust distribution tax has the meaning given by section 271-10.

family trust election has the meaning given by section 272-80.

fixed entitlement has the meaning given by Subdivision 272-A.

fixed trust has the meaning given by section 272-65.

government body means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal corporation or other local governing body; or
- (c) a foreign state.

group has the meaning given by subsection 269-95(5).

income year includes a year of income.

indirectly has a meaning affected by sections 272-20 and 272-63.

interposed entity election has the meaning given by section 272-85.

listed public company has the meaning given by section 272-135.

listed widely held trust has the meaning given by section 272-115.

loss year means the income year in which a tax loss was incurred.

member of a company includes a shareholder, stockholder or holder of a life insurance policy of the company.

more than a 50% stake has the meaning given by section 269-50.

mutual affiliate company has the meaning given by section 121AC.

mutual insurance company has the meaning given by section 121AB.

non-fixed trust has the meaning given by section 272-70.

pass the 50% stake test has the meaning given by section 269-55.

pass the family control test has the meaning given by section 272-87.

pass the pattern of distributions test has the meaning given by section 269-60.

pass the same business test has the meaning given by section 269-100.

pooled superannuation trust means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

scheme has the same meaning as in subsection 177A(1).

special company means:

- (a) a mutual affiliate company; or
- (b) a mutual insurance company; or
- (c) a company whose constituent document prevents it from distributing both income and capital (within the meaning of section 272-50) to any member of the company; or
- (d) a credit union, within the meaning of section 3 of the Financial Institutions Codes (as defined in section 111AZC of the *Corporations Act 2001*), whose constituent documents prevent it from paying dividends to its members; or
- (e) a company that is prescribed by the regulations.

specified individual in relation to a family trust election has the meaning given by subsection (2).

tax loss means:

- (a) a loss within the meaning of former section 79E, 80 or 80AA; or

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- (b) a film loss within the meaning of former section 79F or 80AAA; or
- (c) a tax loss worked out under section 36-10 of the *Income Tax Assessment Act 1997*.

Note: For the purposes of section 36-10 of the *Income Tax Assessment Act 1997* a film loss is a special type of tax loss: see section 375-810 of that Act.

trading in units in a unit trust has the meaning given by section 269-10.

unlisted very widely held trust has the meaning given by section 272-120.

unlisted widely held trust has the meaning given by section 272-110.

wholesale widely held trust has the meaning given by section 272-125.

widely held unit trust has the meaning given by section 272-105.

- (2) A reference in this Schedule to a person specified in a family trust election is a reference to:
 - (a) if the family trust election has not been varied—the person specified for the purposes of subsection 272-80(3); or
 - (b) if the family trust election has been varied—the person most recently specified under subsection 272-80(5A) or (5C).

Schedule 2G—Farm management deposits

[see Note 2]

Division 393—Farm management deposits

Table of Subdivisions

Guide to Division 393

- 393-A Tax consequences of farm management deposits
- 393-B Farm management deposit and related definitions
- 393-C How to work out your taxable primary production income and your taxable non-primary production income

Guide to Division 393

393-1 What this Division is about

This Division allows you to deduct farm management deposits in the year of income you make them and assesses you on the amount deducted when the deposits are repaid to you in later years of income.

Subdivision 393-A—Tax consequences of farm management deposits

Guide to Subdivision

393-5 What this Subdivision is about

This Subdivision allows you to deduct a farm management deposit if certain tests relating to your income etc. are met. The Subdivision assesses you when a deposit is repaid, but only to the extent that the repayment involves an amount previously deducted.

393-7 Definitions of terms

This Subdivision uses a number of terms relating to farm management deposits that are defined in Subdivisions 393-B and 393-C.

Table of sections

Operative provisions

- 393-10 Deduction for making farm management deposit
- 393-15 Assessability on repayment of deposit

Operative provisions

393-10 Deduction for making farm management deposit

- (1) If:
 - (a) you are the owner of a farm management deposit made in the year of income; and
 - (b) your taxable non-primary production income for the year of income is not more than \$65,000; and
 - (c) you did not:
 - (i) become bankrupt during the year of income; or
 - (ii) cease to be a primary producer during the year of income for at least 120 days (whether or not falling entirely within the year of income);

you can deduct the amount of the deposit from your assessable income for the year of income. However, there is no entitlement to the deduction if you die during the year of income.

- Note 1: Because of subsections 393-50(1) and (2), this section will not apply if the making of the deposit arises because of the extension of the term of the deposit or because the deposit is being immediately reinvested as a farm management deposit with the same institution.
- Note 2: Because of subsection 393-50(5), this section will not apply if the making of the deposit arises by way of transfer of the deposit in accordance with a requirement of the agreement concerned as mentioned in subsection 393-40(5).
- Note 3: Because of paragraph 25B(3)(c) of the *Loan (Income Equalization Deposits) Act 1976*, this section will not apply if the making of the deposit arises by way of transfer of an IED scheme deposit to a farm management deposit.
- Note 4: Subdivision B contains other rules that affect the extent to which a deposit can be a farm management deposit.

Sum of deductions not to exceed taxable primary production income

- (2) The sum of the deductions that you would otherwise be entitled to under this section for farm management deposits made in the year of income must *not* exceed your taxable primary production income for the year of income.

Amounts to be deducted in order of deposits

- (3) If subsection (2) prevents you deducting in full amounts in respect of 2 or more deposits, you can deduct the amounts in the order in which the deposits were made until the limit imposed by that subsection is reached.

393-15 Assessability on repayment of deposit

Amount assessable if deposit fully repaid

- (1) If you are the owner of a farm management deposit that is repaid in full in the year of income, your assessable income for the year of income includes the unrecouped FMD deduction (see subsection (3)) in respect of the deposit immediately before the repayment.

- Note 1: Because of subsections 393-50(1) and (2), this section will not apply if the repayment arises because of the extension of the term of the

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deposit or because the deposit is immediately reinvested as a farm management deposit with the same institution.

Note 2: Because of subsection 393-50(5), this section will not apply if the repayment arises by way of transfer of the deposit in accordance with a requirement of the agreement concerned as mentioned in subsection 393-40(5).

Note 3: Subdivision B contains other rules that affect the extent to which a withdrawal is a repayment of a farm management deposit.

Amount assessable if deposit partly repaid

(2) If:

- (a) you are the owner of a farm management deposit of which part only is repaid in the year of income; and
- (b) the unrecouped FMD deduction (see subsection (3)) in respect of the deposit immediately before the repayment exceeds the amount (if any) of the deposit that remains immediately after the repayment;

the amount of the excess is included in your assessable income for the year of income.

Note 1: This provision ensures that, in a case where not all of a deposit was deductible, withdrawal of the non-deductible part can take place without the amount withdrawn being assessable. Once that part has been withdrawn, the remainder will be assessable when it is withdrawn, in order to recoup the deduction.

Note 2: Subdivision B contains rules that affect the extent to which a withdrawal is a repayment of a farm management deposit.

Unrecouped FMD deduction

(3) The ***unrecouped FMD deduction*** in respect of a farm management deposit at a particular time is:

- (a) if no part of the deposit has been repaid before that time—either:
 - (i) if subparagraph (ii) does not apply—the amount of the deduction under section 393-10 for making the deposit; or
 - (ii) if the deposit was made with a financial institution as a result of a request to which section 25B of the *Loan (Income Equalization Deposits) Act 1976* applied—the amount worked out in accordance with paragraph (3)(d) of that section; or

- (b) if one or more parts of the deposit have been repaid before that time—the unrecouped FMD deduction in respect of the deposit immediately before the most recent such repayment, reduced by any amount included in the owner’s assessable income under this section as a result of that repayment.

Example: Assume a deposit of \$3,000 is made, all of which is deductible. The deposit’s *unrecouped FMD deduction* immediately before a later repayment of \$1,000 will be the amount of the deduction (i.e. \$3,000—see subparagraph (3)(a)(i)). The deposit’s unrecouped FMD deduction immediately before a second repayment of an amount will be \$2,000 (i.e. according to paragraph (3)(b), the unrecouped FMD deduction immediately before the first repayment (\$3,000) reduced by the \$1,000 included in assessable income as a result of the first repayment).

Deemed repayment because of death, bankruptcy etc.

- (4) If you are the owner of a farm management deposit that becomes repayable during the year of income in accordance with a requirement of the agreement concerned to the effect mentioned in subsection 393-40(3) (which covers death, bankruptcy and ceasing to be a primary producer), the deposit is taken for the purposes of this section to have been repaid at the time it became repayable, instead of when it is actually repaid.

Note 1: This will mean that it is assessable under this section in the year of income when the death etc. occurs, rather than in any later year in which it might be repaid.

Note 2: Under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* (about pay as you go withholding), a deduction may nevertheless be required to be made from the actual payment.

Subdivision 393-B—Farm management deposit and related terms

Guide to Subdivision 393-B

393-20 What this Subdivision is about

This Subdivision explains what a farm management deposit is, and defines a number of related terms.

Table of sections

Operative provisions

393-25	Various definitions
393-30	Requirements for a farm management deposit
393-35	Requirements whose contravention causes a loss of farm management deposit status
393-40	Other requirements of agreement
393-45	Contraventions that deprive a deposit of its status as a farm management deposit
393-50	Making and repaying etc. deposits
393-52	Certain entities taken to be financial institutions for pre-1 July 2003 deposits and transfers

Operative provisions

393-25 Various definitions

In this Division:

depositor of a farm management deposit means:

- (a) if paragraph (b) does not apply—the person who made the deposit; or
- (b) if the deposit was made by a person in the capacity of trustee of a trust estate on behalf of a beneficiary who, when the deposit was made, was under a legal disability:
 - (i) if the beneficiary is still under a legal disability—the trustee; or
 - (ii) if not—the beneficiary.

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

farm management deposit has the meaning given by sections 393-30, 393-35, 393-37, 393-40 and 393-45 and subsection 393-50(4).

financial institution means an entity that:

- (a) is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or

- (b) carries on in Australia the business of banking, so long as a State or a Territory guarantees the repayment of any deposit taken in the course of that business; or
- (c) carries on in Australia a business that consists of or includes taking money on deposit, so long as a State or a Territory guarantees the repayment of any deposit taken in the course of that business.

Note: An entity can also be a *financial institution* for the purposes of this Subdivision in the limited circumstances described in section 393-52.

make a farm management deposit has a meaning affected by section 393-50.

owner of a farm management deposit means:

- (a) if paragraph (b) does not apply—the person who made or is making the deposit; or
- (b) in the case of a deposit made or being made by the trustee of a trust estate on behalf of a beneficiary—the beneficiary.

primary producer means:

- (a) an individual who carries on in Australia a primary production business otherwise than as trustee of a trust estate; or
- (b) a partner (not being a company) in a partnership that carries on in Australia a primary production business; or
- (c) a beneficiary (not being a company) who is presently entitled to a share of the income of a trust estate where the trustee carries on in Australia a primary production business.

primary production business has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

repay a farm management deposit has a meaning affected by section 393-50.

tax file number has the meaning given by section 202A.

393-30 Requirements for a farm management deposit

- (1) Subject to sections 393-37 and 393-45, a deposit of money is a **farm management deposit** if the requirements of this section are satisfied.

Deposit to be made under agreement between depositor and financial institution

- (2) The deposit must be made with a financial institution under an agreement between the financial institution and the depositor that:
- (a) describes the deposit as a farm management deposit; and
 - (b) at all times while the deposit is with the financial institution, contains requirements to the effect set out in sections 393-35 and 393-40. (The agreement may also contain additional requirements that are not inconsistent with those set out in those sections.)

Depositor to provide information in application form

- (3) The depositor must have applied to the financial institution to make the deposit by completing and signing a form that:
- (a) permitted the depositor to state the owner's tax file number in the form; and
- Note: If the owner chooses not to state his or her tax file number and does not later quote it to the financial institution, the deduction required under section 12-140 in Schedule 1 to the *Taxation Administration Act 1953* from any repayment of the deposit will be at the highest marginal tax rate.
- (b) required the depositor to provide any other information required by regulations for the purposes of this paragraph; and
 - (c) contained any statements, required by regulations for the purposes of this paragraph, that were to be read by the depositor when completing the form.

Note: A depositor who makes a false or misleading statement in such a form will commit an offence against section 8K or 8N of the *Taxation Administration Act 1953*.

393-35 Requirements whose contravention causes a loss of farm management deposit status

- (1) This section sets out requirements, that must be contained in the agreement mentioned in subsection 393-30(2), whose contravention will, under section 393-45, result in the deposit, or some of the deposit, being taken not to be, and (if appropriate) never to have been, a *farm management deposit*.

Owner to be primary producer

- (2) The owner must be a primary producer when the deposit is made.

Deposit to be made by or on behalf of only one person

- (3) The deposit must not be made by 2 or more persons jointly or be made on behalf of 2 or more persons.

Deposit by trustee may only be made for a beneficiary under a legal disability etc.

- (4) The deposit must not be made:
- (a) by the trustee of a trust estate on behalf of a beneficiary, unless the beneficiary is presently entitled to a share of the income of the trust estate and is under a legal disability; or
 - (b) otherwise by a person in his or her capacity as a trustee.

Deposit to be \$1,000 or more

- (5) The deposit must be \$1,000 or more.

Deposit limit of \$400,000

- (6) The deposit must not be more than \$400,000, and the sum of the balances from time to time of the deposit and all other farm management deposits of the owner with the financial institution must not be more than \$400,000.

Owner to have deposit with only one financial institution

- (7) The owner must not, at any time while the deposit is with the financial institution, have any farm management deposits with any other financial institution.

Rights in respect of deposit not transferable

- (8) Rights of the depositor in respect of the deposit must not be transferable to another person.

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Division 393 Farm management deposits

Section 393-37

Charges etc. not to be created over deposit

- (9) A charge or other encumbrance must not be created over the deposit as security for an amount payable by the depositor or any other person to the financial institution or to any other person.

Mortgage offset accounts

- (10) Amounts that would otherwise accrue as interest or other earnings on the deposit must not reduce liabilities of the depositor to pay interest to the financial institution in respect of loans or other debts of the depositor.

Restriction on investment of interest

- (11) Interest or other earnings on the deposit must not be invested as a farm management deposit with the financial institution without having first been paid to the depositor.

393-37 Withdrawal of deposit within first 12 months

Partial withdrawal within first 12 months

- (1) If:
- (a) part of the deposit is withdrawn within the 12 months after the end of the applicable depositing day (see subsection (7)); and
 - (b) the withdrawal is not covered by subsection (3), (5) or (6);
- then the amount withdrawn is not, and is taken never to have been, part of a ***farm management deposit***.

Note: If the withdrawal is covered by subsection (3), (5) or (6) then the normal rules in sections 393-10, 393-15 and 393-50 apply.

Deposit not to be reduced to less than \$1,000 within first 12 months

- (2) If the amount of the deposit is reduced to less than \$1,000 because of one or more withdrawals made within the 12 months after the end of the applicable depositing day that are not withdrawals covered by subsection (3), (5) or (6), then the deposit is not, and is taken never to have been, a ***farm management deposit***.

Note: If any of the withdrawals are covered by subsection (3), (5) or (6), this subsection does not apply.

Withdrawal in exceptional circumstances

- (3) If the whole or a part of the deposit is withdrawn by, or on behalf of, the owner of the deposit in the following circumstances, the withdrawal is not a withdrawal to which subsections (1) and (2) apply:
- (a) the withdrawal is made in the year of income following the year of income in which the applicable depositing day occurs;
 - (b) at the time of the withdrawal, that owner is eligible for the issue of an exceptional circumstances certificate (within the meaning of subsection 8A(2) of the *Farm Household Support Act 1992*) that relates to a primary production business of that owner;
 - (c) by the end of 3 months after the end of the year of income in which the withdrawal is made, such an exceptional circumstances certificate is issued in respect of that owner;
 - (d) a declaration of exceptional circumstances (as referred to in paragraph 8(c) of the *Rural Adjustment Act 1992*) was not in force in relation to that primary production business when the deposit was made.
- (4) Any subsequent deposit that is made by, or on behalf of, that owner in the year of income in which the withdrawal referred to in subsection (3) is made is not, and is taken never to have been, a ***farm management deposit***.

Withdrawal in the case of death, bankruptcy or loss of primary producer status

- (5) A repayment of a deposit that is required in accordance with subsection 393-40(3) (which covers death, bankruptcy and loss of primary producer status) is not a withdrawal to which subsections (1) and (2) apply.

Transfers to other financial institutions

- (6) A transfer of a deposit to another financial institution, in accordance with a requirement of the agreement concerned, as mentioned in subsection 393-40(5) is not a withdrawal to which subsections (1) and (2) apply.

Definition of applicable depositing day

- (7) The *applicable depositing day* is:
- (a) if none of the other paragraphs in this subsection applies—the day on which the deposit is made with the financial institution; or
 - (b) if the deposit is made with the financial institution as a result of a request to which section 25B of the *Loan (Income Equalization Deposits) Act 1976* applied—the day on which the deposit under that Act, that was the subject of the request, was made; or
 - (c) if the deposit is made with the financial institution as a result of one or more transfers from other financial institutions in accordance with requirements of agreements as mentioned in subsection 393-40(5), and paragraph (d) does not apply—the day on which the deposit was made with the first of the financial institutions; or
 - (d) if the deposit is made with the financial institution as a result of a combination of a request as mentioned in paragraph (b) and one or more transfers as mentioned in paragraph (c)—the day applicable under paragraph (b).

393-40 Other requirements of agreement

- (1) This section sets out other requirements that must be contained in the agreement mentioned in subsection 393-30(2).

Deposit must be repaid where death, bankruptcy or loss of primary producer status

- (3) The deposit must be repaid if:
- (a) the owner dies or becomes bankrupt; or
 - (b) the owner ceases to be a primary producer for at least 120 days.

Repayment to be \$1,000 or more

- (4) Except where the entire amount of the deposit is repaid, the amount of any repayment of the deposit must be \$1,000 or more.

Transfer of deposit between financial institutions

- (5) The financial institution must, if requested in writing by the depositor to do so and if given any information or other assistance from the depositor necessary for the purpose, transfer the deposit by electronic means to another financial institution that agrees to accept the deposit as a farm management deposit.

Administration fees etc. not to be deducted from deposit

- (6) The financial institution must not deduct from the deposit (whether at the time it is made, while it is with the institution or at the time of its repayment) any administration fee or other amount required by the financial institution to be paid in respect of the deposit or otherwise.

393-45 Contraventions that deprive a deposit of its status as a farm management deposit

- (1) If, when it was accepted, the requirement set out in subsection 393-35(2), (3), (4), (5), (7) or (8) was contravened, the deposit is not a *farm management deposit*.
- (2) If, by accepting the deposit, the requirement set out in subsection 393-35(6) was contravened, so much of the deposit as caused that requirement to be contravened is not a *farm management deposit*.
- (3) If the requirement set out in subsection 393-35(9), (10) or (11) or section 393-37 is contravened at any time in relation to the deposit, it is not, and is taken never to have been, a *farm management deposit*.

393-50 Making and repaying etc. deposits*Reinvesting a deposit*

- (1) If a farm management deposit is immediately reinvested as a farm management deposit with the same financial institution, the reinvestment does not involve the *repayment* of the farm management deposit or the *making* of a farm management deposit.

Extending the term of a deposit

- (2) If the term of a farm management deposit is extended, the extension does not involve the **repayment** of the farm management deposit or the **making** of a farm management deposit (even if other terms such as those relating to interest payable are also varied).

Repay includes deal with as requested etc.

- (3) Subject to subsections (1) and (2), the expression **repay** a farm management deposit includes transfer or reinvest the deposit or otherwise deal with the deposit on behalf of or at the request of the depositor.

Effect of partial repayment

- (4) The expression **farm management deposit** means, if part of the deposit has been repaid, the balance of the deposit after the repayment.

Transferring a deposit to another financial institution

- (5) If a financial institution (the **transferor**) transfers a farm management deposit to another financial institution (the **transferee**) in accordance with a requirement of the agreement concerned as mentioned in subsection 393-40(5):
- (a) for the purposes of section 393-15, the transfer does not constitute a **repayment** of the deposit by the transferor; and
Note: This means that the owner will not be assessed for income tax purposes on the amount transferred.
 - (b) for the purposes of section 393-10, the transfer does not constitute the **making** of a deposit with the transferee; and
Note: This means that the transfer will not give rise to an income tax deduction.
 - (c) for the purposes of working out the unrecouped FMD deduction in applying section 393-15 in relation to any repayment of the whole or part of the deposit by the transferee, or by any other transferee resulting from any other application of this section, the transfer does not cause the deposit to be a different deposit.
Note: This ensures that the unrecouped FMD deduction (which determines how much income tax is assessed) in the event of a repayment will equal the deduction for the original deposit, less
-

any amount assessed beforehand while the deposit was held by the original or any later financial institution.

393-52 Certain entities taken to be financial institutions for pre-1 July 2003 deposits and transfers

Scope

- (1) This section applies if the condition in subsection (2) or (3) is satisfied.
- (2) The condition in this subsection is satisfied if:
 - (a) a deposit (the *eligible deposit*) of money was made before 1 July 2003 with an entity (the *non-complying entity*) that was not a financial institution; and
 - (b) if the deposit was made after 17 June 2003:
 - (i) the deposit was made in accordance with an agreement of a particular kind; and
 - (ii) on 17 June 2003, the non-complying entity was offering to enter into agreements of that kind; and
 - (iii) the agreements mentioned in subparagraph (ii) described such a deposit as a farm management deposit; and
 - (c) the deposit was made in good faith.
- (3) The condition in this subsection is satisfied if:
 - (a) the depositor of a farm management deposit made a written request before 1 July 2003 to the financial institution with which the deposit was made to transfer the deposit to an entity (the *non-complying entity*); and
 - (b) the financial institution transferred the deposit to the non-complying entity within a reasonable period after the request; and
 - (c) the non-complying entity was not a financial institution when the deposit was transferred; and
 - (d) the condition in subsection (2) is not satisfied in relation to the deposit (the *eligible deposit*) arising from the transfer to the non-complying entity; and
 - (e) if the request was made after 17 June 2003:
 - (i) the eligible deposit was made in accordance with an agreement of a particular kind; and

Schedule 2G Farm management deposits

Division 393 Farm management deposits

Section 393-52

- (ii) on 17 June 2003, the non-complying entity was offering to enter into agreements of that kind; and
- (iii) the agreements mentioned in subparagraph (ii) described such a deposit as a farm management deposit; and
- (f) the request was made in good faith.

Non-complying entity taken to be financial institution

- (4) This Subdivision (other than this section) applies in relation to the eligible deposit as if the non-complying entity were a ***financial institution*** throughout the period:
- (a) beginning:
 - (i) if the condition in subsection (2) is satisfied—when the eligible deposit was made; or
 - (ii) if the condition in subsection (3) is satisfied—when the eligible deposit was transferred as mentioned in paragraph (3)(b); and
 - (b) ending:
 - (i) if the depositor makes, before the deadline mentioned in subsection (6), a written request to the non-complying entity to transfer the eligible deposit to a financial institution, and that transfer is made within a reasonable period after the request—at the time the transfer is made; or
 - (ii) if subparagraph (i) does not apply and the eligible deposit was repaid in full before that deadline—at the time the eligible deposit was repaid; or
 - (iii) in any other case—immediately before that deadline.

Deposit taken to be repaid in certain circumstances

- (5) If:
- (a) the depositor fails, before the deadline mentioned in subsection (6), to make a written request to the non-complying entity to transfer the eligible deposit to a financial institution; or
 - (b) if such a request is made—the non-complying entity fails to transfer the eligible deposit to that financial institution within a reasonable period after the request;

the eligible deposit is taken for the purposes of section 393-15 to have been repaid immediately before that deadline (to the extent that it was not actually repaid before that deadline).

Note: This will mean that it is assessable under section 393-15 (as that section applies because of subsection (4)) in the year of income when the eligible deposit is taken to be repaid, rather than in any later year in which it might be actually repaid.

Deadline

- (6) The deadline is:
- (a) if the term of the eligible deposit:
 - (i) is longer than 12 months; and
 - (ii) ends after 1 July 2004;the earlier of:
 - (iii) the day on which the term of the eligible deposit ends; or
 - (iv) 1 July 2007; or
 - (b) in any other case—1 July 2004.

Deposit with non-complying entity and other deposit with a financial institution

- (7) Ignore subsection (4) in deciding, for the purposes of subsection 393-45(1), whether the requirement in subsection 393-35(7) has been contravened.

Subdivision 393-C—How to work out your taxable primary production income and your taxable non-primary production income

Guide to Subdivision 393-C

393-55 What this Subdivision is about

This Subdivision explains how to work out your taxable primary production income and your taxable non-primary production income for a year of income.

Table of sections

Operative provisions

- 393-60 Working out your taxable primary production income
393-65 Working out your taxable non-primary production income

Operative provisions

393-60 Working out your taxable primary production income

- (1) Work out your *taxable primary production income* for the year of income in this way:

Method statement

- Step 1. Compare your assessable primary production income for the year of income with your primary production deductions for the year of income.
- Step 2. If your assessable primary production income is larger than your primary production deductions, your *taxable primary production income* is the difference between them.
- Step 3. If your primary production deductions are larger than (or equal to) your assessable primary production income, your *taxable primary production income* is nil.

Assessable primary production income

- (2) Your *assessable primary production income* for the year of income is the amount of your basic assessable income (see subsection (4)) for the year of income that was derived (see subsection (3)) from or resulted from your carrying on a primary production business.

Derive

- (3) The expression “derive” has a meaning affected by subsection 6-5(4) of the *Income Tax Assessment Act 1997*.

Basic assessable income

- (4) Your **basic assessable income** for an income year is your assessable income for the income year, less:
- (a) any amount included in your assessable income under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997* (certain superannuation benefits and employment termination payments); and
 - (b) any net capital gain included in your assessable income.

Primary production deductions

- (5) Your **primary production deductions** for the year of income are:
- (a) any deductions allowed or allowable to you for the year of income that relate exclusively to your assessable primary production income of a year of income; and
 - (b) so much of any other deductions (other than apportionable deductions) allowed or allowable to you for the year of income as, in the opinion of the Commissioner, may appropriately be related to your assessable primary production income of a year of income.

393-65 Working out your taxable non-primary production income

- (1) Work out your **taxable non-primary production income** for the year of income in this way:

Method statement

- Step 1. Compare your assessable non-primary production income for the year of income with your non-primary production deductions for the year of income.
- Step 2. If your assessable non-primary production income is larger than your non-primary production deductions, your **taxable non-primary production income** is the difference between them.

Step 3. If your non-primary production deductions are larger than (or equal to) your assessable non-primary production income, your ***taxable non-primary production income*** is nil.

Assessable non-primary production income

- (2) Your ***assessable non-primary production income*** for the year of income is the difference between:
- (a) your basic assessable income (see subsection 393-60(4)) for the year of income; and
 - (b) your assessable primary production income (see subsection 393-60(2)) for the year of income.

Non-primary production deductions

- (3) Your ***non-primary production deductions*** for the year of income are the difference between:
- (a) the sum of your allowable deductions for the year of income; and
 - (b) your primary production deductions (see subsection 393-60(5)) for the year of income.

Schedule 2H—Demutualisation of mutual entities other than insurance companies and health insurers [see Note 2]

Division 326—Demutualisation

Table of Subdivisions

Guide to Division 326

- 326-A Application, key concepts and related expressions
- 326-B How demutualisation is to be effected
- 326-C CGT consequences of extinguishment of membership rights in mutual entity
- 326-D CGT consequences of disposal of demutualisation shares or an interest in such shares by a member of a mutual entity where the entity or a holding company of the entity becomes a listed public company
- 326-E CGT consequences of disposal of demutualisation shares or interests in such shares by a member of a mutual entity where the entity or a holding company of the entity becomes a company that is not a listed public company
- 326-F Variation of amount taken to be paid for shares or an interest in shares by a member of a mutual entity who made a capital gain or capital loss from disposal of membership rights in another mutual entity
- 326-G CGT consequences of disposal of rights or interests resulting from extinguishment of membership rights
- 326-H CGT consequences of transfer of ordinary shares

Schedule 2H Demutualisation of mutual entities other than insurance companies and health insurers

Division 326 Demutualisation

Section 326-1

- 326-I CGT consequences of disposal of demutualisation shares or an interest in such shares by a trustee on behalf of a member
- 326-J CGT consequences of change in rights attaching to special shares or replacement of special shares by ordinary shares
- 326-K CGT consequences of disposal of shares or an interest in shares acquired under a roll-over provision
- 326-L CGT consequences of payment to member of demutualised entity out of accumulated surplus of the entity
- 326-M Indexation
- 326-N Non-CGT consequences of issue of demutualisation shares

Guide to Division 326

326-1 What this Division is about

This Division sets out the taxation consequences of the demutualisation of mutual entities other than insurance companies and health insurers.

Subdivision 326-A—Application, key concepts and related expressions

Table of sections

- 326-5 Application
- 326-10 Mutual entity and demutualisation
- 326-15 Provisions relating to listing on a stock exchange
- 326-20 Demutualisation resolutions etc.
- 326-25 Demutualisation shares
- 326-30 Existing members and new members
- 326-35 Pre-CGT members and post-CGT members

326-5 Application

- (1) This Division applies to the demutualisation of a mutual entity referred to in section 326-10 if, and only if:
 - (a) where the demutualisation resolution day was 14 March 2002 or was or is a later day—the members of the entity have passed a resolution, in accordance with the entity’s

- constitution, that this Division is to apply to the demutualisation; and
- (b) the entity was a resident immediately before the demutualisation resolution day; and
 - (c) the demutualisation has been or is implemented as mentioned in section 326-40; and
 - (d) the continuity of beneficial interest test in section 326-60 is satisfied in relation to the demutualisation; and
 - (e) the demutualisation of the entity was or is completed on or after 12 May 1998.
- (2) For the purposes of paragraph (1)(e), the demutualisation of an entity is taken to have been or to be completed:
- (a) if the demutualisation is implemented in accordance with the direct method or the distributing trust method of demutualisation—on the day on which all the shares in the company that the entity became or becomes that were or are to be issued in connection with the demutualisation have been issued; or
 - (b) if the demutualisation is implemented in accordance with the holding company method of demutualisation—on the day on which all the shares in the holding company that were or are to be issued in connection with the demutualisation have been issued; or
 - (c) if the demutualisation is implemented in accordance with the combined direct and holding company method of demutualisation—on the later of the following days:
 - (i) the day on which all the shares in the company that the entity became or becomes that were or are to be issued in connection with the demutualisation have been issued;
 - (ii) the day on which all the shares in the holding company that were or are to be issued in connection with the demutualisation have been issued.
- (3) If this Division applies to the demutualisation of a mutual entity as mentioned in subsection (1), Subdivisions 326-C to 326-N provide for modifications of this Act and the *Income Tax Assessment Act 1997* as those Acts have effect in respect of the entity.

Division 326 Demutualisation

Section 326-10

- (4) For the purposes of this Division, the giving of consideration (other than the payment of an amount) for the acquisition of shares or an interest in shares is taken to constitute the payment of an amount equal to the value of the consideration.

326-10 Mutual entity and demutualisation

- (1) An entity is a *mutual entity* if, and only if, immediately before the demutualisation resolution day, it is a body corporate that:
- (a) is not an insurance company within the meaning of subsection 121AB(2); and
 - (b) is not a mutual affiliate company within the meaning of section 121AC; and
 - (ba) is not an entity to which item 6.3 of the table in section 50-30 of the *Income Tax Assessment Act 1997* (about private health insurers) applies; and
 - (c) is not carried on for the object of securing a profit or pecuniary gain for its members; and
 - (d) does not have capital divided into shares held by its members; and
 - (e) does not hold property in which any of its members has a disposable interest (whether directly or indirectly) except in the event of the winding up of the entity.
- (2) A mutual entity that has passed a demutualisation resolution is called a *demutualising entity*.
- (3) A mutual entity is *demutualised* if it ceases to be a mutual entity otherwise than by ceasing to be a body corporate. Such an entity is called a *demutualised entity*.
- (4) A reference to a *demutualising entity* includes a reference to a demutualised entity.

326-15 Provisions relating to listing on a stock exchange

- (1) A share is *listed* if it is listed for quotation in the official list of ASX Limited.
- (2) The expression “listed public company” has the same meaning as in the *Income Tax Assessment Act 1997*.

- (3) A *listing resolution*, in relation to the demutualisation of a mutual entity, is a resolution passed by the members of the entity requiring the entity, or a holding company of the entity, to become a listed public company.
- (4) The day on which demutualisation shares are first listed is the *demutualisation listing day*.

326-20 Demutualisation resolutions etc.

- (1) The *demutualisation resolution*, in relation to the demutualisation of a mutual entity, is a resolution passed by the members of the entity to proceed with the demutualisation of the entity.
- (2) The *demutualisation resolution day*, in relation to the demutualisation of a mutual entity, is the day on which the demutualisation resolution was or is passed.
- (3) The *limitation period*, in relation to the demutualisation of a mutual entity, is the period of 2 years beginning on the demutualisation resolution day or such further period as the Commissioner allows.

326-25 Demutualisation shares

The *demutualisation shares*, in relation to a demutualised entity, are:

- (a) the ordinary shares in the entity that are issued as mentioned in paragraphs 326-45(1)(c) and (d); and
- (b) the ordinary shares in the holding company that are issued as mentioned in paragraphs 326-50(1)(d) and (e); and
- (ba) the ordinary shares in the entity that are issued as mentioned in paragraphs 326-52(1)(c) and (e); and
- (bb) the ordinary shares in the holding company that are issued as mentioned in paragraphs 326-52(1)(f) and (g); and
- (c) the ordinary shares in the entity that are issued as mentioned in paragraphs 326-55(1)(f) and (g); and
- (d) the special shares in the entity that are issued as mentioned in paragraph 326-55(1)(c).

Division 326 Demutualisation

Section 326-30

326-30 Existing members and new members

- (1) An *existing member* of a mutual entity that demutualises is:
 - (a) a person who was a member of the entity on the earlier of the following days:
 - (i) the demutualisation resolution day;
 - (ii) the share allocation cut-off day; or
 - (b) a person who became entitled to an allocation of demutualisation shares because of the death of a person referred to in paragraph (a).
- (2) If the members of a mutual entity that is being demutualised have passed or pass a resolution to the effect that any person who became or becomes a member after a specified day is not entitled to an allocation of demutualisation shares, that day is the *share allocation cut-off day* in relation to the demutualisation of the entity.
- (3) A *new member* of a mutual entity that demutualises is a person who is a member of the entity other than an existing member.
- (4) A reference to a *member* of a mutual entity that demutualises is taken, unless the contrary intention appears, to be a reference to a person who is an existing member or a new member of the entity.

326-35 Pre-CGT members and post-CGT members

- (1) A person is a *pre-CGT member* of a demutualising entity if:
 - (a) the person's membership rights in the entity are a pre-CGT asset within the meaning of the *Income Tax Assessment Act 1997*; or
 - (b) both of the following apply:
 - (i) the person acquired membership rights in the entity by disposing of membership rights in another mutual entity; and
 - (ii) the person acquired membership rights in the other entity before 20 September 1985.
- (2) A person is a *post-CGT member* of a demutualising entity if the person is not a pre-CGT member.

Subdivision 326-B—How demutualisation is to be effected

Table of sections

326-40	Methods of demutualisation
326-45	Direct method
326-50	Holding company method
326-52	Combined direct and holding company method
326-55	Distributing trust method
326-60	Continuity of beneficial interest test

326-40 Methods of demutualisation

A demutualisation of a mutual entity is to be implemented in accordance with one of the methods set out in sections 326-45, 326-50, 326-52 and 326-55.

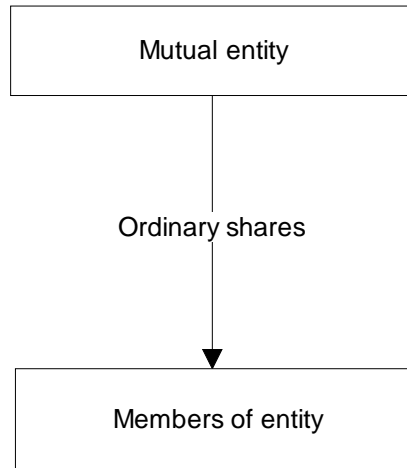
326-45 Direct method

- (1) The direct method of demutualisation is as follows:
- (a) all membership rights in the entity are extinguished;
 - (b) the entity becomes a company with a share capital;
 - (c) shares (*ordinary shares*) of only one class in the entity are issued within the limitation period to existing members in exchange for the membership rights referred to in paragraph (a);
 - (d) shares (also *ordinary shares*) of the same class in the entity may be issued within the limitation period to new members;
 - (e) if a listing resolution was passed by the members of the entity—the ordinary shares are listed within the limitation period.

Note: Other things may happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows, where this demutualisation method is used, the issue of shares to members of the entity.

Direct method of demutualisation



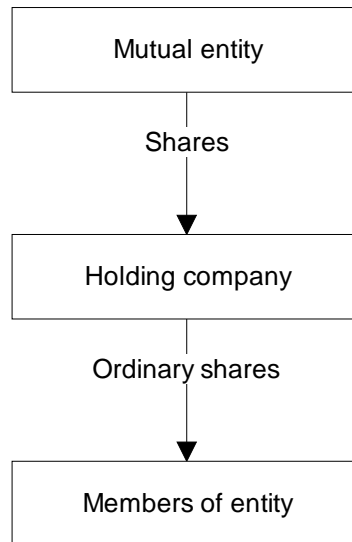
326-50 Holding company method

- (1) The holding company method of demutualisation is as follows:
- (a) all membership rights in the entity are extinguished;
 - (b) the entity becomes a company with a share capital;
 - (c) shares of only one class in the entity are issued to a company (the *holding company*) within the limitation period;
 - (d) shares (*ordinary shares*) of only one class in the holding company are issued within the limitation period to existing members in exchange for the membership rights referred to in paragraph (a);
 - (e) shares (also *ordinary shares*) in the holding company of the same class may be issued within the limitation period to new members;
 - (f) if a listing resolution was passed by the entity—the ordinary shares are listed within the limitation period.

Note: Other things may happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events that occur where this demutualisation method is used.

Holding company method of demutualisation



326-52 Combined direct and holding company method

- (1) The combined direct and holding company method of demutualisation is as follows:
- (a) all membership rights in the entity are extinguished;
 - (b) the entity becomes a company with a share capital;
 - (c) shares (*ordinary shares*) of only one class in the entity are issued within the limitation period to existing members in exchange for the membership rights referred to in paragraph (a);
 - (d) shares (also *ordinary shares*) of the same class in the entity are also issued to a company (the *holding company*) within the limitation period;
 - (e) shares (also *ordinary shares*) of the same class in the entity may be issued within the limitation period to new members;
 - (f) shares (also *ordinary shares*) of only one class in the holding company are issued within the limitation period to existing members as a result of the extinguishment of the membership rights referred to in paragraph (a);

Division 326 Demutualisation

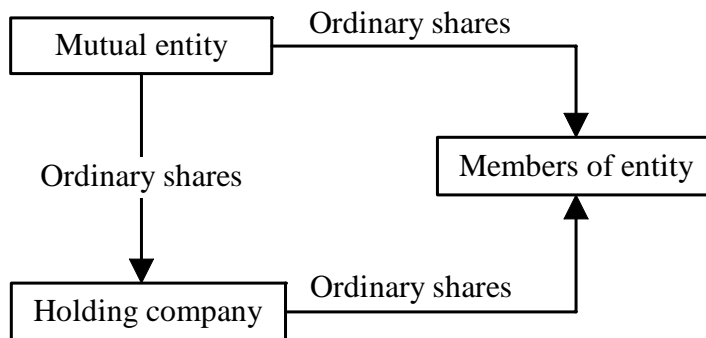
Section 326-55

- (g) shares (also *ordinary shares*) of the same class in the holding company may be issued within the limitation period to new members;
- (h) the total number of ordinary shares issued to members under paragraphs (f) and (g) is the same as the total number of ordinary shares issued to the holding company under paragraph (d);
- (i) if a listing resolution was passed by the members of the entity—the ordinary shares in the entity are listed within the limitation period.

Note: Other things may happen in connection with the implementation of the demutualisation.

- (2) The following diagram shows the main events that occur where this demutualisation method is used.

Combined direct and holding company method of demutualisation



326-55 Distributing trust method

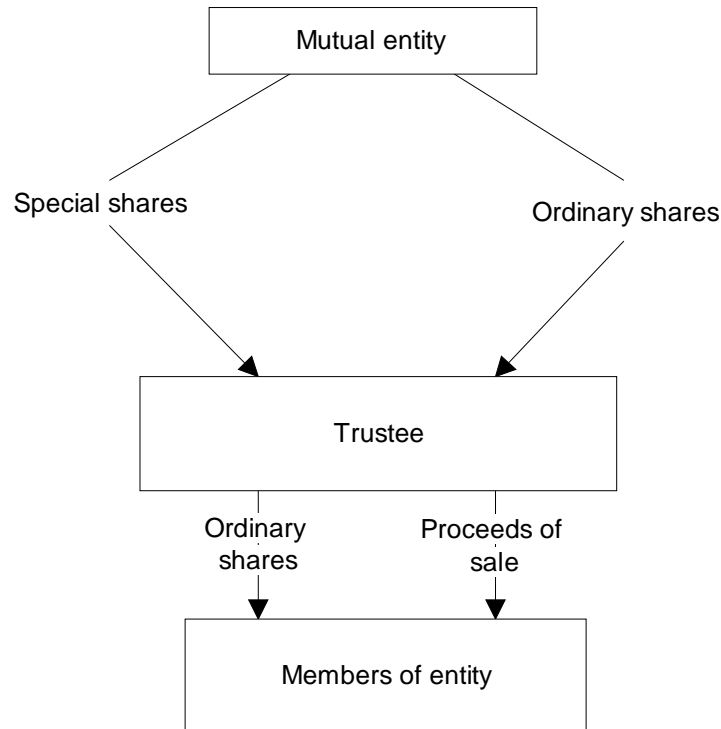
- (1) The distributing trust method of demutualisation is as follows:
 - (a) all membership rights in the mutual entity are extinguished;
 - (b) the entity becomes a company with a share capital;
 - (c) shares (*special shares*) carrying only voting rights in respect of the demutualised entity are issued within the limitation period to a trustee to hold for the benefit of the members;

- (d) the issue takes place before the issue of the ordinary shares mentioned in paragraphs (f) and (g);
- (e) after the issue of all the ordinary shares, the rights attaching to the special shares become the same as those attaching to the ordinary shares and the special shares are dealt with in accordance with paragraph (h) as if they were ordinary shares;
- (f) shares (*ordinary shares*) of only one class in the entity are, within the limitation period, issued to the trustee to hold on behalf of existing members in exchange for the membership rights referred to in paragraph (a) and, in accordance with the choice of each existing member, to transfer to the member the shares held on behalf of the member or to dispose of those shares on behalf of the member;
- (g) shares (also *ordinary shares*) of the same class in the entity may, within the limitation period, be issued to the trustee on behalf of new members and, in accordance with the choice of each new member, to transfer to the member the shares held on behalf of the member or to dispose of those shares on behalf of the member;
- (h) within the limitation period the trustee:
 - (i) sells the ordinary shares issued to the trustee and distributes the proceeds to the member; or
 - (ii) transfers the ordinary shares to the member;
- (i) if a listing resolution was passed by the entity—the ordinary shares are listed within the limitation period.

Note: Other things may happen in connection with the implementation of the demutualisation.

- (2) The trustee must be the trustee of a trust established solely for the purposes of performing functions under subsection (1).
- (3) The following diagram shows the main events that occur where this demutualisation method is used.

Distributing trust method of demutualisation



326-60 Continuity of beneficial interest test

- (1) This section sets out a test (the *continuity of beneficial interest test*) that must be satisfied before this Division applies to the demutualisation of a mutual entity.
- (2) The continuity of beneficial interest test is satisfied if:
 - (a) an opportunity is given to each existing member of the mutual entity:
 - (i) to take up shares in the demutualised entity or in a holding company to which shares in the demutualised entity are issued; or
 - (ii) to have shares in the demutualised entity issued to a trustee on behalf of the member; and

- (b) where the demutualisation is implemented by the method set out in section 326-45, 326-50 or 326-55—of the ordinary shares in the demutualised entity or holding company that are issued in connection with the demutualisation (the *issued shares*), the total number that are issued to existing members or to a trustee on behalf of existing members constitutes at least 90% of the issued shares; and
 - (ba) where the demutualisation is implemented by the method set out in section 326-52:
 - (i) of the ordinary shares in the demutualised entity that are issued to members other than the holding company in connection with the demutualisation (the *issued entity shares*), the total number that are issued to existing members constitutes at least 90% of the issued entity shares; and
 - (ii) of the ordinary shares in the holding company that are issued in connection with the demutualisation (the *issued holding company shares*), the total number that are issued to existing members constitutes at least 90% of the issued holding company shares; and
 - (c) the accumulated surplus of the mutual entity is allocated or distributed in the form of shares, or cash from the sale of shares, to existing members in proportions that broadly accord with any one or more of the following:
 - (i) the respective amounts contributed by the members to the entity;
 - (ii) the respective values of the membership rights of the members;
 - (iii) the respective rights of the members on the winding up of the entity.
- (3) In this section:

accumulated surplus, in relation to a demutualised entity, means the net assets of the entity on the demutualisation resolution day.

Division 326 Demutualisation

Section 326-65

Subdivision 326-C—CGT consequences of extinguishment of membership rights in mutual entity

Table of sections

326-65 Extinguishment of membership rights

326-65 Extinguishment of membership rights

Application

- (1) This section applies where membership rights are extinguished as mentioned in paragraph 326-45(1)(a), 326-50(1)(a), 326-52(1)(a) or 326-55(1)(a).

Modification

- (2) A capital gain or capital loss arising from the extinguishment of the membership rights of a member is to be disregarded.

Subdivision 326-D—CGT consequences of disposal of demutualisation shares or an interest in such shares by a member of a mutual entity where the entity or a holding company of the entity becomes a listed public company

Table of sections

326-70	Application of Subdivision
326-75	Capital losses made from certain disposals to be disregarded
326-80	Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share before demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity
326-85	Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share on or after demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity
326-90	Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share where member acquired membership rights by disposing of membership rights in another mutual entity
326-95	Disposal by post-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share

- 326-100 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, before demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity
- 326-105 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, on or after demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity
- 326-110 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, where member acquired membership rights by disposing of membership rights in another mutual entity
- 326-115 Disposal by post-CGT member of a demutualisation original share or a non-demutualisation bonus share or an interest in such a share
- 326-120 Adjusted market value
- 326-125 Undeducted membership costs
- 326-130 Adjusted first day trading price of demutualisation shares

326-70 Application of Subdivision

- (1) This Subdivision applies where a member (the *disposer*) of a mutual entity which, or a holding company of which, becomes a listed public company disposes of an asset consisting of:
- (a) a demutualisation share in the listed public company or an interest in such a share; or
 - (b) other shares (*non-demutualisation bonus shares*) in the same company, or an interest in such shares, where the shares are bonus equities mentioned in Subdivision 130-A of the *Income Tax Assessment Act 1997* and any of the demutualisation shares (whether or not disposed of at the time) are the original equities mentioned in that Subdivision.
- (2) For the purposes of this Subdivision, if any of the original equities mentioned in Subdivision 130-A of the *Income Tax Assessment Act 1997* is a demutualisation share, it is called a *demutualisation original share*.

326-75 Capital losses made from certain disposals to be disregarded

A capital loss that the disposer makes from a disposal to which section 326-80 or 326-100 applies is to be disregarded.

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326-80 Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share before demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
 - (b) the disposer did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
 - (c) the disposer is a pre-CGT member; and
 - (d) the disposal occurs before the demutualisation listing day;
- then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:
- (e) to have paid for the acquisition of the share or interest the amount worked out by using the formula:

$$\text{Adjusted market value} \times \frac{\text{Share or interest disposed of}}{\text{Total number of shares}}$$

- (f) to have paid that amount on the demutualisation resolution day;
 - (g) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in paragraph (1)(e):

total number of shares means the total number of demutualisation shares issued.

326-85 Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share on or after demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
-

- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
- (b) the disposer did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
- (c) the disposer is a pre-CGT member; and
- (d) the disposal occurs on or after the demutualisation listing day;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:

- (e) to have paid for the acquisition of the share or interest the lesser of the following amounts:
 - (i) the amount worked out by using the formula:

$$\text{Adjusted market value} \times \frac{\text{Share or interest disposed of}}{\text{Total number of shares}}$$

- (ii) the amount worked out by using the formula:

$$\frac{\text{Adjusted first day trading price of the demutualisation shares}}{\text{shares}} \times \frac{\text{Share or interest disposed of}}{\text{disposed of}}$$

- (f) to have paid the amount referred to in paragraph (e) on the demutualisation resolution day;
 - (g) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in subparagraph (1)(e)(i):

total number of shares means the total number of demutualisation shares issued.

326-90 Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share where member acquired membership rights by disposing of membership rights in another mutual entity

- (1) If:
-

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- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
- (b) the disposer acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
- (c) the disposer is a pre-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:

- (d) to have paid for the acquisition of the share or interest both of the following amounts:

- (i) the amount worked out by using the formula:

$$\left(\begin{array}{c} \text{Undeducted} \\ \text{membership} \\ \text{costs} \end{array} + \frac{\text{Adjusted market} \\ \text{value}}{\text{Number of members}} \right) \times \frac{\text{Share or interest} \\ \text{disposed of}}{\text{Number of} \\ \text{disposer's shares}}$$

- (ii) any amount actually paid for the acquisition;

- (e) to have paid the amount referred to in subparagraph (d)(i) on the demutualisation resolution day;
 - (f) to have paid any amount referred to in subparagraph (d)(ii) when it was actually paid;
 - (g) to have acquired the share or interest on the demutualisation resolution day.

- (2) In the formula in subparagraph (1)(d)(i):

number of disposer's shares means the number of demutualisation shares issued to the disposer or in which the disposer had an interest.

number of members means the total number of members of the other mutual entity at the time of the disposal of the membership rights in that entity.

326-95 Disposal by post-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share

- (1) If:
-

- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
 - (b) the disposer is a post-CGT member;
- then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:
- (c) to have paid for the acquisition of the share or interest both of the following amounts:
 - (i) the amount worked out by using the formula:
$$\text{Undeducted membership costs} \times \frac{\text{Share or interest disposed of}}{\text{Number of disposer's shares}}$$
 - (ii) any amount actually paid for the acquisition;
 - (d) to have paid the amount referred to in subparagraph (c)(i) on the demutualisation resolution day;
 - (e) to have paid any amount referred to in subparagraph (c)(ii) when it was actually paid;
 - (f) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in subparagraph (1)(c)(i):

number of disposer's shares means the number of demutualisation shares issued to the disposer or in which the disposer had an interest.

326-100 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, before demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
 - (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or

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- (ii) a non-demutualisation bonus share or an interest in such a share; and
 - (b) the disposer did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
 - (c) the disposer is a pre-CGT member; and
 - (d) the disposal occurs before the demutualisation listing day;
- then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:
- (e) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be the amount worked out by using the formula:

$$\text{Adjusted market value} \times \frac{\text{Number of disposer's shares}}{\text{Total number of shares}}$$

- (f) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken:
 - (i) to have paid the amount referred to in paragraph (e) on the demutualisation resolution day; and
 - (ii) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in paragraph (1)(e):

number of disposer's shares means the number of demutualisation original shares issued to the disposer or in which the disposer had an interest.

total number of shares means the total number of demutualisation shares issued.

326-105 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, on or after demutualisation listing day where member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
 - (b) the disposer did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
 - (c) the disposer is a pre-CGT member; and
 - (d) the disposal occurs on or after the demutualisation listing day;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:

- (e) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be the lesser of the following amounts:

- (i) the amount worked out by using the formula:

$$\text{Adjusted market value} \times \frac{\text{Number of disposer's shares}}{\text{Total number of shares}}$$

- (ii) the amount worked out by using the formula:

$$\frac{\text{Adjusted first day trading price of the demutualisation shares}}{\text{shares}} \times \text{Number of disposer's shares}$$

- (f) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken:

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- (i) to have paid the amount referred to in paragraph (e) on the demutualisation resolution day; and
- (ii) to have acquired the share or interest on the demutualisation resolution day.

(2) In the formulas in subparagraphs 1(e)(i) and (ii):

number of disposer's shares means the number of demutualisation original shares issued to the disposer or in which the disposer had an interest.

total number of shares means the total number of demutualisation shares issued.

326-110 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, where member acquired membership rights by disposing of membership rights in another mutual entity

(1) If:

- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
- (b) the disposer acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
- (c) the disposer is a pre-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:

- (d) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be the sum of the following amounts:
 - (i) the amount worked out by using the formula:

$$\text{Undeducted membership costs} + \frac{\text{Adjusted market value}}{\text{Number of members}}$$

- (ii) any amount actually paid for the acquisition;
 - (e) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken:
 - (i) to have paid the amount referred to in subparagraph (d)(i) on the demutualisation resolution day; and
 - (ii) to have paid any amount referred to in subparagraph (d)(ii) when it was actually paid; and
 - (iii) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in subparagraph (1)(d)(i):

number of members means the total number of members of the other entity at the time of the disposal of the membership rights in that entity.

326-115 Disposal by post-CGT member of a demutualisation original share or a non-demutualisation bonus share or an interest in such a share

If:

- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
- (b) the disposer is a post-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:

- (c) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be the sum of:

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- (i) an amount equal to the undeducted membership costs; and
- (ii) any amount actually paid for the acquisition;
- (d) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken:
 - (i) to have paid the amount referred to in subparagraph (c)(i) on the demutualisation resolution day; and
 - (ii) to have paid any amount referred to in subparagraph (c)(ii) when it was actually paid; and
 - (iii) to have acquired the share or interest on the demutualisation resolution day.

326-120 Adjusted market value

Where membership rights not acquired by disposal of rights in another entity

- (1) For the purposes of this Subdivision, the **adjusted market value**, when the expression is used in relation to a disposer who did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity, is the market value, as determined by a qualified valuer, of the demutualising entity on the demutualisation resolution day. However, in making the determination the valuer is to disregard the franking surplus of that entity on that day.

Where membership rights acquired by disposal of rights in another entity

- (2) For the purposes of this Subdivision but subject to subsection (3), the **adjusted market value**, when the expression is used in relation to a disposer who acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity, is the market value, as determined by a qualified valuer, of the other entity at the time immediately before the disposer disposed of membership rights in the other entity. However, in making the determination the valuer is to disregard the franking surplus of the other entity at that time.

Indexation of amount mentioned in subsection (2)

- (3) If the indexation factor (see section 326-235) of the amount worked out under subsection (2) is more than one, that amount is taken to be replaced by that amount as indexed under Subdivision 326-M.

326-125 Undeducted membership costs

- (1) For the purposes of this Subdivision, the ***undeducted membership costs***, when the expression is used in relation to a disposer who did not acquire membership rights in the demutualising entity by the disposal of membership rights in another mutual entity, are the sum of the undeducted amounts of the costs that were incurred by the disposer in acquiring and maintaining membership in the demutualising entity less any distributions that:
- (a) were made by the demutualising entity to the disposer before any shares in the demutualised entity were issued; and
 - (b) were not included in the disposer's assessable income of any year of income.
- (2) For the purposes of this Subdivision, the ***undeducted membership costs***, when the expression is used in relation to a disposer who acquired membership rights in the demutualising entity by the disposal of membership rights in another mutual entity, are:
- (a) if the disposer was a pre-CGT member—the sum of the undeducted amounts of the costs that were incurred by the disposer in maintaining membership in the demutualising entity less any distributions that:
 - (i) were made by the demutualising entity to the disposer before any shares in the demutualised entity were issued; and
 - (ii) were not included in the disposer's assessable income of any year of income; or
 - (b) if the disposer is a post-CGT member, the sum of:
 - (i) the undeducted amounts of the costs that were incurred by the disposer in acquiring and maintaining membership in the other entity; and
 - (ii) the undeducted amounts of the costs that were incurred by the disposer in maintaining membership in the demutualising entity;

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less any distributions that:

- (iii) were made by the demutualising entity or the other entity to the disposer before any shares in the demutualised entity were issued; and
 - (iv) were not included in the disposer's assessable income of any year of income.
- (3) If at any time 2 or more persons were joint members of a mutual entity, any costs incurred by any one or more of them in acquiring or maintaining the joint membership are taken to have been incurred by each of them.
- (4) Subject to subsection (5), the *undeducted amount of a cost* is the amount of the cost to the extent to which a deduction has not been allowed, and is not allowable, in respect of it.
- (5) If:
- (a) an amount of a cost referred to in subsection (1) or (2) was incurred before the demutualisation resolution day; and
 - (b) the indexation factor (see section 326-235) of the amount is more than one;
- a reference in this section to the undeducted amount of that cost is a reference to the undeducted amount as indexed under Subdivision 326-M.

326-130 Adjusted first day trading price of demutualisation shares

- (1) For the purposes of this Subdivision, the *adjusted first day trading price* of demutualisation shares is the amount worked out using the formula:

$$\text{First day trading price of demutualisation shares} = \frac{\text{Value of franking surplus}}{\text{Total number of demutualisation shares issued}}$$

- (2) In this section:

first day trading price of demutualisation shares means the price per share, as published by ASX Limited, at which the demutualisation shares were last traded, on the stock market operated by ASX Limited, on the demutualisation listing day.

value of franking surplus means the value, as determined by a qualified valuer, of the franking surplus of the demutualised entity on the demutualisation listing day.

Subdivision 326-E—CGT consequences of disposal of demutualisation shares or interests in such shares by a member of a mutual entity where the entity or a holding company of the entity becomes a company that is not a listed public company

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326-135 Application of Subdivision

- (1) This Subdivision applies where a member (the *disposer*) of a mutual entity which, or a holding company of which, becomes a company that is not a listed public company disposes of an asset consisting of:
 - (a) a demutualisation share in that company that is not a listed public company or an interest in such a share; or

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- (b) other shares (*non-demutualisation bonus shares*) in the same company, or an interest in such shares, where the shares are bonus equities mentioned in Subdivision 130-A of the *Income Tax Assessment Act 1997* and any of the demutualisation shares (whether or not disposed of at the time) are the original equities mentioned in that Subdivision.
- (2) For the purposes of this Subdivision, if any of the original equities mentioned in Subdivision 130-A of the *Income Tax Assessment Act 1997*, is a demutualisation share, it is called a *demutualisation original share*.

326-140 Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share where a member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
 - (b) the disposer did not acquire membership rights in the demutualisation entity by disposing of membership rights in another mutual entity; and
 - (c) the disposer is a pre-CGT member;
- then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:
- (d) to have paid for the acquisition of the share or interest the amount worked out by using the formula:
$$\text{Adjusted market value} \times \frac{\text{Share or interest disposed of}}{\text{Total number of shares}}$$
 - (e) to have paid that amount on the demutualisation resolution day;
 - (f) to have acquired the share or interest on the demutualisation resolution day.
- (2) In the formula in paragraph (1)(d):

total number of shares means the total number of demutualisation shares issued.

326-145 Disposal by pre-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share where member acquired membership rights by disposing of membership rights in another mutual entity

(1) If:

- (a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and
- (b) the disposer acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
- (c) the disposer is a pre-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:

- (d) to have paid for the acquisition of the share or interest both of the following amounts:
 - (i) the amount worked out by using the formula:
$$\left(\begin{array}{c} \text{Undeducted} \\ \text{membership} \\ \text{costs} \end{array} + \frac{\text{Adjusted} \\ \text{market value}}{\text{Number of} \\ \text{members}} \right) \times \frac{\text{Share or interest} \\ \text{disposed of}}{\text{Number of} \\ \text{disposer's shares}}$$
 - (ii) any amount actually paid for the acquisition;
- (e) to have paid the amount referred to in subparagraph (d)(i) on the demutualisation resolution day;
- (f) to have paid any amount referred to in subparagraph (d)(ii) when it was actually paid;
- (g) to have acquired the share or interest on the demutualisation resolution day.

(2) In the formula in subparagraph (1)(d)(i):

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number of disposer's shares means the number of demutualisation shares issued to the disposer or in which the disposer had an interest.

number of members means the total number of members of the other mutual entity at the time of the disposal of the membership rights in that entity.

326-150 Disposal by post-CGT member of a demutualisation share (other than a demutualisation original share) or an interest in such a share

(1) If:

(a) the disposal is a disposal of a demutualisation share (other than a demutualisation original share) or an interest in such a share; and

(b) the disposer is a post-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the disposer is taken to have done the following:

(c) to have paid for the acquisition of the share or interest both of the following amounts:

(i) the amount worked out by using the formula:

$$\text{Undeducted membership costs} \times \frac{\text{Share or interest disposed of}}{\text{Number of disposer's shares}}$$

(ii) any amount actually paid for the acquisition;

(d) to have paid the amount referred to in subparagraph (c)(i) on the demutualisation resolution day;

(e) to have paid any amount referred to in subparagraph (c)(ii) when it was actually paid;

(f) to have acquired the share or interest on the demutualisation resolution day.

(2) In the formula in subparagraph (1)(c)(i):

number of disposer's shares means the number of demutualisation shares issued to the disposer or in which the disposer had an interest.

326-155 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, where member did not acquire membership rights by disposing of membership rights in another mutual entity

- (1) If:
- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
 - (b) the disposer did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
 - (c) the disposer is a pre-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs apply:

- (d) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be the amount worked out by using the formula:

$$\text{Adjusted market value} \times \frac{\text{Number of disposer's shares}}{\text{Total number of shares}}$$

- (e) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken:
 - (i) to have paid the amount referred to in paragraph (d) on the demutualisation resolution day; and
 - (ii) to have acquired the share or interest on the demutualisation resolution day.

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(2) In the formula in paragraph (1)(d):

number of disposer's shares means the number of demutualisation original shares issued to the disposer or in which the disposer had an interest.

total number of shares means the total number of demutualisation shares issued.

326-160 Disposal by pre-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share, where member acquired membership rights by disposing of membership rights in another mutual entity

(1) If:

- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
- (b) the disposer acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity; and
- (c) the disposer is a pre-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:

- (d) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be both of the following amounts:
 - (i) the amount worked out by using the formula:
$$\text{Undeducted membership costs} + \frac{\text{Adjusted market value}}{\text{Number of members}}$$
 - (ii) any amount actually paid for the acquisition; and
- (e) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken to have done the following:

- (i) to have paid the amount referred to in subparagraph (d)(i) on the demutualisation resolution day;
- (ii) to have paid any amount referred to in subparagraph (d)(ii) when it was actually paid;
- (iii) to have acquired the share or interest on the demutualisation resolution day.

(2) In the formula in subparagraph (1)(d)(i):

number of members means the total number of members of the other mutual entity at the time of the disposal of the membership rights in that entity.

326-165 Disposal by post-CGT member of a demutualisation original share or a non-demutualisation bonus share, or an interest in such a share

If:

- (a) the disposal is a disposal of either:
 - (i) a demutualisation original share or an interest in such a share; or
 - (ii) a non-demutualisation bonus share or an interest in such a share; and
- (b) the disposer is a post-CGT member;

then, for the purpose of working out whether the disposer made a capital gain or capital loss from the disposal, the following paragraphs have effect:

- (c) for the purpose of applying Subdivision 130-A of the *Income Tax Assessment Act 1997*, the amount paid for the acquisition of all the demutualisation original shares that is to be taken into account under that Division or Subdivision, as the case may be, is taken to be both of the following amounts:
 - (i) an amount equal to the undeducted membership costs;
 - (ii) any amount actually paid for the acquisition;
- (d) if the disposal is a disposal of a demutualisation original share or an interest in such a share, the disposer is taken to have done the following:

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- (i) to have paid the amount referred to in subparagraph (c)(i) on the demutualisation resolution day;
- (ii) to have paid any amount referred to in subparagraph (c)(ii) when it was actually paid;
- (iii) to have acquired the share or interest on the demutualisation resolution day.

326-170 Various adjusted market values

Application

- (1) This section has effect for the purposes of this Subdivision.

Where membership rights not acquired by disposal of rights in another entity

- (2) The **adjusted market value**, when the expression is used in relation to a disposer who did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity, is the lesser of the issue day adjusted market value and the resolution day adjusted market value.

Where membership rights acquired by disposal of rights in another entity

- (3) The **adjusted market value**, when the expression is used in relation to a disposer who acquired membership rights in the demutualising entity by disposing of membership rights in another mutual entity, is the disposal day adjusted market value.

Issue day adjusted market value

- (4) The **issue day adjusted market value** is the market value, as determined by a qualified valuer, of the demutualised entity on the day on which the demutualisation shares were issued. However, in making the determination the valuer is to disregard the franking surplus of the demutualised entity on that day.

Resolution day adjusted market value

- (5) The **resolution day adjusted market value** is the market value, as determined by a qualified valuer, of the demutualising entity on the

demutualisation resolution day. However, in making the determination the valuer is to disregard the franking surplus of the demutualising entity on that day.

Disposal day adjusted market value

- (6) Subject to subsection (7), the ***disposal day adjusted market value*** is the market value, as determined by a qualified valuer, of the other entity at the time immediately before the disposer disposed of membership rights in the other entity. However, in making the determination the valuer is to disregard the franking surplus of the other entity at that time.

Indexation of amount mentioned in subsection (6)

- (7) If the indexation factor (see section 326-235) of the amount worked out under subsection (6) is more than one, that amount is taken to be replaced by that amount as indexed under Subdivision 326-M.

326-175 Undeducted membership costs

- (1) For the purposes of this Subdivision, the ***undeducted membership costs***, when the expression is used in relation to a disposer who did not acquire membership rights in the demutualising entity by the disposal of membership rights in another mutual entity, are the sum of the undeducted amounts of the costs that were incurred by the disposer in acquiring and maintaining membership in the demutualising entity less any distributions that:
- (a) were made by the demutualising entity to the disposer before any shares in the demutualised entity were issued; and
 - (b) were not included in the disposer's assessable income of any year of income.
- (2) For the purposes of this Subdivision, the ***undeducted membership costs***, when the expression is used in relation to a disposer who acquired membership rights in the demutualising entity by the disposal of membership rights in another mutual entity, are the sum of:
- (a) if the disposer was a pre-CGT member—the undeducted amounts of the costs that were incurred by the disposer in

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maintaining membership in the demutualising entity less any distributions that:

- (i) were made by the demutualising entity to the disposer before any shares in the demutualised entity were issued; and
 - (ii) were not included in the disposer's assessable income of any year of income; or
- (b) if the disposer is a post-CGT member, the sum of:
- (i) the undeducted amounts of the costs that were incurred by the disposer in acquiring and maintaining membership in the other entity; and
 - (ii) the undeducted amounts of the costs that were incurred by the disposer in maintaining membership in the demutualising entity;
- less any distributions that:
- (iii) were made by the demutualising entity or the other entity to the disposer before any shares in the demutualised entity were issued; and
 - (iv) were not included in the disposer's assessable income of any year of income.

(3) If at any time 2 or more persons were joint members of a mutual entity, any costs incurred by any one or more of them in acquiring or maintaining the joint membership are taken to have been incurred by each of them.

(4) Subject to subsection (5), the **undeducted amount of a cost** is the amount of the cost to the extent to which a deduction has not been allowed, and is not allowable, in respect of it.

(5) If:

- (a) an amount of a cost referred to in subsection (1) or (2) was incurred before the demutualisation resolution day; and
- (b) the indexation factor (see section 326-235) of the amount is more than one;

a reference in this section to the undeducted amount of that cost is a reference to the undeducted amount as indexed under Subdivision 326-M.

Subdivision 326-F—Variation of amount taken to be paid for shares or an interest in shares by a member of a mutual entity who made a capital gain or capital loss from disposal of membership rights in another mutual entity

Table of sections

326-180 Amount taken to be paid for acquisition of shares or interest by member to be increased by capital gain or reduced by capital loss

326-180 Amount taken to be paid for acquisition of shares or interest by member to be increased by capital gain or reduced by capital loss

- (1) This section applies if:
 - (a) a post-CGT member of a mutual entity that has been demutualised acquired membership rights in the entity by the disposal of membership rights in another mutual entity; and
 - (b) the member made a capital gain or capital loss from the disposal of membership rights in the other mutual entity; and
 - (c) the member has acquired shares or an interest in shares in the demutualised entity or in a company that holds shares in the demutualised entity.
- (2) If the member disposes of a demutualisation original share or a non-demutualisation bonus share, the amount paid for the acquisition of all the demutualisation original shares is taken to be increased by the amount of the capital gain or reduced by the amount of the capital loss, as the case may be.
- (3) If subsection (2) does not apply, the amount that is taken, under Subdivision 326-D or 326-E, to have been paid by the member for the acquisition of the share or interest is taken to be increased by the proportionate part of the amount of the capital gain or reduced by the proportionate part of the amount of the capital loss, as the case may be.

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Subdivision 326-G—CGT consequences of disposal of rights or interests resulting from extinguishment of membership rights

Table of sections

326-185	Disposal of right to receive shares in demutualised entity
326-190	Extinguishment of right to shares in demutualised entity by the issue of the shares
326-195	Disposal of right to receive shares in holding company
326-200	Disposal of interest in trust that holds shares in demutualised entity

326-185 Disposal of right to receive shares in demutualised entity

- (1) This section applies if:
 - (a) under the direct method of demutualisation, or the combined direct and holding company method of demutualisation, of a mutual entity, the membership rights of an existing member of the entity are extinguished; and
 - (b) as a result of the extinguishment of the rights, the member acquires a right or an interest in a right to have shares in the demutualised entity issued to the member; and
 - (c) the member disposes of the whole or a part of the right or interest otherwise than by receiving the shares.
- (2) For the purpose of working out whether the member made a capital gain or capital loss from the disposal, the member is taken to have done the following:
 - (a) to have paid for the acquisition of the right or interest in the right the amount worked out by using the formula:
$$\text{Cost of a share or interest} \times \text{Number of shares}$$
 - (b) to have paid that amount, and to have acquired the right or interest, on the demutualisation resolution day.
- (3) In the formula in paragraph (2)(a):

cost of a share or interest means the amount that would have been taken to have been paid by the member for the acquisition of a share or an interest in a share in the demutualised entity under Subdivisions 326-D, 326-E and 326-F if the disposal had been the

disposal of the shares to which the right or interest in the right related.

number of shares means the number of shares to which the right or interest in the right related.

- (4) If the member is a pre-CGT member who did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity, any capital loss made from the disposal before the demutualisation listing day, or, if there is no such day, before the day on which the shares in the demutualised entity were issued, is to be disregarded.

326-190 Extinguishment of right to shares in demutualised entity by the issue of the shares

- (1) If, under the direct method of demutualisation or the holding company method of demutualisation, shares in a demutualised entity are issued to an existing member, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply in respect of any CGT event constituted by the extinguishment of the member's right to have the shares issued to the member.
- (2) If, under the combined direct and holding company method of demutualisation, shares in a demutualised entity or in a holding company are issued to an existing member, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply in respect of any CGT event constituted by the extinguishment of the member's rights to have the shares issued to the member.

326-195 Disposal of right to receive shares in holding company

- (1) This section applies if:
- (a) under the holding company method of demutualisation, or the combined direct and holding company method of demutualisation, of a mutual entity:
- (i) the membership rights of an existing member of the entity are extinguished; and
- (ii) shares in the demutualised entity are issued to a company (the **holding company**); and

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Section 326-200

- (b) as a result of the extinguishment of the rights, the member acquires a right or an interest in a right to have shares in the holding company issued to the member; and
 - (c) the member disposes of the whole or a part of the right or interest otherwise than by receiving the shares.
- (2) For the purpose of working out whether the member made a capital gain or capital loss from the disposal, the member is taken to have done the following:
- (a) to have paid for the acquisition of the right or interest in the right the amount worked out by using the formula:
$$\text{Cost of a share or interest} \times \text{Number of shares}$$
 - (b) to have paid that amount, and to have acquired the right or interest, on the demutualisation resolution day.
- (3) In the formula in paragraph (2)(a):
- cost of a share or interest* means the amount that would have been taken to have been paid by the member for the acquisition of a share or an interest in a share in the holding company under Subdivisions 326-D, 326-E and 326-F if the disposal had been the disposal of the shares in the holding company to which the right or interest in the right related.
- number of shares* means the number of shares in the holding company to which the right or interest in the right related.
- (4) If the member is a pre-CGT member who did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity, any capital loss made from the disposal before the demutualisation listing day, or, if there is no such day, before the day on which the shares in the holding company were issued, is to be disregarded.

326-200 Disposal of interest in trust that holds shares in demutualised entity

- (1) This section applies if:
- (a) under the distributing trust method of demutualisation of a mutual entity:
 - (i) the membership rights of an existing member of the entity are extinguished; and
-

- (ii) shares in the demutualised entity are issued to a trustee;
and
 - (b) as a result of the extinguishment of the rights, the member acquires an interest in the trust constituted by the right to have shares in the demutualised entity held by the trustee transferred by the trustee to the member or disposed of by the trustee on behalf of the member; and
 - (c) the member disposes of the whole or a part of the interest otherwise than by receiving the shares or proceeds of the sale of the shares.
- (2) For the purpose of working out whether the member made a capital gain or capital loss from the disposal, the member is taken to have done the following:
- (a) to have paid for the acquisition of the interest in the trust the amount worked out by using the formula:
$$\text{Cost of a share} \times \text{Number of shares}$$
 - (b) to have paid that amount, and to have acquired the interest, on the demutualisation resolution day.
- (3) In the formula in paragraph (2)(a):
- cost of a share** means the amount that would have been taken to have been paid by the member for the acquisition of a share in the demutualised entity under Subdivisions 326-D, 326-E and 326-F if the disposal had been the disposal of the shares to which the interest or the part of the interest in the trust related.
- number of shares** means the number of shares in the demutualised entity to which the interest in the trust related.
- (4) If the member is a pre-CGT member who did not acquire membership rights in the demutualising entity by disposing of membership rights in another mutual entity, any capital loss made from the disposal before the demutualisation listing day, or, if there is no such day, before the day on which the shares in the demutualised entity were issued, is to be disregarded.

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Subdivision 326-H—CGT consequences of transfer of ordinary shares

Table of sections

326-205 Transfer of share or distribution of proceeds of sale of share not to have any CGT consequences

326-205 Transfer of share or distribution of proceeds of sale of share not to have any CGT consequences

If a trustee transfers an ordinary share or distributes the proceeds of the sale of an ordinary share as mentioned in subparagraph 326-55(1)(h)(ii), Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply in respect of any CGT event constituted by or arising from the transfer or distribution.

Subdivision 326-I—CGT consequences of disposal of demutualisation shares or an interest in such shares by a trustee on behalf of a member

Table of sections

326-210 Disposal by a trustee

326-210 Disposal by a trustee

If:

- (a) under the distributing trust method of demutualisation, shares in a demutualised entity are issued to a trustee on behalf of a member; and
- (b) the trustee disposes of a share or an interest in a share, or disposes of a non-demutualisation bonus share or an interest in such a share, on behalf of the member;

the disposal is taken for the purposes of Subdivisions 326-D, 326-E and 326-F to have been a disposal of the share or interest by the member.

**Subdivision 326-J—CGT consequences of change in rights
attaching to special shares or replacement of special
shares by ordinary shares**

Table of sections

326-215 Change of rights to, and replacement of, special shares

326-215 Change of rights to, and replacement of, special shares

- (1) This Subdivision applies where, under the distributing trust method of demutualisation of a mutual entity, the rights attaching to special shares issued to a trustee on behalf of a member become the same as the rights attaching to ordinary shares.
- (2) Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply in respect of the change in rights.

**Subdivision 326-K—CGT consequences of disposal of shares or
an interest in shares acquired under a roll-over
provision**

Table of sections

326-220 Disposal of shares or interest in shares

326-220 Disposal of shares or interest in shares

- (1) This section applies where:
 - (a) under any method of demutualisation, a mutual entity, or a holding company of a mutual entity, becomes a listed public company; and
 - (b) a disposal of a share, or of an interest in a share, in the entity or holding company takes place before the demutualisation listing day; and
 - (c) a roll-over provision applies to the disposal; and
 - (d) the person who disposed of the share or interest would, except for section 326-75 and paragraph (c) of this subsection, have made a capital loss as a result of the disposal; and

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Division 326 Demutualisation

Section 326-220

- (e) the person who is taken to acquire the share or interest under the roll-over provision (the *transferee*) disposes of the share or interest.
- (2) If the disposal by the transferee takes place before the demutualisation listing day, any capital loss that the transferee makes from that disposal is disregarded.
- (3) If the disposal by the transferee takes place on or after the demutualisation listing day, Subdivision 326-D applies to the disposal referred to in paragraph (1)(b) as if that disposal had taken place on or after that day.
- (4) In this section:

disposal includes a disposal that would have occurred except for former section 160X.

roll-over provision means:

- (a) former section 160X; or
- (b) any provision of Division 17 of Part III; or
- (c) Division 128 of the *Income Tax Assessment Act 1997*; or
- (d) any provision of Divisions 122 and 126 of Part 3-3 of the *Income Tax Assessment Act 1997*.

Subdivision 326-L—CGT consequences of payment to member of demutualised entity out of accumulated surplus of the entity

Table of sections

- 326-225 Payment out of assets of demutualised entity that is not included in assessable income is taken not to be a dividend

326-225 Payment out of assets of demutualised entity that is not included in assessable income is taken not to be a dividend

If:

- (a) a payment out of the assets of a demutualised entity is made to a taxpayer who holds shares or an interest in shares in the entity; and
- (b) the amount paid is a dividend that is not included in the taxpayer's assessable income;

the payment is taken, for the purposes of section 104-135 of the *Income Tax Assessment Act 1997*, not to be the payment of a dividend.

Subdivision 326-M—Indexation

Table of sections

326-230	Indexing of amounts
326-235	Indexation factor
326-240	Index number

326-230 Indexing of amounts

Some provisions of this Division require amounts to be indexed. An amount is indexed by multiplying it by its indexation factor.

326-235 Indexation factor

- (1) For the indexation of the amount worked out under subsection 326-120(2) or 326-170(6) in relation to a person who acquired membership rights in a demutualising entity by the disposal of membership rights in another mutual entity, the *indexation factor* is:

Index number for the quarter in which the relevant demutualisation resolution day occurred

Index number for the quarter in which the membership rights in the other mutual entity were disposed of

- (2) For the indexation of an undeducted amount referred to in subsections 326-125(1) and (2) or 326-175(1) and (2) of a cost

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Division 326 Demutualisation

Section 326-240

incurred by a person in acquiring or maintaining membership in a demutualising entity or another entity, the *indexation factor* is:

$$\frac{\text{Index number for the quarter in which the relevant demutualisation resolution day occurred}}{\text{Index number for the quarter in which the cost was incurred}}$$

- (3) An indexation factor is to be worked out to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

326-240 Index number

- (1) The *index number* for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.
- (2) If the Australian Statistician changes the reference base for an index number, only index numbers published in terms of the new base are to be used after the change.

Subdivision 326-N—Non-CGT consequences of issue of demutualisation shares

Table of sections

326-245 General taxation consequences of issue of demutualisation shares

326-245 General taxation consequences of issue of demutualisation shares

If any demutualisation shares are issued to a taxpayer under any method of demutualisation, no amount is to be included in the taxpayer's assessable income because of the issue of the shares to the taxpayer.

Schedule 2J—General insurance

Division 321—General insurance companies

Table of Subdivisions

	Guide to Division 321
321-A	Provision for or payment of claims
321-B	Premium income

Guide to Division 321

321-1 What this Division is about

This Division deals with several disparate matters relating to the taxation of general insurance companies.

Subdivision 321-A—Provision for or payment of claims

Guide to Subdivision 321-A

321-5 What this Subdivision is about

This Subdivision contains provisions relating to the assessment of general insurance companies in respect of provision for or payment of claims.

Table of sections

Operative provisions

321-10	Amount to be included in assessable income for outstanding claims liability
321-15	Deduction for outstanding claims liability
321-20	How value of outstanding claims liability is worked out
321-25	Deduction for claims paid during year of income
321-30	Application: insurance business other than reinsurance business
321-35	Application: reinsurance business

Operative provisions

321-10 Amount to be included in assessable income for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability of a general insurance company under general insurance policies is less than the value, at the end of the previous year of income, of that liability, the company's assessable income of the current year of income includes an amount equal to the difference.

321-15 Deduction for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability of a general insurance company under general insurance policies exceeds the value, at the end of the previous year of income, of that liability, the company can deduct for the current year of income an amount equal to the excess.

321-20 How value of outstanding claims liability is worked out

The *value of the outstanding claims liability*, at the end of a year of income, of a general insurance company under general insurance policies issued in the course of carrying on insurance business is:

- (a) the sum of the amounts that, at that time, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:
 - (i) liabilities for outstanding claims under those policies; and
 - (ii) direct settlement costs associated with those outstanding claims;

less

- (b) any part of that sum that at that time the company expects to recover under a policy of reinsurance or in any other way.

321-25 Deduction for claims paid during year of income

A general insurance company can deduct amounts paid during the year of income in respect of claims under general insurance policies.

321-30 Application: insurance business other than reinsurance business

- (1) Subject to this section, this Subdivision applies, and is taken to have applied, to assessments in respect of insurance business other than reinsurance business, for the 1991-92 year of income and all later years of income.
- (2) In determining whether an amount is to be included under section 321-10 in a general insurance company's assessable income for the 1991-92 year of income in respect of insurance business other than reinsurance business, the value of the company's outstanding claims liability under general insurance policies (other than policies of reinsurance) at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.
- (3) In determining whether a general insurance company can deduct an amount under section 321-15 for the 1991-92 year of income in respect of insurance business other than reinsurance business, the value of the company's outstanding claims liability under general insurance policies (other than policies of reinsurance) at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

321-35 Application: reinsurance business

- (1) Subject to this section, this Subdivision applies, and is taken to have applied, to assessments in respect of reinsurance business for the 1995-96 year of income and all later years of income.
- (2) In determining whether an amount is to be included under section 321-10 in a general insurance company's assessable income for the 1995-96 year of income in respect of reinsurance business, the value of the company's outstanding claims liability

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Division 321 General insurance companies

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under general insurance policies that are policies of reinsurance at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

- (3) In determining whether a general insurance company can deduct an amount under section 321-15 for the 1995-96 year of income, the value of the company's outstanding claims liability under general insurance policies that are policies of reinsurance at the end of the previous year of income is taken to be the amount that would have been the value of that liability at that time if it had been worked out in accordance with section 321-20.

Subdivision 321-B—Premium income

Guide to Subdivision 321-B

321-40 What this Subdivision is about

This Subdivision contains provisions relating to the assessment of general insurance companies in respect of premium income.
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Table of sections

Operative provisions

321-45	Assessable income to include gross premiums
321-50	Amount to be included in assessable income for reduction in value of unearned premium reserve
321-55	Deduction for increase in value of unearned premium reserve
321-60	How value of unearned premium reserve is worked out
321-65	Application

Operative provisions**321-45 Assessable income to include gross premiums**

The assessable income of a general insurance company for a year of income includes the gross premiums received or receivable by the company during the year of income in respect of general insurance policies.

321-50 Amount to be included in assessable income for reduction in value of unearned premium reserve

If the value, at the end of a year of income (the *current year of income*), of the unearned premium reserve of a general insurance company under general insurance policies is less than the value, at the end of the previous year of income, of that reserve, the company's assessable income of the current year of income includes an amount equal to the difference.

321-55 Deduction for increase in value of unearned premium reserve

If the value, at the end of a year of income (the *current year of income*), of the unearned premium reserve of a general insurance company under general insurance policies exceeds the value, at the end of the previous year of income, of that reserve, the company can deduct for the current year of income an amount equal to the excess.

321-60 How value of unearned premium reserve is worked out

The *value of the unearned premium reserve*, at the end of a year of income (the *current year of income*), of a general insurance company under general insurance policies issued in the course of carrying on insurance business is so much of the sum of the net premiums received or receivable by the company in relation to those policies as the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later years of income where:

apportionable issue costs means so much of the costs incurred by the company in connection with the issue of the relevant policies as

relate to the gross premiums and, without limiting the generality of the above, includes the following:

- (a) commission and brokerage fees;
- (b) administration costs of processing insurance proposals and renewals;
- (c) administration costs of collecting premiums;
- (d) selling and underwriting costs;
- (e) fire brigade charges;
- (f) stamp duty;
- (g) other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.

net premiums means:

- (a) the sum of:
 - (i) the gross premiums received or receivable by the company in relation to the relevant policies in the current year of income or an earlier year of income; and
 - (ii) any reinsurance commissions received or receivable by the company that relate to relevant reinsurance premiums;

less

- (b) the sum of:
 - (i) the apportionable issue costs; and
 - (ii) any relevant reinsurance premiums.

relevant reinsurance premiums means premiums paid by the company in the current year of income or an earlier year of income for the reinsurance of risks covered by the relevant policies, other than:

- (a) reinsurance premiums that the company cannot deduct because of the application of subsection 148(1); and
- (b) treaty non-proportional reinsurance premiums.

treaty non-proportional reinsurance premiums means reinsurance premiums that were paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of a loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.

321-65 Application

This Subdivision applies to assessments for the 1999-2000 year of income and all subsequent years of income.

Division 323 Companies that are not required by law to insure in respect of workers' compensation liabilities

Section 323-1

Division 323—Companies that are not required by law to insure in respect of workers' compensation liabilities

Guide to Division 323

323-1 What this Division is about

This Division deals with provision for and payment of outstanding claims for workers' compensation liabilities against companies that are not required by law to insure, and do not insure, in respect of such liabilities.

Table of sections

Operative provisions

323-5	Amount to be included in assessable income for outstanding claims liability
323-10	Deduction for outstanding claims liability
323-15	How value of outstanding claims liability is worked out
323-20	Deductions for claims paid during year of income
323-25	Application

Operative provisions

323-5 Amount to be included in assessable income for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability for workers' compensation claims of a company that is not required by law to insure, and does not insure, against liability for such claims is less than the value, at the end of the previous year of income, of that liability, the company's assessable income of the current year of income includes an amount equal to the difference.

Companies that are not required by law to insure in respect of workers' compensation liabilities **Division 323**

Section 323-10

323-10 Deduction for outstanding claims liability

If the value, at the end of a year of income (the *current year of income*), of the outstanding claims liability for workers' compensation claims of a company that is not required by law to insure, and does not insure, against liability for such claims exceeds the value, at the end of the previous year of income, of that liability, the company can deduct for the current year of income an amount equal to the excess.

323-15 How value of outstanding claims liability is worked out

The *value of the outstanding claims liability*, at the end of a year of income, of a company for workers' compensation claims is the sum of the amounts that, at that time, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- (a) liabilities for those claims; and
- (b) direct settlement costs associated with those claims.

323-20 Deductions for claims paid during year of income

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct amounts paid during the year of income in respect of such claims.

323-25 Application

This Division applies, and is taken to have applied, to assessments for the 1996-97 year of income and all later years of income.

Schedule 3—Approved stock exchanges for the purposes of Part XI

Section 470

Argentina

- Buenos Aires stock exchange
- Cordoba stock exchange
- La Plata stock exchange
- Medoza stock exchange
- Rusario stock exchange

Australia

- The stock market operated by ASX Limited

Austria

- Vienna stock exchange

Belgium

- Antwerp stock exchange
- Brussels stock exchange
- Liege stock exchange

Brazil

- Belo Horizonte stock exchange
- Curtiba stock exchange
- Fortalezo stock exchange
- Porto Alegro stock exchange
- Recife stock exchange
- Rio de Janeiro stock exchange
- Salvador stock exchange
- Santos stock exchange
- Sao Paulo stock exchange

Canada

- Calgary stock exchange
- Montreal stock exchange
- Toronto stock exchange
- Vancouver stock exchange
- Winnipeg stock exchange

Chile

Santiago stock exchange
Valparaiso stock exchange

China

Shanghai stock exchange
Shenzen stock exchange

Denmark

Copenhagen stock exchange

Finland

Helsinki stock exchange

France

Bordeaux stock exchange
Lille stock exchange
Lyons stock exchange
Marseilles stock exchange
Paris stock exchange

Germany

Berlin stock exchange
Dusseldorf stock exchange
Frankfurt stock exchange
Hamburg stock exchange
Hanover stock exchange
Munich stock exchange
Stuttgart stock exchange

Greece

Athens stock exchange

Hong Kong

Hong Kong stock exchange

Hungary

Budapest stock exchange

India

Bombay stock exchange
Calcutta stock exchange
Delhi stock exchange
Madras stock exchange

Indonesia

Jakarta stock exchange
Surabaya stock exchange

Ireland

Dublin stock exchange

Israel

Tel Aviv stock exchange

Italy

Bologna stock exchange

Florence stock exchange

Genoa stock exchange

Milan stock exchange

Naples stock exchange

Palermo stock exchange

Rome stock exchange

Trieste stock exchange

Turin stock exchange

Venice stock exchange

Jamaica

Jamaica stock exchange

Japan

Hiroshima stock exchange

Kyoto stock exchange

Nagoya stock exchange

Niigata stock exchange

Osaka stock exchange

Pukvoka stock exchange

Sapparo stock exchange

Tokyo stock exchange

Korea, Republic of

Seoul stock exchange

Luxembourg

Luxembourg stock exchange

Malaysia

Kuala Lumpur stock exchange

Mexico

Mexican stock exchange

Netherlands

Amsterdam stock exchange

New Zealand

New Zealand stock exchange

Nigeria

Nigerian stock exchange

Norway

Oslo stock exchange

Pakistan

Karachi stock exchange

Philippines

Makati stock exchange

Manila stock exchange

Portugal

Lisbon stock exchange

Oporto stock exchange

Singapore

Singapore stock exchange

Slovenia

Ljubljana stock exchange

South Africa

Johannesburg stock exchange

Spain

Barcelona stock exchange

Bilbao stock exchange

Madrid stock exchange

Valencia stock exchange

Sweden

Stockholm stock exchange

Switzerland

Basle stock exchange

Geneva stock exchange

Zurich stock exchange

Taiwan

Taiwan stock exchange

Thailand

Thailand stock exchange

Trinidad and Tobago

Trinidad and Tobago stock exchange

Turkey

Istanbul stock exchange

United Kingdom

London stock exchange

United States

American stock exchange
Boston stock exchange
Cincinnati stock exchange
Midwest stock exchange
NASDAQ stock exchange
New York stock exchange
Pacific stock exchange
Philadelphia stock exchange

Uruguay

Montevideo stock exchange

Venezuela

Caracas stock exchange
Maracaibo stock exchange

Yugoslavia

Belgrade stock exchange

Schedule 4—Business activities that are not eligible activities for the purposes of Division 3 of Part XI

Section 496

- (a) Banking* and the provision of finance.
- (b) Financial intermediation services.
- (c) Investment in tainted assets, or tainted commodity investments, within the meaning of section 317.*
- (d) Life insurance business.*
- (e) General insurance business.*
- (g) Activities in connection with real property, other than in connection with construction.*

*Note: subsection 496(2) provides to the effect that the references in this Schedule to banking, investment, life insurance business, general insurance business, and certain activities in connection with real property, as being activities that are not eligible activities do not affect the exemptions provided for by Divisions 4, 5, 6 and 7 of Part XI.

Schedule 5—Approved international sectoral classification systems for purposes of Part XI

Section 499

Bloomberg's Information Systems
Financial Times—Actuaries World Index
Morgan Stanley Capital International Index
Salomon—Russell Global Equity Index
Standard and Poor's Composite Index (S&P 500)

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

Volume 6 includes: Note 1
Table of Acts
Act Notes
Table of Amendments

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

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

Table of Acts**Notes to the *Income Tax Assessment Act 1936*****Note 1**

The *Income Tax Assessment Act 1936* as shown in this compilation comprises Act No. 27, 1936 amended as indicated in the Tables below.

The *Income Tax Assessment Act 1936* was modified by the *Taxation Laws Amendment Act (No. 4) 1992*. The modifications are not incorporated in this compilation.

The operation of the *Income Tax Assessment Act 1936* is affected by the *Income Tax (International Agreements) Act 1953*, which gives the force of law to the several agreements (*see Schedules*) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The operation of the *Income Tax Assessment Act 1936* is affected by the *First Home Owners Act 1983*.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, *see* Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 17 April 1997 is not included in this compilation. For subsequent information *see* Table A.

The *Income Tax Assessment Act 1936* was modified by the *Banking (State Bank of South Australia and Other Matters) Act 1994* *see* Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act 1936</i>	27, 1936	2 June 1936	2 June 1936	
<i>Income Tax Assessment Act (No. 2) 1936</i>	88, 1936	7 Dec 1936	7 Dec 1936	S. 19
<i>Judiciary Act 1937</i>	5, 1937	3 July 1937	3 July 1937	S. 5
<i>Income Tax Assessment Act 1938</i>	46, 1938	30 Nov 1938	28 Dec 1938	S. 17
<i>Income Tax Assessment Act 1939</i>	30, 1939	26 Sept 1939	24 Oct 1939	S. 5

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act 1940</i>	17, 1940	27 May 1940	24 June 1940	S. 13 S. 3 (am. by 50, 1942, s. 3)
as amended by				
<i>Income Tax Assessment Act (No. 2) 1942</i>	50, 1942	6 Oct 1942	S. 26: 28 July 1942 Remainder: Royal Assent	Ss. 32 and 33
<i>Income Tax Assessment Act (No. 2) 1940</i>	65, 1940	14 Dec 1940	Ss. 3, 4 and 15: 1 Jan 1941 S. 10: 28 Nov 1940 Remainder: Royal Assent	S. 2(4)
<i>Income Tax Assessment Act 1941</i>	58, 1941	3 Dec 1941	S. 27: 13 Oct 1939 Remainder: 31 Dec 1941	Ss. 7(2) and 15(2) S. 30 (am. by 48, 1950, s. 35)
as amended by				
<i>Income Tax and Social Services Contribution Assessment Act 1950</i>	48, 1950	14 Dec 1950	(see 48, 1950 below)	(see 48, 1950 below)
<i>Income Tax Assessment Act (No. 2) 1941</i>	69, 1941	18 Dec 1941	31 Dec 1941	S. 2
<i>Income Tax Assessment Act 1942</i>	22, 1942	7 June 1942	7 June 1942	S. 32
<i>Income Tax Assessment Act (No. 2) 1942</i>	50, 1942	6 Oct 1942	S. 26: 28 July 1942 Remainder: Royal Assent	Ss. 32 and 33
<i>Income Tax Assessment Act 1943</i>	10, 1943	20 Mar 1943	S. 17: 1 July 1943 (see <i>Gazette</i> 1943, p. 1289) S. 26 (insofar as it inserts ss. 251L and 251O in the Principal Act): 1 July 1943 (see <i>Gazette</i> 1943, p. 1289) Ss. 19–25: 1 Apr 1943 Remainder: Royal Assent	S. 28

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act 1944</i>	3, 1944	3 Apr 1944	Ss. 7–9: 1 July 1943 Ss. 16–20 and 22–25: 1 July 1944 Remainder: Royal Assent	Ss. 6(2), 20(2), (3) and 28
<i>Income Tax Assessment Act (No. 2) 1944</i>	28, 1944	6 Oct 1944	6 Oct 1944	S. 12
<i>Income Tax Assessment Act 1945</i>	4, 1945	18 May 1945	15 June 1945	Ss. 9(2), 15(2) and 20
<i>Income Tax Assessment Act (No. 2) 1945</i>	37, 1945	11 Oct 1945	11 Oct 1945	S. 9
<i>Income Tax Assessment Act 1946</i>	6, 1946	13 Apr 1946	13 Apr 1946	Ss. 5(2) and 22
<i>Income Tax Assessment Act 1947</i>	11, 1947	3 June 1947	3 June 1947	S. 38
<i>Income Tax Assessment Act (No. 2) 1947</i>	63, 1947	4 Dec 1947	4 Dec 1947	Ss. 13(2)–(8) and 15
<i>Income Tax Assessment Act 1948</i>	44, 1948	24 Nov 1948	22 Dec 1948	Ss. 9(2) and 22
<i>Income Tax Assessment Act 1949</i>	66, 1949	28 Oct 1949	25 Nov 1949	S. 5
<i>Income Tax and Social Services Contribution Assessment Act 1950</i>	48, 1950	14 Dec 1950	S. 35: 31 Dec 1941 (see s. 35(2)) Remainder: Royal Assent	Ss. 23(2), 34(2) and 36
<i>Income Tax and Social Services Contribution Assessment Act 1951</i>	44, 1951	7 Dec 1951	7 Dec 1951	Ss. 16(2), 20(2), 29(2) and 46
<i>Income Tax and Social Services Contribution Assessment Act 1952</i>	4, 1952	13 Mar 1952	13 Mar 1952	S. 5
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1952</i>	28, 1952	16 June 1952	S. 18: 11 Mar 1952 Remainder: Royal Assent	Ss. 6(2), 9(2), 10(2), 18(1)–(6) and 19
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1952</i>	90, 1952	18 Nov 1952	18 Nov 1952	Ss. 6(2), 7(2)–(4), 10(2)–(5), 15(2), 17(2) and 21–24
<i>Taxation Administration Act 1953</i>	1, 1953	4 Mar 1953	1 Apr 1953	—
<i>Income Tax and Social Services Contribution Assessment Act 1953</i>	28, 1953	15 Apr 1953	15 Apr 1953	Ss. 3(2) and 6
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1953</i>	45, 1953	26 Oct 1953	26 Oct 1953	Ss. 4(2), 17(2) and 18

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1953</i>	81, 1953	11 Dec 1953	11 Dec 1953	Ss. 6(2) and 9
<i>Income Tax and Social Services Contribution Assessment Act 1954</i>	43, 1954	6 Nov 1954	6 Nov 1954	Ss. 5(2) and 13
<i>Salaries Adjustment Act 1955</i>	18, 1955	10 June 1955	10 June 1955	—
<i>Income Tax and Social Services Contribution Assessment Act 1955</i>	62, 1955	4 Nov 1955	4 Nov 1955	Ss. 3(2), (3), 5(2), 10(2), (3), 11(2), (3) and 12
<i>Income Tax and Social Services Contribution Assessment Act 1956</i>	25, 1956	23 May 1956	20 June 1956	Ss. 3(2) and 4
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1956</i>	30, 1956	6 June 1956	1 July 1956	S. 5
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1956</i>	101, 1956	15 Nov 1956	15 Nov 1956	Ss. 2(2), 4(2), (3), 5(2), (3) and 24–26
<i>Salaries (Statutory Offices) Adjustment Act 1957 (a)</i>	39, 1957	12 Sept 1957	1 July 1957	—
<i>Income Tax and Social Services Contribution Assessment Act 1957</i>	65, 1957	28 Nov 1957	28 Nov 1957	S. 23
<i>Income Tax and Social Services Contribution Assessment Act 1958</i>	55, 1958	1 Oct 1958	1 Oct 1958	S. 13
<i>Income Tax and Social Services Contribution Assessment Act 1959</i>	12, 1959	23 Apr 1959	14 Jan 1960 (see s. 2 and <i>Gazette</i> 1960, p. 47)	S. 6
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1959</i>	70, 1959	20 Nov 1959	S. 1(4): 14 Jan 1960 (see s. 1(5) and <i>Gazette</i> 1960, p. 47) Remainder: Royal Assent	Ss. 3(2), (3), 5(2)–(4), 17 and 18
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1959</i>	85, 1959	2 Dec 1959	S. 1(5): 14 Jan 1960 (see s. 2(2) and <i>Gazette</i> 1960, p. 47) Remainder: Royal Assent	Ss. 19(2) and 27(2)
<i>Salaries (Statutory Offices) Adjustment Act 1960 (a)</i>	17, 1960	17 May 1960	17 May 1960	S. 2

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax and Social Services Contribution Assessment Act 1960</i>	18, 1960	20 May 1960	17 June 1960	S. 8
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1960</i>	58, 1960	25 Nov 1960	25 Nov 1960	Ss. 4(2), 7 and 8
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1960</i>	108, 1960	16 Dec 1960	16 Dec 1960	S. 6
<i>Income Tax and Social Services Contribution Assessment Act 1961</i>	17, 1961	15 May 1961	12 June 1961	S. 13
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1961</i>	27, 1961	19 May 1961	16 June 1961	S. 5(2)
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1961</i>	94, 1961	30 Oct 1961	30 Oct 1961	Ss. 3(2) and 23
<i>Income Tax and Social Services Contribution Assessment Act 1962</i>	39, 1962	28 May 1962	28 May 1962	S. 9(2)
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1962</i>	98, 1962	14 Dec 1962	28 May 1963 (see s. 2 and <i>Gazette</i> 1963, p. 1869)	—
<i>Income Tax and Social Services Contribution Assessment Act 1963</i>	34, 1963	31 May 1963	S. 4: 13 July 1962 S. 5: 1 July 1962 S. 8: 1 Jan 1963 Remainder: Royal Assent	S. 11
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1963</i>	69, 1963	31 Oct 1963	31 Oct 1963	Ss. 2(2), (3), 55(2), (3) and 56
<i>Income Tax and Social Services Contribution Assessment Act 1964</i>	46, 1964	28 May 1964	28 May 1964	S. 8
<i>Income Tax and Social Services Contribution Assessment Act (No. 2) 1964</i>	68, 1964	20 Oct 1964	20 Oct 1964	Ss. 2(2), 9 and 10
<i>Income Tax and Social Services Contribution Assessment Act (No. 3) 1964</i>	110, 1964	23 Nov 1964	23 Nov 1964	Ss. 2(2), 45 and 46
<i>Salaries (Statutory Offices) Adjustment Act (No. 2) 1964 (a)</i>	115, 1964	23 Nov 1964	23 Nov 1964	S. 2

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax and Social Services Contribution Assessment Act 1965</i>	33, 1965	2 June 1965	2 June 1965	S. 7
<i>Income Tax Assessment Act 1965</i>	103, 1965	14 Dec 1965	14 Dec 1965	Ss. 41–44
<i>Income Tax Assessment Act (No. 2) 1965</i>	143, 1965	18 Dec 1965	14 Feb 1966	Ss. 4(2), (3) and 6(2), (3)
<i>Income Tax Assessment Act 1966</i>	50, 1966	26 Oct 1966	S. 17: 4 Mar 1968 (see s. 2 and <i>Gazette</i> 1968, p. 119) Remainder: Royal Assent	Ss. 17(2), (3) and 20 S. 21 (rep. by 83, 1966, s. 4)
as amended by				
<i>Income Tax Assessment Act (No. 2) 1966</i>	83, 1966	29 Oct 1966	29 Oct 1966	—
<i>Income Tax Assessment Act (No. 2) 1966</i>	83, 1966	29 Oct 1966	29 Oct 1966	Ss. 5 and 6
<i>Income Tax Assessment Act 1967</i>	19, 1967	12 May 1967	12 May 1967	S. 5
<i>Income Tax Assessment Act (No. 2) 1967</i>	38, 1967	25 May 1967	25 May 1967	Ss. 15 and 16
<i>Income Tax Assessment Act (No. 3) 1967</i>	76, 1967	6 Nov 1967	6 Nov 1967	Ss. 3(2), (3), 5(2) and 14
<i>Income Tax Assessment Act (No. 4) 1967</i>	85, 1967	8 Nov 1967	8 Nov 1967	Ss. 2(2), (3), 4(3), 6(4) and 35–37
<i>Income Tax Assessment Act 1968</i>	4, 1968	8 May 1968	8 May 1968	Ss. 2(2) and 14
<i>Income Tax Assessment Act (No. 2) 1968</i>	60, 1968	25 June 1968	25 June 1968	Ss. 2(2), (3), 16(2), 22 and 23 S. 21 (am. by 51, 1973, s. 25)
as amended by				
<i>Income Tax Assessment Act 1973</i>	51, 1973	14 June 1973	14 June 1973	Ss. 23, 24 and 25(2)
<i>Income Tax Assessment Act (No. 3) 1968</i>	70, 1968	25 Oct 1968	25 Oct 1968	S. 3(2)
<i>Income Tax Assessment Act (No. 4) 1968</i>	87, 1968	21 Nov 1968	21 Nov 1968	S. 11
<i>Income Tax Assessment Act (No. 5) 1968</i>	148, 1968	9 Dec 1968	9 Dec 1968	S. 6
<i>Income Tax Assessment Act 1969</i>	18, 1969	4 June 1969	4 June 1969	Ss. 3(2) and 4(2)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act (No. 2) 1969</i>	93, 1969	27 Sept 1969	27 Sept 1969	Ss. 3(2), 7(2), 8(2), 10(2), 12(2)–(5), 18(2) and 19
<i>Income Tax Assessment Act (No. 3) 1969</i>	101, 1969	27 Sept 1969	27 Sept 1969	Ss. 6 and 7
<i>Income Tax Assessment Act 1970</i>	87, 1970	27 Oct 1970	27 Oct 1970	S. 5(2)
<i>Income Tax Assessment Act 1971</i>	6, 1971	19 Mar 1971	19 Mar 1971	—
<i>Income Tax Assessment Act (No. 2) 1971</i>	54, 1971	25 May 1971	25 May 1971	Ss. 9(2) and 12
<i>Income Tax Assessment Act (No. 3) 1971</i>	93, 1971	12 Nov 1971	12 Nov 1971	S. 9
<i>Income Tax Assessment Act 1972</i>	5, 1972	24 Mar 1972	24 Mar 1972	S. 4
<i>Income Tax Assessment Act (No. 2) 1972</i>	46, 1972	7 June 1972	12 Apr 1972	—
<i>Income Tax Assessment Act (No. 3) 1972</i>	47, 1972	7 June 1972	7 June 1972	S. 12
<i>Income Tax Assessment Act (No. 4) 1972</i>	65, 1972	31 Aug 1972	31 Aug 1972	S. 5
<i>Income Tax Assessment Act (No. 5) 1972</i>	85, 1972	4 Oct 1972	4 Oct 1972	Ss. 8 and 9
<i>Income Tax Assessment Act 1973</i>	51, 1973	14 June 1973	14 June 1973	Ss. 23, 24 and 25(2)
<i>Income Tax Assessment Act (No. 2) 1973</i>	52, 1973	14 June 1973	14 June 1973	Ss. 6(2), 8(2) and 14
<i>Income Tax Assessment Act (No. 3) 1973</i>	53, 1973	18 June 1973	18 June 1973	S. 8
<i>Income Tax Assessment Act (No. 4) 1973</i>	164, 1973	11 Dec 1973	11 Dec 1973	Ss. 19–22
<i>Income Tax Assessment Act (No. 5) 1973</i>	165, 1973	11 Dec 1973	11 Dec 1973	Ss. 4(3), (4), 5(2), 8(2), (3), 9(3), 15(2), 17(2), 20(2), (3), 21(2), 23(2), 24(2), 25(2), 26(2), 27(2), 28(2), 32(2) and 34–36 S. 7 (am. by 50, 1976, s. 20)
as amended by <i>Income Tax Assessment Amendment Act 1976</i>	50, 1976	4 June 1976	4 June 1976	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
as amended by				
<i>Statute Law Revision Act 1974</i>	20, 1974	25 July 1974	31 Dec 1973	—
<i>Income Tax Assessment Act 1974</i>	26, 1974	1 Aug 1974	1 Aug 1974	Ss. 3(2), 5(2), 9(2) and 21
<i>Income Tax Assessment Act (No. 2) 1974</i>	126, 1974	6 Dec 1974	6 Dec 1974	Ss. 3(2), 5(2), 6(2), 7(2), 9(2), 10(2), 11(2), 14(2), 15(2), 16(2), 17(2), 18(2), 19(2), 20(2), 34(2), 35(2), 36(2), 37(2), (3), 38(2), (3), 40(2), 41(2), 42(2) and 44–46
<i>Income Tax Assessment Act 1975</i>	80, 1975	20 June 1975	20 June 1975	Ss. 4(2), 5(2), (3), 7(2)–(5), 8(2), (3), 9(2), 10(2), 11(2), 12(2), 13(2), 14(2), 15(2), 16(2), 18(2), (3), 19(2), (3), 20(2), 21(2), 22(2), (3), 23(2), 24(2), 25(2), 26(2), 29(2), 30(2), 31(2), 32(2), 33(2), (3), 35(2), 38(2), (3), 42(2), 43(2), 44(2), (3), 46(2), (3), 47(2)–(4), 49(2), 50(2), 51(2), (3), 52(2), 53(2) and 54 Ss. 34 and 36 (am. by 205, 1976, s. 37)
as amended by				
<i>Income Tax Assessment Amendment Act (No. 3) 1976</i>	205, 1976	20 Dec 1976	(see 205, 1976 below)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act (No. 2) 1975</i>	117, 1975	11 Nov 1975	11 Nov 1975	Ss. 2(2), (3), 7(2), 11(2), (3), 15(2), (3), 24(2), (3) and 31–34
as amended by				
<i>Income Tax Assessment Amendment Act 1976</i>	50, 1976	4 June 1976	4 June 1976	—
<i>Income Tax Assessment Amendment Act 1976</i>	50, 1976	4 June 1976	4 June 1976	Ss. 9(2) and 18(2)
<i>Health Insurance Levy Assessment Act 1976</i>	53, 1976	4 June 1976	4 June 1976	Ss. 6 and 7 (am. by 98, 1976, ss. 7 and 8)
as amended by				
<i>Health Insurance Levy Assessment Act (No. 2) 1976</i>	98, 1976	29 Sept 1976	29 Sept 1976	S. 9
<i>Income Tax Assessment Amendment Act (No. 2) 1976</i>	56, 1976	4 June 1976	4 June 1976	Ss. 17 and 18
<i>Health Insurance Levy Assessment Act (No. 2) 1976</i>	98, 1976	29 Sept 1976	29 Sept 1976	S. 9
<i>Income Tax Laws Amendment (Royalties) Act 1976</i>	143, 1976	6 Dec 1976	6 Dec 1976	Ss. 8 and 9
<i>Income Tax Assessment Amendment (Jurisdiction of Courts) Act 1976</i>	165, 1976	9 Dec 1976	1 Feb 1977 (see <i>Gazette</i> 1977, No. S3, p. 3)	Ss. 5(2), 8(2) and 9(2)
<i>Income Tax Assessment Amendment Act (No. 3) 1976</i>	205, 1976	20 Dec 1976	S. 37: 20 June 1975 Remainder: Royal Assent	Ss. 3(2), 4(2), (3), 9(2), 10(2) and 35(2)
<i>Income Tax Assessment Amendment Act 1977</i>	57, 1977	16 June 1977	Ss. 16 and 17: 1 July 1976 Remainder: Royal Assent	S. 18
<i>Income Tax Assessment Amendment Act (No. 2) 1977</i>	126, 1977	10 Nov 1977	10 Nov 1977	Ss. 6(2), 8(2), (3), 9(2), 11(2), 12(2), 13(2), 16(2), 17(2), 18(2), 20(2), 21(2), 22(2) and 23
<i>Income Tax Assessment Amendment Act (No. 3) 1977</i>	127, 1977	10 Nov 1977	10 Nov 1977	Ss. 3(2), (3) and 5(2)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Income Tax Assessment Amendment Act 1978</i>	57, 1978	22 June 1978	22 June 1978	Ss. 3(2), 4(2), 5(2), 7(2), (3), 11(2), (3), 13(2), (3), 17(2), 19(2), 22(2), 23(2) and 24
<i>Income Tax (Arrangements with the States) Act 1978 (aa)</i>	87, 1978	22 June 1978	22 June 1978	—
<i>Health Insurance Levy Assessment Amendment Act 1978</i>	90, 1978	22 June 1978	22 June 1978	Ss. 3(2), 4(2) and 5(2)
<i>Income Tax Assessment Amendment Act (No. 2) 1978</i>	123, 1978	13 Oct 1978	13 Oct 1978	Ss. 3(2), (3), 6(2), (3), 8(2), 10(2), 11(2), 12(2), (3), 13(2), 14(2), 16(2), 17(2), 21 and 22
<i>Income Tax Assessment Amendment Act (No. 3) 1978</i>	171, 1978	28 Nov 1978	28 Nov 1978	S. 3(2) and (3)
<i>Income Tax Assessment Amendment Act (No. 4) 1978</i>	172, 1978	28 Nov 1978	28 Nov 1978	Ss. 5(2)–(5), 6(2), (3) and 31
<i>Income Tax Assessment Amendment Act 1979</i>	12, 1979	13 Mar 1979	13 Mar 1979	Ss. 3(2), 4(2), 5(2), 7(2), 8(2), 9(2), 10(2), 11(2), (3), 12(2), 13(2), 14(2), 15(2), 16(2), 17(2), 18(2), 19(2) and 20(2)
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 44
<i>Income Tax Assessment Amendment Act (No. 2) 1979</i>	27, 1979	4 June 1979	4 June 1979	S. 2(2) and (3)
<i>Income Tax (Rates and Assessment) Amendment Act 1979</i>	43, 1979	14 June 1979	14 June 1979	S. 5

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Amendment Act (No. 3) 1979</i>	62, 1979	15 June 1979	15 June 1979	—
<i>Income Tax Assessment Amendment Act (No. 4) 1979</i>	146, 1979	28 Nov 1979	28 Nov 1979	Ss. 3(2), (3), 4(2), 5(2), 6(2), (3), 7(2), 8(2) and 9(2)
<i>Income Tax Assessment Amendment Act (No. 5) 1979</i>	147, 1979	28 Nov 1979	29 Nov 1979	Ss. 5 and 8(2)
<i>Income Tax Laws Amendment Act 1979</i>	149, 1979	28 Nov 1979	S. 24: 21 July 1979 Remainder: Royal Assent	Ss. 5(2), 6(2)–(5), 8(2), 9(2), 10(2), 11(2), (3), 12(2), 14, 15(2), 16(2), 17(2), 18(2), 23(2) and 25–27
<i>Income Tax Laws Amendment Act 1980</i>	19, 1980	30 Apr 1980	30 Apr 1980	Ss. 3(2), (3), 4(2), 6, 7(2), 8(2), 9(2), 10(2), 11(2), 12(2), 13(2), 14(2), 15(2), 16(2)–(4), 17(2), 18(2), 19(2) and 20
<i>Income Tax Assessment Amendment Act 1980</i>	24, 1980	1 May 1980	1 May 1980	Ss. 3(2), 4(2), 5(2), (3), 7(2), (3), 9(2) and 10(2)
<i>Income Tax Assessment Amendment Act (No. 2) 1980</i>	57, 1980	23 May 1980	23 May 1980	Ss. 3(2), 5(2), 6(2), 9(2), 13(2), (3), 14(2), 15(2), 16(2), 21(2), 22(2), 23(2) and 24(2)
<i>Income Tax Assessment Amendment Act (No. 3) 1980</i>	58, 1980	23 May 1980	23 May 1980	Ss. 3(2) and 4(2)
<i>Income Tax Assessment Amendment Act (No. 4) 1980</i>	124, 1980	17 Sept 1980	17 Sept 1980	Ss. 4(2), 8(2) and 16
<i>Income Tax Assessment Amendment Act (No. 5) 1980</i>	133, 1980	19 Sept 1980	19 Sept 1980	Ss. 4(2), 5(2), 6(2), (3), 7(2), 8(2) and 9(2)
<i>Taxation Debts (Abolition of Crown Priority) Act 1980</i>	134, 1980	19 Sept 1980	19 Sept 1980	Ss. 4(2) and 5(2)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Amendment Act (No. 6) 1980</i>	159, 1980	10 Dec 1980	10 Dec 1980	Ss. 3(2), 5(2), (3) and 8(2) S. 13 (am. by 108, 1981, s. 27)
as amended by				
<i>Income Tax Laws Amendment Act 1981</i>	108, 1981	24 June 1981	24 June 1981	S. 27(2)
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 116: 30 Sept 1983 (see <i>Gazette</i> 1983, No. S222) (b) S. 117: Royal Assent (b)	—
<i>Companies (Miscellaneous Amendments) Act 1981</i>	92, 1981	18 June 1981	Part XIV (s. 45): 1 July 1982 (see <i>Gazette</i> 1982, No. S124) (c)	—
<i>Income Tax Laws Amendment Act 1981</i>	108, 1981	24 June 1981	24 June 1981	Ss. 6(2), 10(2)–(4), 15(2)–(4), 17(2), 18(2), 21(2) and 25
as amended by				
<i>Income Tax Assessment Amendment Act 1982</i>	29, 1982	17 May 1982	(see 29, 1982 below)	—
<i>Income Tax (Assessment and Rates) Amendment Act 1981</i>	109, 1981	24 June 1981	24 June 1981	Ss. 24(2), 25(2), 26(2), 28(2) and 29(2)–(4)
<i>Income Tax Laws Amendment Act (No. 2) 1981</i>	110, 1981	24 June 1981	24 June 1981	S. 11
<i>Income Tax Assessment Amendment Act 1981</i>	111, 1981	24 June 1981	24 June 1981	S. 19
<i>Income Tax Laws Amendment Act (No. 3) 1981</i>	154, 1981	26 Oct 1981	26 Oct 1981	Ss. 39–41
<i>Income Tax Assessment Amendment Act (No. 2) 1981</i>	175, 1981	2 Dec 1981	2 Dec 1981	Ss. 3(2), (3), 4(2), (3) and 5(2)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Amendment Act 1982</i>	29, 1982	17 May 1982	S. 25: 24 June 1981 Remainder: Royal Assent	Ss. 3(2)–(4), 4(2), (3), 6(2), 9(2)–(5), 10(2)–(6), 11(2)–(4), 12(2), (3), 13(2), (3), 14(2), (3), 15(2), 16(2), 17(2), (3), 18(2), 19(2)–(6), 20(2), 21(2), 22(2), 23(2)–(4) and 24
<i>Income Tax Assessment Amendment Act (No. 2) 1982</i>	38, 1982	2 June 1982	2 June 1982	—
<i>Income Tax Assessment Amendment Act (No. 3) 1982</i>	39, 1982	2 June 1982	S. 3: 3 June 1982 (see s. 2(2)) Remainder: Royal Assent	S. 4(2)
<i>Income Tax Assessment Amendment Act (No. 4) 1982</i>	76, 1982	13 Sept 1982	13 Sept 1982	Ss. 4(2), (3), 6(2)–(4) and 11
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (d)	S. 280(2), (3)
<i>Income Tax Assessment Amendment Act (No. 5) 1982</i>	106, 1982	30 Oct 1982	30 Oct 1982	Ss. 3(2), 4(2), (3), 5(2)–(4), 6(2), 7(2), 9(3)–(5), 10(2), (3), 11(3)–(5), 12(2), (3), 13(2), (3), 14(2), 15(2), 16(2), (3), 17(2), 18(2), 19(2), 20(2), (3), 21(2), 22(2), (3), 23(2)–(4), 24(2), 25(2), 26(2) and 28
<i>Income Tax Assessment Amendment Act (No. 6) 1982</i>	123, 1982	13 Dec 1982	13 Dec 1982	Ss. 14 and 15

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Amendment Act 1983</i>	14, 1983	14 June 1983	S. 4: 14 Feb 1983 (see s. 2) Remainder: Royal Assent	Ss. 9(2), 11(2), 15(2), 20(2), 23(2), 29(2), 30(2), 58(2), 67 and 68
<i>Income Tax Assessment Amendment Act (No. 2) 1983</i>	25, 1983	19 June 1983	19 June 1983	S. 16
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: (e)	S. 7(1)
<i>Income Tax Assessment Amendment Act (No. 3) 1983</i>	49, 1983	21 Sept 1983	21 Sept 1983	—
<i>Income Tax Laws Amendment (Medicare Levy) Act 1983</i>	51, 1983	1 Oct 1983	1 Oct 1983	S. 3(2), (3)
<i>Health Legislation Amendment Act 1983</i>	54, 1983	1 Oct 1983	Part V (s. 132): 1 Feb 1984 (f)	—
<i>Income Tax Assessment Amendment Act (No. 4) 1983</i>	103, 1983	23 Nov 1983	S. 3: 22 Dec 1983 (see s. 2(2)) Remainder: Royal Assent	Ss. 4(2), (3), 5(2), (3), 6(2), 11(2), 12(2), 13(2), 14(2), (3), 15(2), 18(2), 19(2), 20(2), 23(2) and 25
<i>Income Tax Assessment Amendment Act 1984</i>	14, 1984	12 Apr 1984	12 Apr 1984	Ss. 3(2), 4(2), 6(2), 7(2), 8(2), 16(2), 22(2), 23(2), 28(2), 29 and 30
<i>National Crime Authority (Consequential Amendments) Act 1984</i>	42, 1984	15 June 1984	1 July 1984 (see s. 2 and <i>Gazette</i> 1984, No. S245, p. 2)	—
<i>Income Tax Assessment Amendment Act (No. 3) 1984</i>	47, 1984	25 June 1984	25 June 1984	Ss. 60–62
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (see <i>Gazette</i> 1984, No. S245) (g)	S. 151(9)
<i>Commonwealth Banks Amendment Act 1984</i>	76, 1984	25 June 1984	29 June 1984 (see <i>Gazette</i> 1984, No. S241)	—
<i>Income Tax Assessment Amendment Act (No. 5) 1984</i>	115, 1984	17 Oct 1984	17 Oct 1984	S. 3(2) and (3)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act 1984</i>	123, 1984	19 Oct 1984	Part VII (ss. 91–166): 14 Dec 1984 (<i>h</i>)	Ss. 165, 166, 384 and 385
as amended by				
<i>Sales Tax Laws Amendment Act 1985</i>	47, 1985	30 May 1985	S. 61: Royal Assent (<i>j</i>)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 19 Oct 1984 (<i>k</i>)	—
<i>Income Tax Assessment Amendment Act (No. 4) 1984</i>	124, 1984	19 Oct 1984	S. 3(a): 1 July 1984 Remainder: Royal Assent	Ss. 4(2), (3), 5(2), (3), 7(2), (3), 9(2)–(4), 10(2), (3), 11(2), (3), 13(2), 23, 24(2), (3), 28(2), 31(2), 36(2), 37(2), 38 and 39
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: 13 Dec 1984 (<i>see Gazette</i> 1984, No. S519) (<i>l</i>)	S. 9
<i>Income Tax Assessment Amendment (Income Equalization Deposits) Act 1984</i>	174, 1984	26 Oct 1984	23 Nov 1984 (<i>see</i> s. 2)	Ss. 3(2), (3) and 7
<i>Sales Tax Laws Amendment Act 1985</i>	47, 1985	30 May 1985	S. 61: Royal Assent (<i>m</i>)	—
<i>Taxation Laws Amendment Act 1985</i>	49, 1985	30 May 1985	30 May 1985	Ss. 18(2)–(4), 38 and 39
<i>National Crime Authority (Miscellaneous Amendments) Act 1985</i>	104, 1985	16 Oct 1985	S. 14 (1): 1 July 1984 Remainder: Royal Assent	S. 14(3)
<i>Taxation Laws Amendment Act (No. 2) 1985</i>	123, 1985	28 Oct 1985	28 Oct 1985	Ss. 34–36
<i>Income Tax Assessment Amendment Act 1985</i>	129, 1985	18 Nov 1985	18 Nov 1985	Ss. 9–12
<i>Taxation Laws Amendment Act (No. 3) 1985</i>	168, 1985	16 Dec 1985	Part VII (ss. 18–43): Royal Assent (<i>n</i>)	Ss. 42 and 43

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 1985</i>	173, 1985	16 Dec 1985	Ss. 4, 5(3), 17 and 20–22: 22 May 1986 (see s. 2 and <i>Gazette</i> 1986, No. S225) S. 5(1): 6 June 1985 S. 5(2): 1 Nov 1985 S. 13: (p) Remainder: Royal Assent	Ss. 23 and 24
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1986</i>	49, 1986	24 June 1986	Ss. 33 and 36: 16 Dec 1985 (see s. 2(2)) Ss. 34, 35 and 37–39: 22 May 1986 (see s. 2(3) and <i>Gazette</i> 1986, No. S225) Remainder: Royal Assent	Ss. 28 and 29
<i>Income Tax Assessment Amendment Act (No. 2) 1985</i>	174, 1985	16 Dec 1985	16 Dec 1985 (see s. 2)	S. 3(2)
<i>Fringe Benefits Tax (Miscellaneous Provisions) Act 1986</i>	41, 1986	24 June 1986	24 June 1986 (see s. 2)	S. 4
<i>Taxation Laws Amendment Act 1986</i>	46, 1986	24 June 1986	Part IV (ss. 31–37): 1 July 1986 (see s. 2(2)) Part V (ss. 42, 43): 28 Oct 1985 Remainder: Royal Assent	Ss. 25 and 26
<i>Taxation Boards of Review (Transfer of Jurisdiction) Act 1986</i>	48, 1986	24 June 1986	S. 31 and Parts VII, VIII (ss. 45–56): 24 June 1986 (see s. 2(2)) Remainder: 1 July 1986	Ss. 216, 219, 221, 226 and 228 S. 213 (am. by 107, 1989, s. 33(4))
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1989</i>	107, 1989	30 June 1989	(see 107, 1989 below)	S. 34

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1986</i>	49, 1986	24 June 1986	Ss. 33 and 36: 16 Dec 1985 (see s. 2(2)) Ss. 34, 35 and 37–39: 22 May 1986 (see s. 2(3) and <i>Gazette</i> 1986, No. S225) Remainder: Royal Assent	Ss. 28 and 29
as amended by				
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 24 June 1986 (q)	S. 5(1)
<i>Taxation Laws Amendment (Foreign Tax Credits) Act 1986</i>	51, 1986	24 June 1986	22 July 1986	Ss. 32, 33 35(1), (2), (3) and (4) S. 34 (am. by 78, 1988, s. 63) S. 35(2A) (ad. by 78, 1988, s. 64)
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1988</i>	78, 1988	24 June 1988	(see 78, 1988 below)	Ss. 63 and 64
<i>Income Tax Assessment Amendment (Capital Gains) Act 1986</i>	52, 1986	24 June 1986	24 June 1986	—
as amended by				
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 24 June 1986 (r)	S. 5(1)
<i>Income Tax Assessment Amendment (Research and Development) Act 1986</i>	90, 1986	25 June 1986	25 June 1986	S. 9
as amended by				
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 25 June 1986 (s)	S. 5(1)
<i>Taxation Laws (Miscellaneous Provisions) Act 1986</i>	109, 1986	4 Nov 1986	4 Nov 1986	S. 4(2)–(9)
<i>Taxation Laws Amendment Act (No. 3) 1986</i>	112, 1986	4 Nov 1986	4 Nov 1986	Ss. 32–34, 46 and 47

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 1986</i>	154, 1986	18 Dec 1986	Ss. 23–25, 26(a), 27, 29–39, 41–48, 49(1), (2), (4)–(6), (8)–(11) and 50: Royal Assent (t) Ss. 26(b), (c), 28, 40, 49(3) and (7): 1 Jan 1987 (see <i>Gazette</i> 1986, No. S650) (t)	Ss. 39(2), (3), 49 and 50
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i>	23, 1987	26 May 1987	S. 3: 1 Sept 1987 (see <i>Gazette</i> 1987, No. S217) (u)	S. 4
<i>Taxation Laws Amendment (Company Distributions) Act 1987</i>	58, 1987	5 June 1987	S. 6: 5 June 1987 (see s. 2(2)) Remainder: Royal Assent	Ss. 18 and 19
<i>Taxation Laws Amendment Act 1987</i>	61, 1987	5 June 1987	5 June 1987	Ss. 31–33
<i>Taxation Laws Amendment Act (No. 2) 1987</i>	62, 1987	5 June 1987	Ss. 8–35, 44, 46–48 and 62: Royal Assent (v) Ss. 36–43: (v) S. 45: 5 June 1987 (v)	S. 48 S. 47 (am. by 108, 1987, s. 45)
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1987</i>	108, 1987	13 Nov 1987	13 Nov 1987	—
<i>Taxation Laws Amendment Act (No. 3) 1987</i>	108, 1987	13 Nov 1987	13 Nov 1987	Ss. 38–40 S. 37 (am. by 138, 1987, s. 90)
as amended by				
<i>Taxation Laws Amendment Act (No. 4) 1987</i>	138, 1987	18 Dec 1987	(see 138, 1987 below)	S. 91
<i>Crimes Legislation Amendment Act 1987</i>	120, 1987	16 Dec 1987	Part VI (ss. 30, 31): Royal Assent (w)	—
<i>Taxation Laws Amendment Act (No. 4) 1987</i>	138, 1987	18 Dec 1987	S. 6 and Parts IV, V (ss. 63–88): (x) Remainder: Royal Assent	Ss. 48–50 and 52 S. 51 (am. by 11, 1988, s. 48)
as amended by				
<i>Taxation Laws Amendment Act 1988</i>	11, 1988	26 Apr 1988	(see 11, 1988 below)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987</i>	139, 1987	18 Dec 1987	18 Dec 1987	Ss. 74 and 75
<i>Petroleum Resource Rent Tax (Miscellaneous Provisions) Act 1987</i>	145, 1987	18 Dec 1987	15 Jan 1988 (see s. 2)	—
<i>Management and Investment Companies Legislation Amendment Act 1987</i>	163, 1987	26 Dec 1987	26 Dec 1987	—
<i>Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988</i>	8, 1988	5 Apr 1988	Ss. 1–11, 12(b), (c), (e), (f), 13–21, 27, 29 and 30: Royal Assent S. 12(a) and (d): 1 Jan 1990 Remainder: 1 July 1988 (see <i>Gazette</i> 1988, No. S191)	—
as amended by				
<i>Law and Justice Legislation Amendment Act 1988</i>	120, 1988	14 Dec 1988	Part XI (ss. 34, 35): 5 Apr 1988 (y)	—
<i>Taxation Laws Amendment Act 1988</i>	11, 1988	26 Apr 1988	S. 14: 24 June 1986 Part VI (ss. 43, 44): 1 Sept 1987 Part VII (ss. 45, 46): 6 Nov 1987 Part VIII (ss. 47, 48): 18 Dec 1987 (see s. 2(5)) Part IX (ss. 49, 50): 18 Dec 1987 (see s. 2(6)) Remainder: Royal Assent	Ss. 38–40
<i>Research and Development Legislation Amendment Act 1988</i>	59, 1988	15 June 1988	1 July 1988	Ss. 7 and 18
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 (see <i>Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 (see <i>Gazette</i> 1988, No. S196)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1988</i>	78, 1988	24 June 1988	Part II (ss. 3–6), ss. 37, 39–53 and 55(15)–(25): 1 Nov 1988 (see <i>Gazette</i> 1988, No. S331) S. 14(2): 1 July 1988 S. 15: 22 Dec 1986 Part VI (ss. 62–64): 22 July 1986 Part VII (ss. 65, 66): 18 Dec 1987 Remainder: Royal Assent	Ss. 55–57
<i>Employment, Education and Training Act 1988</i>	80, 1988	24 June 1988	1 July 1988 (see <i>Gazette</i> 1988, No. S190)	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	—
<i>Taxation Laws Amendment Act (No. 4) 1988</i>	95, 1988	24 Nov 1988	Ss. 44(a) and 54(11): (z) Remainder: Royal Assent	Ss. 54–58 S. 2 (am. by 107, 1989, s. 30)
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1989</i>	107, 1989	30 June 1989	(see 107, 1989 below)	—
<i>Taxation Laws Amendment (Tax File Numbers) Act 1988</i>	97, 1988	25 Nov 1988	S. 12: 1 July 1989 (see <i>Gazette</i> 1989, No. S159) Remainder: 1 Jan 1989 (see s. 2(1) and <i>Gazette</i> 1988, No. S399)	—
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 122): 25 Nov 1988 (za)	—
<i>ANL (Conversion into Public Company) Act 1988</i>	127, 1988	14 Dec 1988	S. 11: 1 July 1989 (see <i>Gazette</i> 1989, No. S210) (zb)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 1988</i>	153, 1988	26 Dec 1988	Div. 6 of Part III (s. 43): 1 Jan 1989 Remainder: Royal Assent	Ss. 36–44
<i>Higher Education Funding Act 1988</i>	2, 1989	6 Jan 1989	Chapt. 4 (ss. 79–85): Royal Assent (zc)	—
<i>Taxation Laws Amendment Act 1989</i>	11, 1989	16 Mar 1989	16 Mar 1989	Ss. 52 and 53
<i>Income Equalization Deposits Laws Amendment Act 1989</i>	56, 1989	14 June 1989	1 July 1989	S. 37
<i>Taxation Laws Amendment (Rates and Rebates) Act 1989</i>	70, 1989	21 June 1989	21 June 1989	S. 5
<i>Income Tax (Arrangements with the States) Repeal Act 1989</i>	73, 1989	21 June 1989	21 June 1989	—
<i>Taxation Laws Amendment Act (No. 2) 1989</i>	97, 1989	30 June 1989	30 June 1989	Ss. 5(2), 11, 12(2), (4)–(6), 13, 14(3), (4) and 15 S. 12(1) and (3) (am. by 105, 1989, s. 77) S. 12(2A) (ad. by 105, 1989, s. 77) S. 14(1) and (2) (am. by 105, 1989, s. 78) S. 14(5)–(7) (ad. by 105, 1989, s. 78)
as amended by <i>Taxation Laws Amendment (Superannuation) Act 1989</i>	105, 1989	30 June 1989	(see 105, 1989 below)	—
<i>Taxation Laws Amendment (Superannuation) Act 1989</i>	105, 1989	30 June 1989	S. 5(o): 18 Dec 1987 Remainder: (zd)	Ss. 64–66
as amended by <i>Taxation Laws Amendment Act 1994</i>	56, 1994	7 Apr 1994	(see 56, 1994 below)	S. 112(2) and (3)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1989</i>	107, 1989	30 June 1989	Part 6 (ss. 29, 30): (ze) Remainder: Royal Assent	Ss. 20–23 and 32
<i>Banking Legislation Amendment Act 1989</i>	129, 1989	7 Nov 1989	Part I (ss. 1, 2), ss. 3, 26, 29–33, 35, 38 and 40: Royal Assent S. 23(1): 4 May 1989 S. 39: 23 Jan 1988 Remainder: 28 Dec 1989 (see <i>Gazette</i> 1989, No. S383)	S. 28
<i>Social Security and Veterans' Affairs Legislation Amendment Act (No. 3) 1989</i>	163, 1989	19 Dec 1989	Part 4 (ss. 18–20): 13 Nov 1989 (zf)	S. 4
<i>Taxation Laws Amendment Act (No. 4) 1989</i>	167, 1989	19 Dec 1989	S. 31: 19 Jan 1989 Part 4 (ss. 35–37): 25 Jan 1989 Remainder: Royal Assent	Ss. 29–32
<i>Taxation Laws Amendment Act (No. 5) 1989</i>	20, 1990	17 Jan 1990	17 Jan 1990	Ss. 2(2), 6(2), 13(2), 14(2), 15(2), 16(2), 25(2), 29(2), 31(2), 32(2), 37(2), 41(2) and 46–50
<i>Taxation Laws Amendment Act 1990</i>	35, 1990	7 June 1990	7 June 1990	Ss. 38–41
<i>Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>	37, 1990	7 June 1990	18 Feb 1991 (see s. 2 and <i>Gazette</i> 1991, No. S47)	—
<i>Income Tax Assessment Amendment Act 1990</i>	45, 1990	16 June 1990	16 June 1990	—
<i>Taxation Laws Amendment Act (No. 2) 1990</i>	57, 1990	16 June 1990	Part 4 (ss. 66–68): 14 July 1990 Remainder: Royal Assent	Ss. 61–65

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1990</i>	58, 1990	16 June 1990	S. 11: 16 June 1990 (see s. 2(2)) S. 23: 4 Dec 1989 Part 5 (ss. 36–38): 11 May 1989 Remainder: Royal Assent	Ss. 29–35
<i>Training Guarantee (Administration) Act 1990</i>	60, 1990	16 June 1990	S. 43 and Part 10 (ss. 88–95): 31 Oct 1990 (see <i>Gazette</i> 1990, No. S272) Remainder: 1 July 1990	—
<i>Occupational Superannuation (Reasonable Benefit Limits) Amendment Act 1990</i>	61, 1990	16 June 1990	Ss. 1 and 2: Royal Assent S. 7: 30 June 1989 Ss. 22–24: 1 July 1995 Remainder: 1 July 1990	—
<i>Taxation Laws Amendment (Rates and Provisional Tax) Act 1990</i>	87, 1990	6 Nov 1990	S. 4: 1 July 1991 Remainder: Royal Assent	Ss. 3(2), 4(2), 5 and 12–14
<i>Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1990</i>	119, 1990	28 Dec 1990	Ss. 4–6, 7(g), 8, 19–21, 22(g) and 23: 22 Aug 1990 Ss. 7(a)–(f) and 22(a)–(f): 1 Mar 1991 Ss. 9, 10, 41(b) and 42(b): 1 Jan 1991 Remainder: Royal Assent	S. 2 (am. by 69, 1991, s. 23)
as amended by				
<i>Social Security Legislation Amendment Act 1991</i>	69, 1991	25 June 1991	S. 22: Royal Assent (zg) S. 23: (zg)	—
<i>Taxation Laws Amendment Act (No. 5) 1990</i>	135, 1990	28 Dec 1990	Part 4 (ss. 34–36): 25 Jan 1991 Ss. 38(3), 39(2) and Schedule (Part 3): 1 July 1993 Ss. 38(4), 39(3) and Schedule (Part 4): 8 Jan 1991 (see s. 2(4)) Remainder: Royal Assent	Ss. 28–33, 38 and 39

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 1990</i>	4, 1991	8 Jan 1991	Part 3 (ss. 38, 39): 16 June 1990 (see s. 2(2)) Remainder: Royal Assent	Ss. 32–37
<i>Taxation Laws Amendment (Foreign Income) Act 1990</i>	5, 1991	8 Jan 1991	8 Jan 1991	Ss. 50, 51 and 54–61 S. 52 (am. by 48, 1991, s. 104) S. 53 (am. by 216, 1991, s. 119)
as amended by				
<i>Taxation Laws Amendment Act 1991</i>	48, 1991	24 Apr 1991	(see 48, 1991 below)	—
<i>Taxation Laws Amendment Act (No. 3) 1991</i>	216, 1991	24 Dec 1991	(see 216, 1991 below)	—
<i>Social Security Legislation Amendment Act 1990</i>	6, 1991	8 Jan 1991	Part 7 (ss. 94, 95): 1 Jan 1991 (zh)	—
<i>Taxation Laws Amendment Act 1991</i>	48, 1991	24 Apr 1991	Ss. 9, 15, 33, 70, 81–83 and Part 6 (ss. 103, 104): (zj) Ss. 32, 84(9), 93(2), 96 and 97(3): 1 July 1991 Ss. 34(b), 36, 40 and 87: 21 Aug 1990 Ss. 51(2), 59(2), 62–66, 68(2) and 84(12): 25 Apr 1991 Remainder: Royal Assent	Ss. 84–90
<i>Occupational Superannuation Laws Amendment Act 1991</i>	55, 1991	24 Apr 1991	24 Apr 1991	—
<i>Taxation Laws Amendment Act (No. 2) 1991</i>	100, 1991	27 June 1991	Ss. 4, 6, 8, 9 and 11: 28 June 1991 S. 29: (zj) S. 33(a): 16 June 1990 (see s. 2(4)) S. 33(c) and (d): 30 June 1989 (see s. 2(5)) S. 77: (zj) S. 78: (zj) Remainder: Royal Assent	Ss. 83 and 84

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Political Broadcasts and Political Disclosures Act 1991</i>	203, 1991	19 Dec 1991	Part 2 (ss. 4–9): 3 Jan 1992 (see <i>Gazette</i> 1992, No. S2) Part 4 (ss. 32, 33) and Part 5 (ss. 34, 35): 19 June 1992 Part 6 (ss. 36–38): 16 Jan 1992 Remainder: Royal Assent	—
<i>Veterans' Affairs Legislation Amendment Act (No. 2) 1991</i>	208, 1991	24 Dec 1991	S. 21: Royal Assent (<i>zk</i>)	—
<i>Taxation Laws Amendment Act (No. 3) 1991</i>	216, 1991	24 Dec 1991	Ss. 11 and 89(2): 22 Jan 1991 Ss. 40 and 42: 6 Jan 1992 (see s. 2(3)) Ss. 45, 46, 48–51, 54–58, 60–66, 90(1), (3)–(14), 93–96 and 98–101: 21 Aug 1991 Ss. 47, 52, 53, 59, 90(2) and 97: 20 Aug 1991 (<i>zl</i>) S. 82(2): 25 Dec 1991 S. 107: 24 June 1992 Ss. 112–117: 1 Mar 1992 (see <i>Gazette</i> 1992, No. GN7) Part 9 (ss. 121, 122): 1 July 1991 Remainder: Royal Assent	Ss. 89–103
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 119): 24 Dec 1991 (<i>zm</i>)	—
<i>Life Insurance Policy Holders' Protection Levies Collection Act 1991</i>	3, 1992	6 Jan 1992	6 Jan 1992	—
<i>Taxation Laws Amendment Act 1992</i>	35, 1992	25 May 1992	25 May 1992	Ss. 63–70 and 72–75 S. 71 (am. by 98, 1992, s. 103)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1992</i>	98, 1992	30 June 1992	(see 98, 1992 below)	—
<i>Social Security (Family Payment) Amendment Act 1992</i>	69, 1992	26 June 1992	1 Jan 1993	—
<i>Veterans' Affairs Legislation Amendment Act 1992</i>	70, 1992	26 June 1992	Schedule (Part 8): 20 Oct 1991 (zn) Schedule (Part 9): 1 July 1992 (zn)	—
<i>Taxation Laws Amendment Act (No. 2) 1992</i>	80, 1992	30 June 1992	Ss. 52(2) and 53(2): 1 July 1992 Remainder: Royal Assent	Ss. 65–84
<i>Social Security Legislation Amendment Act 1992</i>	81, 1992	30 June 1992	Schedule 2 (Part 1): Royal Assent (zo) Schedule 2 (Part 6): 1 July 1992 (zo)	—
<i>Superannuation Guarantee (Consequential Amendments) Act 1992</i>	92, 1992	30 June 1992	1 July 1992	—
<i>Taxation Laws Amendment Act (No. 3) 1992</i>	98, 1992	30 June 1992	Ss. 32–36: 1 July 1992 Remainder: Royal Assent	Ss. 5, 7, 20, 31, 36, 46, 57, 80 and 81 S. 38 (am. by 17, 1993, s. 65)
as amended by				
<i>Taxation Laws Amendment Act 1993</i>	17, 1993	9 June 1993	(see 17, 1993 below)	—
<i>Taxation Laws Amendment (Self Assessment) Act 1992</i>	101, 1992	30 June 1992	30 June 1992	S. 34
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 121): 30 June 1992 (zp)	—
<i>Sales Tax Amendment (Transitional) Act 1992</i>	118, 1992	30 Sept 1992	28 Oct 1992	—
<i>Student Assistance Amendment Act 1992</i>	138, 1992	19 Nov 1992	Ss. 31–43: 1 Jan 1993 Remainder: Royal Assent	—
<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>	167, 1992	11 Dec 1992	1 July 1993	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Amendment (Foreign Investment) Act 1992</i>	190, 1992	18 Dec 1992	1 Jan 1993	Ss. 11(2), 12(2), 24(2), (3) and 25(2) S. 14(2) (ad. by 18, 1993, s. 61)
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1993</i>	18, 1993	9 June 1993	(see 18, 1993 below)	—
<i>Taxation Laws Amendment Act (No. 4) 1992</i>	191, 1992	21 Dec 1992	21 Dec 1992	Ss. 10, 13, 19, 20(1), 22, 31, 32, 33(2), 34 and 35
<i>Taxation Laws Amendment (Superannuation) Act 1992</i>	208, 1992	22 Dec 1992	Divs. 2, 4–6 and 9–11 of Part 2 (ss. 4–6, 19–33, 47–61): 1 July 1994 Divs. 2 and 3 of Part 3 (ss. 64–71): 1 July 1994 Remainder: Royal Assent	Ss. 6, 17, 18, 27, 33, 38, 39, 46, 61 and 62 S. 49 (rs. by 169, 1995, Sch. 10 [item 9])
as amended by				
<i>Taxation Laws Amendment (Superannuation) Act 1993</i>	7, 1993	27 May 1993	(see 7, 1993 below)	S. 64
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	(see 169, 1995 below)	—
<i>Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992</i>	223, 1992	24 Dec 1992	1 Apr 1994	—
<i>Taxation Laws Amendment Act (No. 5) 1992</i>	224, 1992	24 Dec 1992	Ss. 3–13, 14(1), 15(1), 16(1), 17(1) and 18–87: Royal Assent (zq) Ss. 14(2), 15(2), 16(2) and 17(2): 1 July 1993 (zq)	Ss. 13, 17, 21, 22, 24, 32, 34, 36, 38, 40, 44, 45, 56, 57, 81, 82 and 86

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 6) 1992</i>	227, 1992	24 Dec 1992	Div. 5 of Part 2 (ss. 9, 10): 19 Aug 1992 Div. 6 of Part 2 (ss. 11–13): 1 Jan 1993 (zr) Remainder: Royal Assent	Ss. 7, 10, 13 and 31–33 S. 5 (rs. by 82, 1994, s. 125)
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1994</i>	82, 1994	23 June 1994	(see 82, 1994 below)	—
<i>Taxation Laws Amendment (Car Parking) Act 1992</i>	237, 1992	24 Dec 1992	24 Dec 1992	S. 10
<i>Income Equalisation Deposits Laws Amendment Act 1992</i>	238, 1992	24 Dec 1992	19 Aug 1992	S. 26
<i>Taxation Laws Amendment (Superannuation) Act 1993</i>	7, 1993	27 May 1993	S. 7 and Div. 5 of Part 2 (ss. 21–25): (zs) Ss. 12–20, 26–29, 36–43 and 65: 1 July 1994 Ss. 47 and 48: 30 July 1993 (see <i>Gazette</i> 1993, No. S230) Ss. 62–64: 22 Dec 1992 Remainder: Royal Assent	Ss. 5, 11, 20, 25, 29, 33 and 34
<i>Taxation Laws Amendment Act 1993</i>	17, 1993	9 June 1993	Part 4 (ss. 60, 61): (zt) Part 6 (ss. 64, 65): (zt) Remainder: Royal Assent	Ss. 14, 17, 22, 24, 32, 34, 35, 40, 43, 45, 49, 51, 56, 58 and 59 S. 47 (am. by 171, 1995, Sch. 6)
as amended by				
<i>Taxation Laws Amendment Act (No. 4) 1995</i>	171, 1995	16 Dec 1995	(see 171, 1995 below)	—
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 16 (item 1): (zta)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1993</i>	18, 1993	9 June 1993	Div. 1 (s. 7), Div. 7 (ss. 30–53) of Part 3 and Part 4 (ss. 60, 61): (zu) Remainder: Royal Assent	Ss. 13, 14, 22, 56 and 59 S. 57 (am. by 138, 1994, s. 7(3))
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1994</i>	138, 1994	28 Nov 1994	(see 138, 1994 below)	—
<i>Veterans' Affairs Legislation Amendment Act 1993</i>	27, 1993	9 June 1993	Ss. 5–8: 20 Sept 1993 S. 9: 20 Oct 1991 Ss. 10–12 and 19(1): 12 Jan 1992 Ss. 13–15 and 19(2): 20 Oct 1992 Remainder: Royal Assent	S. 3
<i>Insolvency (Tax Priorities) Legislation Amendment Act 1993</i>	32, 1993	16 June 1993	Ss. 6, 7, 9, 11, 13, 15, 29 and 30: 1 June 1993 Ss. 20–28: 1 July 1993 Remainder: Royal Assent	S. 17
<i>Taxation (Deficit Reduction) Act (No. 2) 1993</i>	55, 1993	27 Oct 1993	Ss. 7–12 and 14: Royal Assent (zua) S. 13: 1 July 1995 S. 15: (zua)	Ss. 8, 11, 12 and 13(2) S. 2 (am. by 94, 1995, Sch. 2 [item 1]; 174, 1997, Sch. 8 [item 1]; 58, 2000, Sch. 7 [item 1]) S. 15(2) (am. by 174, 1997, Sch. 8 [item 4])
as amended by				
<i>Taxation Laws Amendment (Budget Measures) Act 1995</i>	94, 1995	27 July 1995	(see 94, 1995 below)	—
<i>Taxation Laws Amendment Act (No. 4) 1997</i>	174, 1997	21 Nov 1997	(see 174, 1997 below)	—
<i>Taxation Laws Amendment Act (No. 2) 2000</i>	58, 2000	31 May 2000	Schedule 7: Royal Assent (zub)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation (Deficit Reduction) Act (No. 1) 1993</i>	57, 1993	27 Oct 1993	27 Oct 1993	Ss. 13, 16, 17, 23, 24, 26–28 and 34
<i>Taxation (Deficit Reduction) Act (No. 3) 1993</i>	58, 1993	27 Oct 1993	Ss. 10–13: Royal Assent (zv)	S. 13
<i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i>	82, 1993	30 Nov 1993	Ss. 14 and 16(2): 1 Dec 1993 (zw) Ss. 15, 16(1) and 17–35: 1 July 1994 (zw)	S. 35
<i>Higher Education Funding Legislation Amendment Act 1993</i>	116, 1993	24 Dec 1993	Part 3 (ss. 21–25): 1 Jan 1994 (zx)	—
<i>Taxation Laws Amendment Act (No. 3) 1993</i>	118, 1993	24 Dec 1993	Ss. 125, 132 and 133: 1 July 1991 Ss. 129 and 131: 1 July 1993 Div. 3 of Part 10 (ss. 153–155) and Part 11 (ss. 156–159): 25 Dec 1993 (see s. 2 (4)) Div. 3 of Part 14 (ss. 180–182): (zy) Remainder: Royal Assent	Ss. 18, 23, 26, 30, 33, 38, 108–113, 116 and 167–175
<i>Taxation Laws Amendment Act 1994</i>	56, 1994	7 Apr 1994	Subdiv. A of Div. 4 of Part 3 (ss. 24–32): 1 July 1993 Subdiv. B of Div. 4 of Part 3 (ss. 33–38): 20 Mar 1994 Div. 8 of Part 3 (ss. 55–64): 1 July 1994 S. 70(1): (zz) Ss. 70(2), 71(2) and 83(2): (zz) S. 71(1): (zz) S. 75(1): (zz) S. 83(1): (zz) S. 112: (zz) Remainder: Royal Assent	Ss. 14, 18, 19, 23, 24, 32, 33, 38, 39, 46, 47, 48(3), 49, 50, 55, 63–65, 68, 69, 74(2), (3), 75(2), 78(2), 80(2), 82(2), 86, 87, 111 112(2) and (3)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1994</i>	82, 1994	23 June 1994	Ss. 7, 120 and 121: 22 Oct 1986 Ss. 44–46: (zza) Ss. 72–79: (zza) Ss. 84–92: (zza) S. 113: (zza) Part 4 (ss. 123–127): (zza) Remainder: Royal Assent	Ss. 21, 24, 28, 32, 33, 43, 44, 46, 49, 53, 56, 59, 62, 71, 83, 96, 104, 105, 109, 114, 119, 122 and 134
<i>Drought Relief Payment Act 1994</i>	125, 1994	18 Oct 1994	18 Oct 1994	S. 3 (item 93)
<i>Taxation Laws Amendment Act (No. 3) 1994</i>	138, 1994	28 Nov 1994	Div. 1 and Subdivs. B, D, E, G, J, K, L and M of Div. 3 of Part 2 (ss. 3, 11–13, 17–20, 25, 26 and 34–43): (zzb) Subdiv. A of Div. 12 of Part 2 (ss. 93–98): (zzb) Ss. 120–122 and 124–127: 1 July 1994 Div. 3 of Part 4 (ss. 137–140), ss. 162 and 163(a)): 30 June 1994 Remainder: Royal Assent	Ss. 4, 8, 10, 11, 14, 16, 17, 19, 21, 24, 25, 27, 29, 30, 33, 34, 37, 39, 40, 42, 44, 49–51, 61–63, 65, 66, 74, 75, 79, 80, 83, 84, 86, 87, 93, 98, 99, 101, 102, 104, 105, 107–109, 111, 115 and 116 S. 92 (am. by 169, 1995, Sch. 10 [item 7])
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	(see 169, 1995 below)	—
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 16 (items 2, 3): (zzba)	—
<i>Taxation Laws Amendment (Infrastructure Borrowings) Act 1994</i>	163, 1994	16 Dec 1994	16 Dec 1994	S. 26
<i>Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994</i>	174, 1994	16 Dec 1994	Schedule 1 (items 163–174): 1 July 1995 (zcc) Schedule 3 (items 34–38): 20 Sept 1994 (zcc) Schedule 4 (items 38–41 and 47–51): 1 Jan 1995 (zcc)	Ss. 14 and 15

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 1994</i>	181, 1994	19 Dec 1994	Schedule 1 (items 22–85): 13 Oct 1994 Remainder: Royal Assent	Sch. 1 (items 1, 13, 14, 21, 22, 86, 88, 90, 91), Sch. 2 (items 5, 23), Sch. 3 (items 6, 13, 14, 17, 18, 23, 24, 29, 30, 34, 35, 41, 42, 48, 49, 51, 52, 54, 55, 67, 68, 72, 73, 80, 81, 85, 86, 90, 91, 94, 95, 99, 100) and Sch. 4 (items 9, 22, 23)
<i>Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994</i>	184, 1994	23 Dec 1994	1 Jan 1995 (zzd)	—
<i>Life Insurance (Consequential Amendments and Repeals) Act 1995</i>	5, 1995	23 Feb 1995	1 July 1995 (see s. 2 and <i>Gazette</i> 1995, No. GN24)	S. 3(2) and (3)
<i>Income Tax (International Agreements) Amendment Act 1995</i>	22, 1995	29 Mar 1995	29 Mar 1995	—
<i>Tax Law Improvement (Substantiation) Act 1995</i>	30, 1995	7 Apr 1995	7 Apr 1995	S. 3(3)
<i>Taxation Laws Amendment (Drought Relief Measures) Act 1995</i>	31, 1995	7 Apr 1995	7 Apr 1995	S. 2 (rep. by 170, 1995, Sch. 4 [item 1])
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1995</i>	170, 1995	16 Dec 1995	(see 170, 1995 below)	—
<i>Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995</i>	53, 1995	23 June 1995	1 July 1995	Sch. 2 (item 19)
<i>Taxation Laws Amendment (Budget Measures) Act 1995</i>	94, 1995	27 July 1995	Schedule 3 (Part 2 (items 5, 6)): 1 July 1995 Schedule 9: Royal Assent Remainder: 9 May 1995	Sch. 10 (item 2)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security Legislation Amendment (Family Measures) Act 1995</i>	106, 1995	29 Sept 1995	Schedules 1, 5 and 6: 1 Feb 1996 Schedules 2–4 and 7–9: 1 Jan 1996 Remainder: Royal Assent	—
<i>Taxation Laws Amendment Act (No. 1) 1995</i>	120, 1995	25 Oct 1995	Schedule 1 (Part 8): 23 Nov 1994 (see s. 2(2)) Schedule 2 (Part 2): 1 July 1994 Remainder: Royal Assent	Sch. 1 (items 7, 20, 21, 24, 35, 43, 44, 53, 57, 59, 71, 85, 86, 89, 90) and Sch. 2 (item 1)
<i>Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995</i>	143, 1995	12 Dec 1995	Schedule 6 (item 50): 1 Jan 1997 (zzz)	—
<i>Taxation Laws Amendment (FBT Cost of Compliance) Act 1995</i>	145, 1995	12 Dec 1995	12 Dec 1995	Sch. 2 (item 15)
<i>Veterans' Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995</i>	146, 1995	12 Dec 1995	Schedule 12 (Part 1): 1 Jan 1997 (zzf) Schedule 12 (Part 2): 1 Jan 1996 (see (zzf))	Sch. 12 (item 13)
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	Schedule 1, (items 1–14 and 16), Schedule 2, (Parts 1 and 4), Schedule 3, (Parts 1–5 and 7, 8) and Schedule 8 (Part 1): Royal Assent (zzg) Schedule 3 (Part 6): (zzg) Schedule 10 (Part 2): (zzg) Schedule 10 (item 7): (zzg) Schedule 10 (Part 5): (zzg)	Sch. 1 (item 16), Sch. 2 (Part 4), Sch. 3 (items 13, 17, 19, 21, 23, 25, 27, 33, 35, 36, 39, 43, 44) and Sch. 8 (item 5)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1995</i>	170, 1995	16 Dec 1995	Schedule 4: (<i>zzh</i>) Remainder: Royal Assent	Sch. 1 (items 12, 16, 18, 20, 33, 34, 40, 43, 49, 50), Sch. 2 (items 51–53) and Sch. 3 (item 16)
<i>Taxation Laws Amendment Act (No. 4) 1995</i>	171, 1995	16 Dec 1995	Schedule 2 (items 3–85 and 87–160): 1 July 1995 Schedule 4 (Part 3): 1 Mar 1996 Remainder: Royal Assent	S. 4, Sch. 1 (items 19, 38–40), Sch. 2 (item 160), Sch. 3 (item 3) and Sch. 4 (items 4, 10–12, 14) Sch. 1 [items 36, 37] (am. by 76, 1996, Sch. 6) Sch. 2 [item 159] (am. by 122, 1997, Sch. 2) Sch. 2 [item 159A] (ad. by 122, 1997, Sch. 2)
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1996</i>	76, 1996	18 Dec 1996	Schedule 6 (items 1–3): (<i>zzi</i>) Schedule 6 (items 4, 5): (<i>zzi</i>)	—
<i>Taxation Laws Amendment Act (No. 1) 1997</i>	122, 1997	8 July 1997	Schedule 2: (<i>zzia</i>)	—
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 16 (items 4–6): (<i>zzib</i>)	—
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	Schedule 6 (items 20, 21): (<i>zzic</i>)	—
<i>Law and Justice Legislation Amendment Act (No. 1) 1995</i>	175, 1995	16 Dec 1995	16 Dec 1995	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security and Veterans' Affairs Legislation Amendment Act 1995</i>	1, 1996	9 Jan 1996	Schedule 11 (items 1–7): 1 July 1996 (zzj) Schedule 11 (items 8, 9): 20 Sept 1996 (zzj) Schedule 11 (items 10–21): 1 July 1997 (zzj)	—
<i>Income Tax Assessment Amendment Act 1996</i>	17, 1996	27 June 1996	Schedule 1: 1 July 1996 Schedule 2: 1 July 1997 Remainder: Royal Assent	Sch. 1 (item 6) and Sch. 2 (item 6)
<i>Taxation Laws Amendment Act (No. 1) 1996</i>	31, 1996	9 July 1996	9 July 1996	S. 4 and Sch. 1 (items 3, 10–13)
<i>Taxation Laws Amendment (International Tax Agreements) Act 1996</i>	39, 1996	9 Oct 1996	9 Oct 1996	Sch. 2 (item 3)
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 93): Royal Assent (zzi)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (items 19, 20): Royal Assent (zzm)	S. 2(2) and (6) (am. by 77, 1996 Sch. 3 [items 1, 3])
as amended by				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (zzma)	—
<i>Family (Tax Initiative) Act 1996</i>	63, 1996	27 Nov 1996	1 Jan 1997	S. 3
<i>Taxation Laws Amendment Act (No. 2) 1996</i>	76, 1996	18 Dec 1996	Ss. 1–4 and Schedule 1 (items 1–43, 47): Royal Assent (zzn) Schedule 1 (items 44–46): 1 Jan 1993 (zzn) Schedule 2: 27 June 1996 (zzn) Schedule 4 (items 19–24): 16 Feb 1997 (zzn)	S. 4 and Sch. 1 (items 29, 32, 37, 47)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1996</i>	78, 1996	19 Dec 1996	Schedule 1 (item 11): (zzo) Schedule 3: 30 Oct 1995 Schedule 4 (items 56, 57): 23 July 1996 (zzo) Remainder: Royal Assent	Sch. 1 (items 5, 9, 12, 13), Sch. 2 (item 2) and Sch. 4 (items 10, 13, 18, 28, 52, 57) Sch. 4 [item 38] (rs. by 147, 1997, Sch. 11 [item 13])
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 11 (item 13): (zzoa)	—
<i>Industry Research and Development Amendment Act 1996</i>	82, 1996	19 Dec 1996	Schedule 2: Royal Assent (zpz)	Sch. 2 (item 2)
<i>Social Security Legislation Amendment (Budget and Other Measures) Act 1996</i>	84, 1996	23 Dec 1996	Schedule 2 (items 13–15): 1 July 1997 (zzq)	—
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedule 2 (item 135): Royal Assent (zzr)	—
<i>Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997</i>	29, 1997	17 Apr 1997	1 July 1997 (see s. 2)	—
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	1 July 1997	Sch. 1 (item 274) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1997</i>	95, 1997	30 June 1997	Schedule 1 (item 24): (zzs)	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Schedule 12 (items 24–29): (zzt)	S. 4 [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 14 (items 61–63): (zzu)	Sch. 14 (item 64) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 1998</i>	16, 1998	16 Apr 1998	Schedule 8 (items 1, 2): (zzua)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 43): (see 57, 2002 below)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997</i>	56, 1997	30 Apr 1997	Schedule 1 (items 1, 3–5): 1 July 1997 Schedule 1 (item 2): 1 July 1994 Schedule 2: (zzv) Remainder: Royal Assent	Sch. 1 (item 5), Sch. 2 (item 10(1)) and Sch. 3 (item 2) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 16 (item 9): (zzva)	—
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 3 (items 5, 6): 1 July 1997 (zzw)	—
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
<i>Superannuation Contributions Tax (Consequential Amendments) Act 1997</i>	71, 1997	5 June 1997	5 June 1997	—
<i>Taxation Laws Amendment Act (No. 2) 1997</i>	95, 1997	30 June 1997	Schedule 1 (items 1–22), Schedule 2, Schedule 3 (items 1–8, 11–14), Schedule 4, Schedule 5 (items 12, 13, 17–21) and Schedule 6: Royal Assent (zzx) Schedule 3 (items 9, 10): (zzx) Schedule 5 (items 1–9): (zzx)	S. 4, Sch. 1 (item 22), Sch. 2 (items 19, 20), Sch. 3 (item 14), Sch. 4 (items 3, 4) and Sch. 5 (items 18, 21) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 16 (item 8): (zzy)	—
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	Schedule 6 (item 22): (zzya)	—
<i>Taxation Laws Amendment (Infrastructure Borrowings) Act 1997</i>	104, 1997	30 June 1997	30 June 1997	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aged Care (Consequential Provisions) Act 1997</i>	114, 1997	7 July 1997	Schedule 5 (items 30, 31): 1 Oct 1997 (see <i>Gazette</i> 1997, No. GN36) (zzz)	—
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 38): (see 57, 2002 below)	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Schedule 2 (items 18–37), Schedule 3 (items 31–61), Schedule 4 (items 63–138), Schedule 5 (items 43–93), Schedule 6 (items 68–132), Schedule 7 (items 5–7), Schedule 8 (items 32–51), Schedule 9 (items 16–40), Schedule 10 (items 12–15) and Schedule 11 (items 37–57): (zzza) Schedule 12 (items 15–23): 1 July 1997 (zzza)	S. 4, Sch. 2 (items 31, 33), Sch. 3 (items 47, 52, 56, 59) and Sch. 4 (item 78) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 6) 1999</i>	54, 1999	5 July 1999	Schedule 4 (items 11, 12): Royal Assent (zzzaaa)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 65): (see 57, 2002 below)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 1) 1997</i>	122, 1997	8 July 1997	Schedule 1 (items 1–15, 20), Schedule 3 (items 1, 2, 6–21) and Schedule 5: Royal Assent (<i>zzzaa</i>) Schedule 1 (items 17–19): 3 June 1990 (<i>zzzaa</i>) Schedule 1 (items 22, 23): 1 Sept 1994 (<i>zzzaa</i>) Schedule 1 (item 24): 1 Jan 1993 (<i>zzzaa</i>) Schedule 3 (items 3, 4): (<i>zzzaa</i>) Schedule 3 (item 5): (<i>zzzaa</i>) Schedule 4: 20 Jan 1997 (<i>zzzaa</i>) Schedule 6: (<i>zzzaa</i>) Schedule 8: (<i>zzzaa</i>)	S. 4, Sch. 1 (items 16, 21), Sch. 3 (items 22, 23), Sch. 5 (item 5) and Sch. 8 (item 6) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 1997</i>	95, 1997	30 June 1997	Schedule 1 (item 23): Royal Assent (<i>zzzab</i>)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 50): (see 57, 2002 below)	—
<i>Franchise Fees Windfall Tax (Consequential Amendments) Act 1997</i>	134, 1997	19 Sept 1997	19 Sept 1997	S. 4 [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 1 (items 1–43), Schedule 2 (item 1), Schedules 3–5, Schedule 6 (items 1–3, 5–8), Schedule 8, Schedule 10 (items 1, 3, 4), Schedule 13, Schedule 14 (items 1–39, 41, 42), Schedule 15 (items 1–6) and Schedule 17: Royal Assent (<i>zzzb</i>) Schedule 6 (item 4): (<i>zzzb</i>) Schedule 10 (items 2, 5): (<i>zzzb</i>) Schedule 11 (items 1–11): (<i>zzzb</i>) Schedule 14 (item 40): (<i>zzzb</i>)	S. 4, Sch. 1 (item 45), Sch. 3 (item 5), Sch. 4 (item 3), Sch. 5 (item 34), Sch. 6 (item 9), Sch. 8 (item 3), Sch. 10 (item 6), Sch. 11 (item 12), Sch. 13 (item 2), Sch. 14 (items 17, 41) and Sch. 17 (item 3) [see Table A] S. 2(6A) (ad. by 57, 2002, Sch. 12 [item 54])
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 54): (see 57, 2002 below)	—
<i>Foreign Affairs and Trade Legislation Amendment Act 1997</i>	150, 1997	17 Oct 1997	Schedule 2 (items 3–7): Royal Assent (<i>zzzc</i>)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 877–880): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (<i>zzzd</i>)	—
<i>Taxation Laws Amendment (Foreign Income Measures) Act 1997</i>	155, 1997	24 Oct 1997	24 Oct 1997	S. 4, Sch. 1 (items 120–129) and Sch. 2 (item 5) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 1997</i>	174, 1997	21 Nov 1997	Schedule 8: 1 July 1997 Remainder: Royal Assent	S. 4, Sch. 1 (items 17, 18), Sch. 2 (item 6), Sch. 3 (item 3), Sch. 4 (items 8, 9), Sch. 5 (item 11), Sch. 6. (item 23(2), (3)), Sch. 7 (item 32(1)) and Sch. 9 (item 30(2), (3)) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (item 39): (zzzzzr)	—
<i>Farm Household Support Amendment (Restart and Exceptional Circumstances Act 1997</i>	179, 1997	25 Nov 1997	25 Nov 1997	—
<i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997</i>	191, 1997	7 Dec 1997	Schedule 1: Royal Assent (zzze)	—
<i>Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997</i>	196, 1997	8 Dec 1997	Schedule 1 (items 17, 18): 8 Dec 1997 (zzzf)	—
<i>Social Security Legislation Amendment (Parenting and Other Measures) Act 1997</i>	197, 1997	11 Dec 1997	Schedule 1 (items 313–337): 20 Mar 1998 (zzzg)	—
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 3 (items 7, 8): (zzzga)	—
<i>Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997</i>	202, 1997	16 Dec 1997	Schedule 1 (items 41–43): 1 Jan 1998 (zzzh)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 1) 1998</i>	16, 1998	16 Apr 1998	S. 4, Schedule 1 (items 1–34, 36–45, 48, 49, 52, 53, 55–58), Schedule 6 (items 1–17) and Schedule 10 (items 20–57): Royal Assent (<i>zzzi</i>) Schedule 1 (items 35, 46, 47, 50, 51, 54): (<i>zzzi</i>)	S. 4, Sch. 1 (items 26, 58), Sch. 6 (item 17) and Sch. 10 (item 57) [see Table A] S. 2 (am. by 11, 1999, Sch. 3 [items 3, 4])
as amended by				
<i>Taxation Laws Amendment Act (No. 3) Act 1999</i>	11, 1999	31 Mar 1999	Schedule 3 (items 3, 4): (<i>zzzia</i>)	—
<i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i>	17, 1998	16 Apr 1998	16 Apr 1998	S. 4 and Sch. 1 (items 13–21, 24–26) Sch. 1 [item 22] (am. by 58, 2000, Sch. 11 [items 2–5]) Sch. 1 [item 22A] (ad. by 58, 2000, Sch. 11 [item 6]) Sch. 1 [item 23] (am. by 58, 2000, Sch. 11 [items 7–9]; 57, 2002, Sch. 12 [item 64]) Sch. 1 [item 23A] (ad. by 58, 2000, Sch. 11 [item 10]) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2000</i>	58, 2000	31 May 2000	Schedule 11 (items 2–11): Royal Assent (<i>zzzib</i>)	Schedule 11 (item 11) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 64): (see 57, 2002 below) Schedule 12 (items 77, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Commonwealth Places (Consequential Amendments) Act 1998</i>	23, 1998	17 Apr 1998	17 Apr 1998	S. 4(1) [see Table A]
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	S. 4, Schedule 1 (items 4–16, 18–26), Schedule 2 (items 1–4), Schedule 3 (items 1–3, 7(1)), Schedule 4 (item 5), Schedule 5 (items 16, 18), Schedule 6 (items 1, 2, 4, 5, 7–13, 15–18, 27): Royal Assent (zzzj) Schedule 1 (item 17): (zzzj) Schedule 5 (items 17, 19): (zzzj) Schedule 6 (item 3): (zzzj) Schedule 6 (item 6): (zzzj) Schedule 6 (item 16): 1 July 1998 (zzzj)	S. 4, Sch.1 (item 26), Sch. 2 (item 4), Sch. 3 (item 7(1)), Sch. 4 (item 5) and Sch. 6 (item 27) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 82, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i>	45, 1998	17 June 1998	Schedule 12 (items 1–24): 1 July 1998 (zzzk)	Sch. 12 (items 23, 24) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Law Improvement Act (No. 1) 1998</i>	46, 1998	22 June 1998	S. 4 and Schedule 9 (items 7, 8): Royal Assent (zzzl) Schedule 2 (items 49–522): (zzzl) Schedule 3 (items 13–20): (zzzl) Schedule 4 (items 12–27), Schedule 5 (items 6–10), Schedule 6 (items 8–30), Schedule 7 (items 12–19) and Schedule 8 (items 2–9): (zzzl)	S. 4, Sch. 5 (item 10), Sch. 6 (item 30), Sch. 8 (item 9) and Sch. 9 (item 8) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 66–68): (see 57, 2002 below) Sch. 12 (items 84–86): Royal Assent	(Sch. 12 (item 86) [see Table A])
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (items 44, 45): (zzzzzr)	—
<i>Taxation Laws Amendment Act (No. 3) 1998</i>	47, 1998	23 June 1998	Schedule 1 (items 2, 4): 1 July 1998 Remainder: Royal Assent	S. 4, Sch. 3 (item 20), Sch. 4 (item 69), Sch. 6 (item 6), Sch. 7 (item 9), Sch. 8 (items 7–10) and Sch. 9 (items 14, 15(3), 16)) Sch. 7 [item 26] (am. by 58, 2000, Sch. 3 [item 8]) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2000</i>	58, 2000	31 May 2000	Schedule 3 (item 8): 23 June 1998 (zzzla)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 78, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (items 83–97): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (zzzm)	—
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 72, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Taxation Laws Amendment (Company Law Review) Act 1998</i>	63, 1998	29 June 1998	Schedules 1–4 and Schedule 5 (items 1–22, 25–53, 58–67): 1 July 1998 (see <i>Gazette</i> 1998, No. S325) (zzzn) Schedule 5 (items 23, 24, 54–57): 1 July 1998	Sch. 2 (items 8, 9), Sch. 3 (item 8) and Sch. 4 (item 5) and Sch. 5 (item 67) Sch. 1 [item 3] (am. by 117, 1999, Sch. 1 [item 6]) Sch. 2 [item 9] (ad. by 117, 1999, Sch. 1 [item 7]) [see Table A] S. 2 (am. by 117, 1999, Sch. 1 [item 5]; 41, 2005, Sch. 10 [item 267])
as amended by				
<i>Taxation Laws Amendment Act (No. 7) 1999</i>	117, 1999	22 Sept 1999	Schedule 1 (items 5–7): (zzzna)	—
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 267): (zzznb)	—
<i>Taxation Laws Amendment (Farm Management Deposits) Act 1998</i>	85, 1998	2 July 1998	2 Jan 1999	—
<i>Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998</i>	91, 1998	14 July 1998	14 July 1998	Sch. 1 (item 19) [see Table A] S. 2(2) (am. by 16, 1999, Sch. 7 [item 15])

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Taxation Laws Amendment Act (No. 1) 1999</i>	16, 1999	9 Apr 1999	Schedule 7 (Part 3): (zzzo)	—
<i>Primary Industries and Energy Legislation Amendment Act (No. 1) 1998</i>	102, 1998	30 July 1998	30 July 1998	—
<i>Taxation Laws Amendment (Film Licensed Investment Company) Act 1998</i>	108, 1998	7 Dec 1998	7 Dec 1998 (see s. 2)	—
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 79, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Taxation Laws Amendment (Private Health Insurance) Act 1998</i>	128, 1998	21 Dec 1998	21 Dec 1998	Sch. 1 (item 6) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 81, 86): Royal Assent	Sch. 12 (item 86) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 1 (items 12–118, 120–185, 187–192, 194, 195, 197–210, 212, 214–221, 223, 225–276, 398–404): 1 July 1999 (zzzp) Schedule 1 (items 119, 186, 193, 196, 211, 213, 222, 224): (zzzp) Schedule 2: (zzzp) Schedule 3 (items 1, 2): Royal Assent (zzzp)	Sch. 1 (items 398–404) [see Table A]
as amended by				
<i>A New Tax System (Pay As You Go) Act 1999</i>	178, 1999	22 Dec 1999	(see 178, 1999 below)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 55): (see 57, 2002 below)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (items 36, 37): (zzzzzr)	—
<i>Assistance for Carers Legislation Amendment Act 1999</i>	13, 1999	9 Apr 1999	Schedule 1 (items 126–128): (zzzq) Schedule 2 (items 56–64): (zzzq)	Sch. 1 (item 128) and Sch. 2 (items 63, 64(2)) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 1999</i>	16, 1999	9 Apr 1999	S. 4, Schedule 1, Schedule 3 (items 8–10, 12(3)), Schedules 5, 6, Schedule 7 (items 1–8) and Schedules 8–11: Royal Assent (zzzr)	S. 4, Sch. 1 (item 14), Sch. 3 (item 12(3)), Sch. 5 (item 16), Sch. 6 (item 28), Sch. 7 (item 8), Sch. 8 (item 2), Sch. 9 (item 10), Sch. 10 (items 3, 4) and Sch. 11 (item 2) [see Table A]
<i>A New Tax System (Fringe Benefits Reporting) Act 1999</i>	17, 1999	19 Apr 1999	Schedule 2 (item 14): 17 May 1999 Remainder: Royal Assent	Sch. 2 (items 17, 20, 26, 29, 32, 39, 40) [see Table A]
<i>Taxation Laws Amendment (Software Depreciation) Act 1999</i>	39, 1999	31 May 1999	31 May 1999	S. 4 and Sch. 1 (item 21) [see Table A]
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (items 59–104): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (zzzs) Schedule 8 (items 18, 22, 23): Royal Assent (zzzs)	Sch. 8 (items 18, 22, 23) [see Table A] S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
as amended by <i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 6) 1999</i>	54, 1999	5 July 1999	S. 4, Schedule 1 (items 2–13, 36), Schedule 3, Schedule 5 (items 11–15), Schedule 6 and Schedule 7 (items 1, 3): Royal Assent (zzzt)	S. 4, Sch. 1 (item 36), Sch. 3 (item 11), Sch. 5 (item 15), Sch. 6 (item 2) and Sch. 7 (item 3) [see Table A]
<i>A New Tax System (Income Tax Laws Amendment) Act 1999</i>	60, 1999	8 July 1999	9 July 1999 (see s. 2)	Sch. 2 (item 12) [see Table A]
<i>A New Tax System (Personal Income Tax Cuts) Act 1999</i>	69, 1999	8 July 1999	9 July 1999 (see s. 2)	Sch. 3 [see Table A]
<i>A New Tax System (Closely Held Trusts) Act 1999</i>	70, 1999	8 July 1999	8 July 1999	Sch. 1 (items 3, 4) and Sch. 2 (item 12) [see Table A]
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999</i>	82, 1999	8 July 1999	Schedule 8 (items 1–25, 29): (zzzu)	Sch. 8 (item 29) [see Table A]
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i>	83, 1999	8 July 1999	Schedule 10 (item 22): 12 Dec 1999 (zzzv) Schedule 10 (items 7–21, 23, 68): 1 July 2000 (zzzv)	Sch. 10 (item 68) [see Table A] S. 2(2) (am. by 172, 1999, Sch. 2 [item 1]) S. 2(6A) (ad. by 172, 1999, Sch. 2 [item 2])
as amended by				
<i>Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999</i>	172, 1999	10 Dec 1999	Schedule 2 (items 1, 2): (zzzva)	—
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 171): (zzzvb)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1999</i>	93, 1999	16 July 1999	Schedule 4 (item 24): 16 Apr 1998 Remainder: Royal Assent	S. 4, Sch. 1 (items 39, 46, 48), Sch. 2 (item 3), Sch. 3 (item 33), Sch. 4 (item 25) and Sch. 5 (items 80, 81) [see Table A]
<i>Taxation Laws Amendment Act (No. 4) 1999</i>	94, 1999	16 July 1999	S. 4, Schedule 3 (items 1–3), Schedule 4, Schedule 5 (items 23–35) and Schedule 6 (items 67–73): Royal Assent (zzzw)	S. 4, Sch. 3 (item 3), Sch. 4 (item 2), Sch. 5 (item 35) and Sch. 6 (item 73) [see Table A]
<i>Superannuation Legislation Amendment Act (No. 2) 1999</i>	96, 1999	16 July 1999	16 July 1999	Sch. 2 (items 3, 4) [see Table A]
<i>Taxation Laws Amendment (CPI Indexation) Act 1999</i>	102, 1999	16 July 1999	Schedule 1 (items 3, 4): 12 Dec 1995 (see s. 2(2)) Remainder: Royal Assent	Sch. 2 (item 2) [see Table A]
<i>Taxation Laws Amendment (Demutualisation of Non-insurance Mutual Entities) Act 1999</i>	103, 1999	16 July 1999	16 July 1999	Sch. 1 (item 4) [see Table A]
<i>Taxation Laws Amendment Act (No. 7) 1999</i>	117, 1999	22 Sept 1999	Schedule 1 (items 1–4, 8): (zzzx)	Sch. 1 (item 8) [see Table A]
<i>Statute Stocktake Act 1999</i>	118, 1999	22 Sept 1999	22 Sept 1999	Sch. 2 (item 51) [see Table A]
<i>Superannuation Legislation Amendment Act (No. 3) 1999</i>	121, 1999	8 Oct 1999	Schedule 2 (items 5, 6): Royal Assent (zzzy)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999</i>	128, 1999	13 Oct 1999	S. 8 and Schedule 1 (items 3–11): 13 Oct 1999 (zzzz) Schedule 3 (item 1): 2 June 1997 (see <i>Gazette</i> 1997, No. S202) (zzzz) Schedule 3 (item 4): Royal Assent (zzzz)	S. 8 [see Table A]
<i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999</i>	131, 1999	13 Oct 1999	Schedule 4: Royal Assent (zzzza)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 525–531): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584 (zzzzb))	—
<i>New Business Tax System (Capital Allowances) Act 1999</i>	164, 1999	10 Dec 1999	Schedule 3 (items 11–14): Royal Assent (zzzzc)	Sch. 3 (item 14) [see Table A]
<i>New Business Tax System (Capital Gains Tax) Act 1999</i>	165, 1999	10 Dec 1999	Schedule 1 (items 54–62): (zzzzd)	Sch. 1 (item 62) [see Table A] Sch. 1 [item 61] (am. by 173, 2000, Sch. 3 [item 16]) [see Table A]
as amended by <i>Taxation Laws Amendment Act (No. 7) 2000</i>	173, 2000	21 Dec 2000	Schedule 3 (item 16): Royal Assent (zzzzda)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Integrity and Other Measures) Act 1999</i>	169, 1999	10 Dec 1999	Schedule 2 (items 4, 5), Schedule 3 (items 5–7), Schedule 4 (items 16–19), Schedule 5 (item 15), Schedule 7 (items 10, 12), Schedule 9 (items 16–22): Royal Assent Schedule 7 (items 1–5): 10 Dec 1999) Schedule 7 (items 6–9): 22 Sept 2002 Schedule 9 (item 15): (zzzze)	Sch. 2 (item 5), Sch. 3 (item 7), Sch. 4 (item 19) and Sch. 9 (item 22) Sch. 7 [item 12] (am. by 89, 2000, Sch. 8 [item 10]) [see Table A]
as amended by				
<i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i>	89, 2000	30 June 2000	S. 4 and Schedule 8 (item 10): Royal Assent (zzzzea)	S. 4 [see Table A]
<i>New Business Tax System (Simplified Tax System) Act 2001</i>	78, 2001	30 June 2001	(see 78, 2001 below)	Sch. 3 (item 15(2)) [see Table A]
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act 1999</i>	176, 1999	22 Dec 1999	Schedule 8 (items 16–25): (zzzzf)	—
<i>A New Tax System (Pay As You Go) Act 1999</i>	178, 1999	22 Dec 1999	Schedule 1 (items 6, 8, 70–78): 1 July 2000 Remainder: Royal Assent	S. 4 and Sch. 2 (item 35) Sch. 1 [item 49A] (ad. by 179, 1999, Sch. 10 [item 21]) [see Table A] S. 2(1A) (ad. by 179, 1999, Sch. 10 [item 19])
as amended by				
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 10 (items 19, 21): (zzzzg)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 40): (see 57, 2002 below)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (item 3): (zzzzzr)	—
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 2 (items 20–47), Schedule 10 (items 22–24), Schedule 11 (item 44) and Schedule 16 (items 3–17, 37): (zzzzh) Schedule 3 (items 3–6): (zzzzh) Schedule 5 (items 1–64) and Schedule 11 (items 14–43, 45–79): (zzzzh) Schedule 5 (item 74), Schedule 6 (items 1–13, 24(1)–(4)) and Schedule 17 (items 1, 2): Royal Assent (zzzzh) Schedule 12 (item 3): (zzzzh)	Sch. 5 (item 74), Sch. 6 (item 24(1)–(4)), Sch. 10 (item 24), Sch. 11 (item 79, Sch. (item 37) and Sch. 17 (item 2) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 42): (see 57, 2002 below)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i>	24, 2000	3 Apr 2000	Schedule 11 (item 5): 12 May 2000 (see <i>Gazette</i> 2000, No. S239) (zzzzi)	—
<i>Timor Gap Treaty (Transitional Arrangements) Act 2000</i>	25, 2000	3 Apr 2000	S. 4–6: Royal Assent Schedule 2 (items 34, 35): 26 Oct 1999 (zzzzj)	Ss. 4–6 [see Table A]
<i>Radiocommunications Legislation Amendment Act 2000</i>	34, 2000	3 May 2000	31 May 2000	—
<i>Taxation Laws Amendment Act (No. 5) 2000</i>	43, 2000	3 May 2000	3 May 2000	S. 4, Sch. 2 (item 6) and Sch. 3 (items 9, 10) [see Table A]

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Tax Administration) Act (No. 1) 2000</i>	44, 2000	3 May 2000	Schedule 3 (items 14–33, 36, 37), Schedule 4 (items 10–12): (zzzzk) Schedule 3 (items 34, 35): (zzzzk) Schedule 4 (items 4–9): (zzzzk)	Sch. 4 (items 5, 7, 9) [see Table A]
<i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>	45, 2000	3 May 2000	Schedule 4 (items 11–28): (zzzzl) Schedule 4 (item 29): Royal Assent (zzzzl)	Sch. 4 (item 29) [see Table A] S. 2(11) (am. by 71, 2001, Sch. 2 [item 1]; 30, 2003, Sch.2 [item 87])
as amended by				
<i>Family and Community Services Legislation (Simplification and Other Measures) Act 2001</i>	71, 2001	30 June 2001	Schedule 2 (item 1): 3 May 2000 (zzzzla)	—
<i>Family and Community Services Legislation Amendment Act 2003</i>	30, 2003	15 Apr 2003	Schedule 2 (item 87): (zzzzlb)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 2000</i>	58, 2000	31 May 2000	S. 4, Schedule 1 (items 1–11), Schedule 2 (items 1, 4(1)), Schedule 3 (item 3), Schedule 6 (item 34), Schedule 10 (items 1–11, 17(1), (2), 18–30, 38(1), (2)), Schedule 11 (items 1, 11): Royal Assent (zzzzm) Schedule 1 (items 12–27): (zzzzm) Schedule 3 (item 1): (zzzzm) Schedule 3 (items 2, 4, 5): (zzzzm) Schedule 3 (item 6): (zzzzm) Schedule 3 (item 7): (zzzzm) Schedule 6 (item 33): (zzzzm) Schedule 8 (items 1–17, 21): (zzzzm) Schedule 8 (item 18): 1 July 1999 (zzzzm)	S. 4, Sch. 1 (items 10, 11, 27), Sch. 2 (item 4(1)), Sch. 3 (item 3), Sch. 6 (item 34), Sch. 8 (item 21), Sch. 10 (items 17(1), (2), 21, 38(1), (2)) and Sch. 11 (item 11) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 2000</i>	66, 2000	22 June 2000	Schedule 2 (item 2): 7 Dec 1998 (zzzzn)	—
<i>Taxation Laws Amendment Act (No. 6) 2000</i>	76, 2000	28 June 2000	28 June 2000	S. 4 and Sch. 1 (item 8(1)–(3)) [see Table A]
<i>New Business Tax System (Miscellaneous) Act (No. 1) 2000</i>	79, 2000	30 June 2000	Schedules 1–3, Schedule 4 (items 1–5) and Schedule 6: 1 July 2000 Schedule 4 (items 6–10): 1 July 2001 Schedule 5: (zzzzo) Reminder: Royal Assent	S. 4, Sch. 1 (item 4), Sch. 2 (item 7), Sch. 3 (item 14), Sch. 4 (items 5, 10), Sch. 5 (item 45) and Sch. 6 (item 15) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Alienation of Personal Services Income) Act 2000</i>	86, 2000	30 June 2000	Schedule 1 (items 59, 60, 63–71): (zzzzp) Reminder: Royal Assent	—
<i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i>	89, 2000	30 June 2000	S. 4, Schedule 1 (item 66), Schedule 2 (items 1–24, 35, 36, 48, 53–62), Schedule 3 (items 1–29, 98–100), Schedule 5 (items 32–34(1)) and Schedule 8 (items 1–8, 11): Royal Assent (zzzzq) Schedule 1 (item 67): 11 Nov 1999 (zzzzq) Schedule 2 (items 25, 26): 1 July 2000 (zzzzq) Schedule 3 (items 30–84): 1 July 2000 (zzzzq) Schedule 3 (items 85–97): (zzzzq)	S. 4, Sch. 2 (item 62), Sch. 3 (items 29, 84, 100), Sch. 5 (item 34(1)) and Sch. 8 (item 11) [see Table A]
<i>New Business Tax System (Integrity Measures) Act 2000</i>	90, 2000	30 June 2000	30 June 2000	Sch. 2 (item 11) [see Table A]
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 2 (items 13–48, 130–142, 144(1), 145–147): (zzzzr)	Sch. 2 (items 144(1), 147) [see Table A]
<i>Indirect Tax Legislation Amendment Act 2000</i>	92, 2000	30 June 2000	Schedule 7 (items 26, 27): (zzzzs)	—
<i>Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000</i>	94, 2000	30 June 2000	Schedule 4: 1 July 2000 (zzzzt)	—
<i>Youth Allowance Consolidation Act 2000</i>	106, 2000	6 July 2000	Schedule 5 (items 2–4): Royal Assent (zzzzu)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 4) 2000</i>	114, 2000	5 Sept 2000	Schedule 4 (items 43, 44): 1 July 1998 Remainder: Royal Assent	S. 4, Sch. 3 (item 3) and Sch. 4 (item 82) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (item 40): (zzzzzr)	—
<i>Social Security and Veterans' Entitlements Legislation Amendment (Private Trusts and Private Companies—Integrity of Means Testing) Act 2000</i>	132, 2000	13 Nov 2000	13 Nov 2000	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Farm Household Support Amendment Act 2000</i>	144, 2000	7 Dec 2000	Ss. 1 and 2: Royal Assent Remainder: 18 Dec 2000 (see <i>Gazette</i> , 2000 No. S634)	Sch. 3 (items 7(3), 8) [see Table A]
<i>Taxation Laws Amendment Act (No. 8) 2000</i>	156, 2000	21 Dec 2000	Schedule 7 (items 13, 14): Royal Assent (zzzzv)	—
<i>Taxation Laws Amendment Act (No. 7) 2000</i>	173, 2000	21 Dec 2000	S. 65(1), (2) and Schedule 4 (items 1–5): Royal Assent (zzzzw)	Sch. 4 (item 65(1), (2)) [see Table A]
<i>Taxation Laws Amendment (Changes for Senior Australians) Act 2001</i>	44, 2001	25 May 2001	25 May 2001	Sch. (item 11, 12) [see Table A]
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 220–263): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (zzzzx)	Ss. 4–14 [see Note 1]
<i>Governor-General Legislation Amendment Act 2001</i>	57, 2001	28 June 2001	28 June 2001	Sch. 2 (item 4) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 1) 2001</i>	72, 2001	30 June 2001	30 June 2001	Sch. 2 (items 108(2), 109(2), 110) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 2001</i>	73, 2001	30 June 2001	Schedule 1 (items 69–78): 23 May 2001 Schedule 2 (items 48–52): 1 Jan 2001 Schedule 3 (items 34–36): 1 Apr 2001 Remainder: Royal Assent	Sch. 2 (item 95), Sch. 3 (item 17) and Sch. 4 (item 10) [see Table A]
<i>Child Support Legislation Amendment Act 2001</i>	75, 2001	30 June 2001	Schedule 5 (items 68, 69): Royal Assent (zzzzy)	—
<i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	77, 2001	30 June 2001	Schedule 2 (items 20–148): Royal Assent (zzzzz)	Sch. 2 [item 488(1)] (am. by 119, 2002, Sch. 3 [item 97]) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 5) 2002</i>	119, 2002	2 Dec 2002	Schedule 3 (item 97): (zzzzzaa)	—
<i>New Business Tax System (Simplified Tax System) Act 2001</i>	78, 2001	30 June 2001	Schedule 3 (items 5, 14): 22 Sept 2002 Remainder: Royal Assent	Sch. 3 (item 15) [see Table A]
<i>Taxation Laws Amendment (Superannuation Contributions) Act 2001</i>	89, 2001	18 July 2001	18 July 2001	Sch. 1 (items 11(1), 12) [see Table A]
<i>Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001</i>	114, 2001	18 Sept 2001	(zzzzza)	—
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and Gazette 2002, No. GN24)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 238, 239): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (zzzzzb)	—
<i>Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001</i>	144, 2001	1 Oct 2001	Schedule 3 (item 3): Royal Assent (zzzzzc)	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	Schedule 4 (items 41–91): 15 Dec 2001 (zzzzzd)	—
<i>New Business Tax System (Thin Capitalisation) Act 2001</i>	162, 2001	1 Oct 2001	Schedule 1 (items 2–13, 23–26): 1 July 2001 (zzzzze)	Sch. 1 (items 23–26) [see Table A]
<i>New Business Tax System (Debt and Equity) Act 2001</i>	163, 2001	1 Oct 2001	1 July 2001	Sch. 1 (items 118(1), (6)–(8), (10)–(13)), Sch. 1 [item 118(2)] (am. by 162, 2005, Sch. 6 [item 26]), Sch. 1 [item 118(9)] (rs. by 162, 2005, Sch. 6 [item 27]) and [see Table A]
as amended by				
<i>Tax Laws Amendment (2005 Measures No. 5) Act 2005</i>	162, 2005	19 Dec 2005	Schedule 6 (items 26, 27): (zzzzzx)	—
<i>Taxation Laws Amendment Act (No. 2) 2001</i>	167, 2001	1 Oct 2001	Schedule 5: (zzzzzf) Remainder: Royal Assent	Sch. 2 (item 3), Sch. 4 (item 7), Sch. 5 (item 4) and Sch. 6 (item 3) [see Table A]
<i>Taxation Laws Amendment Act (No. 5) 2001</i>	168, 2001	1 Oct 2001	Schedule 2: 1 July 2000 Remainder: Royal Assent	Sch. 2 (item 3) (am. by 58, 2006, Sch. 7 [item 270]; 4, 2007, Sch. 2 [item 22]) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 270): Royal Assent	—
<i>Tax Laws Amendment (2006 Measures No. 6) Act 2007</i>	4, 2007	19 Feb 2007	Schedule 2 (item 22): Royal Assent	—
<i>Taxation Laws Amendment Act (No. 6) 2001</i>	169, 2001	1 Oct 2001	Schedules 2, 3 and Schedule 6 (items 16A–16K, 19(1), (2), (2B)): Royal Assent (zzzzzg)	Sch. 2 (item 3) and Sch. 6 (item 19(1), (2), (2B)) [see Table A]
<i>Taxation Laws Amendment (Research and Development) Act 2001</i>	170, 2001	1 Oct 2001	Schedule 2 (items 4–51): 29 Jan 2001 (zzzzzh) Schedule 2 (items 52–92): (zzzzzh) Remainder: Royal Assent	Sch. 1 (item 6), Sch. 2 (items 2, 51, 92), Sch. 3 (item 19(1)) and Sch. 4 (item 11) [see Table A] S. 2(3) (am. by 57, 2002, Sch. 12 [item 63])
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 63): (see 57, 2002 below)	—
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 268): (zzzzzha)	—
<i>Taxation Laws Amendment (Superannuation) Act (No. 1) 2002</i>	15, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (item 21) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 2002</i>	26, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (item 9(1), (3)) [see Table A]
<i>Taxation Laws Amendment (Film Incentives) Act 2002</i>	27, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (item 12) [see Table A]
<i>Taxation Laws Amendment (Baby Bonus) Act 2002</i>	32, 2002	30 May 2002	30 May 2002	S. 4 [see Table A]
<i>Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002</i>	39, 2002	26 June 2002	26 June 2002	S. 4 and Sch. 2 (item 3) [see Table A]
<i>New Business Tax System (Imputation) Act 2002</i>	48, 2002	29 June 2002	29 June 2002	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Superannuation) Act (No. 2) 2002</i>	51, 2002	29 June 2002	S. 4, Schedule 1 (item 202(2)), Schedule 3 (items 1, 2, 4) and Schedules 4, 5: Royal Assent Schedule 1 (items 170–184): 1 July 2003	S. 4, Sch. 1 (item 202(2)), Sch. 3 (item 4), Sch. 4 (item 3) and Sch. 5 (item 2) [see Table A]
<i>Taxation Laws Amendment Act (No. 4) 2002</i>	53, 2002	29 June 2002	Schedules 3 and 4: 1 July 2002 Remainder: Royal Assent	S. 4 and Sch. 1 (items 47, 48) [see Table A]
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 1: 1 July 2001 Schedules 3, 5, 6, Schedule 9 (items 1–8, 41–44), Schedule 11 (items 1, 5), Schedule 12 (items 8–10, 14, 15): Royal Assent Schedule 4 (items 1, 2, 4): 1 July 2000 Schedule 10: 17 Nov 1999 Schedule 12 (items 4–7, 11–13, 38, 40, 42, 43, 50, 54, 55, 63–68): (zzzzzi)	Sch. 1 (item 11), Sch. 3 (item 4), Sch. 4 (item 4(1)), Sch. 5 (item 2), Sch. 6 (item 3), Sch. 9 (items 41–44), Sch. 11 (items 5) and Sch. 12 (items 6, 9, 13) [see Table A]
<i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	68, 2002	22 Aug 2002	24 Oct 2002 (see s. 2)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	90, 2002	24 Oct 2002	S. 4, Schedule 16 (items 2–20, 54, 55): Royal Assent Schedules 10, 15 (items 16–18), (zzzzzj)	S. 4, Sch. 10 (item 4) and Sch. 16 (items 54, 55) Sch. 10 [items 2, 3] (am. by 117, 2002, Sch. 15 [items 2, 3]) Sch. 10 [items 5–10] (ad. by 117, 2002, Sch. 15 [item 4]) and Sch. 10 [item 11] (ad. by 16, 2003, Sch. 18 [item 1]) [see Table A]
as amended by				
<i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	117, 2002	2 Dec 2002	Schedule 15 (items 2–4): (zzzzzja)	—
<i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	16, 2003	11 Apr 2003	Schedule 18 (item 1): (zzzzzjb)	—
<i>Taxation Laws Amendment Act (No. 3) 2002</i>	97, 2002	10 Nov 2002	S. 4, Schedule 2 (items 1–9): 10 Nov 2002 Schedule 3: see (zzzzzk)	S. 4 and Sch. 3 (item 2) [see Table A]
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 51): 12 May 2003 (see s. 2(1) and Gazette 2002, No. GN49)	—
<i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	117, 2002	2 Dec 2002	S. 4 and Schedule 16: Royal Assent Schedule 11 (items 1–7), Schedule 14 (items 3–7): (zzzzzl)	S. 4 and Sch. 16 (item 3) [see Table A]

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 2002</i>	119, 2002	2 Dec 2002	S. 4, Schedule 3 (item 100(1)) and Schedule 4: Royal Assent Schedule 3 (items 1–3): (zzzzzm)	S. 4, Sch. 3 (item 100(1)) and Sch. 4 (item 19) [see Table A]
<i>Taxation Laws Amendment (Venture Capital) Act 2002</i>	136, 2002	19 Dec 2002	Schedule 2 (items 1–17): Royal Assent	Sch. 2 (item 28) [see Table A]
<i>Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Act 2002</i>	138, 2002	19 Dec 2002	Schedule 1 (items 1–6): 2 Jan 1999 Schedule 1 (items 7–13): 1 July 2002 Remainder: Royal Assent	S. 4 [see Table A]
<i>Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002</i>	139, 2002	19 Dec 2002	19 Dec 2002	—
<i>Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003</i>	10, 2003	2 Apr 2003	Schedule 1 (items 1–52, 54–75, 78–82): 20 May 2002 Remainder: Royal Assent	S. 4 and Sch. 1 (item 81) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 2003</i>	12, 2003	2 Apr 2003	Schedule 1: 29 Aug 2001 Remainder: Royal Assent	Sch. 1 (item 10) and Sch. 3 (item 11) [see Table A]
<i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	16, 2003	11 Apr 2003	S. 4: Royal Assent Schedule 5 (item 1) and Schedule 23 (items 1–9): (zzzzzn) Schedule 9 (items 3–12): (zzzzzn) Schedule 10 (item 1): (zzzzzn) Schedule 29 (items 1–11, 14): (zzzzzn)	S. 4 and Sch. 29 (item 14) Sch. 9 [item 12] (am. by 83, 2004, Sch. 2 [item 51]) [see Table A]
as amended by <i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i>	83, 2004	25 June 2004	Schedule 2 (item 51): Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Personal Income Tax Reduction) Act 2003</i>	45, 2003	24 June 2003	24 June 2003	S. 4 [see Table A]
<i>Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003</i>	54, 2003	27 June 2003	1 July 2003	—
<i>Taxation Laws Amendment Act (No. 2) 2003</i>	65, 2003	30 June 2003	Schedule 5 (item 1): (zzzzzo) Remainder: Royal Assent	S. 4, Sch. 3 (item 2), Sch. 4 (item 2) and Sch. 5 (item 4) [see Table A]
<i>Taxation Laws Amendment Act (No. 4) 2003</i>	66, 2003	30 June 2003	S. 4, Schedule 1 and Schedule 3 (items 1–45, 47, 48, 140(1), (5), (7)): Royal Assent Schedule 3 (item 46): (zzzzzp) Schedule 3 (item 46A): (zzzzzq)	S. 4, Sch. 1 (item 18) and Sch. 3 (item 140(1), (5), (7)) [see Table A]
<i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	S. 4: Royal Assent Schedule 9 (items 6–15, 18(1)(b), (2), 19): 1 Sept 2003	S. 4, Sch. 9 (items 18(1)(b), (2), 19) [see Table A]
<i>Australian Heritage Council (Consequential and Transitional Provisions) Act 2003</i>	86, 2003	23 Sept 2003	Ss. 1–3: Royal Assent Remainder: 1 Jan 2004 (see s. 2 and <i>Gazette</i> 2003, No. GN47)	—
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	S. 4, Schedule 1 (items 1, 22) Schedule 3 (items 1, 6), Schedule 4, Schedule 6 (items 7–13, 15): Royal Assent S. 5: 11 Oct 2002 Schedule 6 (items 5, 6, 14): (zzzzzq)	Ss. 4, 5, Sch. 1 (item 21), Sch. 3 (item 6) and Sch. 4 (item 2) [see Table A] S. 2(1) (am. by 67, 2003, Sch. 10 [item 13])
as amended by <i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	Schedule 10 (item 13): 14 Oct 2003 (see s. 2(1))	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 8) 2003</i>	107, 2003	21 Oct 2003	S. 4, Schedule 1 (items 5–9) and Schedule 7 (items 11, 12): Royal Assent Schedule 6: 1 July 2003	S. 4, Sch. 1 (item 9(2)), Sch. 6 (item 3) and Sch. 7 (item 12) [see Table A]
<i>Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003</i>	111, 2003	12 Nov 2003	12 Nov 2003	Sch. 1 (item 25) [see Table A]
<i>Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003</i>	122, 2003	5 Dec 2003	Schedule 2 (items 16–18): 5 Dec 2003	Sch. 2 (item 18) [see Table A]
<i>International Tax Agreements Amendment Act 2003</i>	123, 2003	5 Dec 2003	5 Dec 2003	—
<i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i>	133, 2003	17 Dec 2003	17 Dec 2003	S. 4, Sch. 1 (item 17(1)) and Sch. 4 (items 77, 78) [see Table A]
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	140, 2003	17 Dec 2003	Schedule 1 (item 27): (zzzzzr)	—
<i>Taxation Laws Amendment Act (No. 5) 2003</i>	142, 2003	17 Dec 2003	S. 4, Schedule 1 (items 1, 16, 17), Schedule 2 (items 1, 3), Schedule 4 (items 1, 2), Schedule 8 (items 1–3, 24(1)): Royal Assent	S. 4, Sch. 1 (item 1), Sch. 2 (item 1), Sch. 4 (item 2) and Sch. 8 (item 24(1)) [see Table A]
<i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i>	150, 2003	19 Dec 2003	Schedule 2 (items 125–132): (zzzzzs)	—
<i>Taxation Laws Amendment Act (No. 2) 2004</i>	20, 2004	23 Mar 2004	Schedule 6: 1 July 2000 Remainder: Royal Assent	S. 4, Sch. 4 (item 9) and Sch. 8 (item 14) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>	52, 2004	27 Apr 2004	Schedule 4 (items 1–9, 14(1), 15): 1 July 2004 (see s. 2)	Sch. 4 (items 14(1), 15) [see Table A]
<i>Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004</i>	59, 2004	26 May 2004	Schedule 2 (items 34, 35): 1 July 2004	Sch. 2 (item 35) [see Table A]
<i>Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004</i>	60, 2004	26 May 2004	26 May 2004	Sch. 3 (item 1) [see Table A]
<i>New International Tax Arrangements Act 2004</i>	73, 2004	23 June 2004	23 June 2004	Sch. 1 (item 13), Sch. 2 (item 6), Sch. 3 (item 2) and Sch. 4 (item 2) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i>	83, 2004	25 June 2004	S. 4, Schedule 1 (items 108–115, 126(7)), Schedule 2 (items 1, 3, 4, 35, 37), Schedule 3 (items 1–3, 6, 7), Schedule 9, Schedule 10 (item 43(1)) and Schedule 11: Royal Assent Schedule 1 (item 1): (zzzzzt) Schedule 10 (items 1, 2): (zzzzzt)	S. 4, Sch. 1 (item 126(7)), Sch. 2 (items 1, 37), Sch. 3 (items 6, 7), Sch. 9 (item 7), Sch. 10 (item 43(1)) and Sch. 11 (item 5) [see Table A]
<i>Superannuation Laws Amendment (2004 Measures No. 1) Act 2004</i>	92, 2004	29 June 2004	29 June 2004	—
<i>Superannuation Laws Amendment (2004 Measures No. 2) Act 2004</i>	93, 2004	29 June 2004	Schedule 1 (items 1, 2): Royal Assent	—
<i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i>	95, 2004	29 June 2004	S. 4, Schedules 1, 8 and 9: Royal Assent Schedule 7 (items 11–13): 1 July 2004	S. 4, Sch. 1 (item 2), Sch. 7 (item 13), Sch. 8 (items 8, 9) and Sch. 9 (item 9) [see Table A]

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004</i>	96, 2004	29 June 2004	29 June 2004	Sch. 2 (item 141) and Sch. 3 (item 10) Sch. 2 (item 140) (am. by 64, 2005, Sch. 5 [item 1]) [see Table A]
as amended by				
<i>New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005</i>	64, 2005	26 June 2005	Schedule 5: (see 64, 2005 below)	—
<i>Veterans' Entitlements (Clarke Review) Act 2004</i>	100, 2004	30 June 2004	Schedule 2 (item 31): 20 Sept 2004	—
<i>Taxation Laws Amendment Act (No. 1) 2004</i>	101, 2004	30 June 2004	S. 4, Schedule 1 (items 1, 4), Schedule 8, Schedule 10 (items 1–6) and Schedule 11 (items 161, 162): Royal Assent Schedule 11 (items 1, 2): (zzzzzu) Schedule 11 (items 17–34, 38–43): (zzzzzu) Schedule 11 (items 44–46, 49–51, 60–87, 101–127): (zzzzzu) Schedule 11 (items 131–140): (zzzzzu)	S. 4, Sch. 1 (item 4), Sch. 8 (item 3), Sch. 10 (item 6) and Sch. 11 (items 2, 18, 20, 22, 24, 26, 28, 30, 32, 34, 40, 43, 50, 63, 65, 68, 70, 72, 74, 76, 79, 81, 83, 85, 87, 104, 106, 109, 114, 116, 119, 121, 123, 125, 127, 133, 135, 137, 140, 162) [see Table A]
<i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i>	102, 2004	30 June 2004	Schedule 2 (items 1–3, 10(1)): Royal Assent	Sch. 2 (item 10(1)) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 3) Act 2004</i>	105, 2004	30 June 2004	Schedule 2: 1 Apr 2004 Remainder: Royal Assent	S. 4 and Sch. 1 (item 19) [see Table A]
<i>Higher Education Legislation Amendment Act (No. 2) 2004</i>	114, 2004	13 July 2004	Schedule 2 (items 39–45, 80): 14 July 2004 Remainder: Royal Assent	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 156–158, 496): Royal Assent	S. 4 and Sch. 1 (item 496) [see Table A]
<i>New International Tax Arrangements (Managed Funds and Other Measures) Act 2005</i>	21, 2005	21 Mar 2005	21 Mar 2005	Sch. 3 (item 47(1), (2)) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 6) Act 2005</i>	23, 2005	21 Mar 2005	S. 4 and Schedule 3 (items 14–74, 111(3)–(5), 112–114): Royal Assent	S. 4 and Sch. 3 (items 111(3)–(5), 112–114) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	S. 4, Schedule 3 (items 1–16, 22), Schedule 6 (items 1, 6–11), Schedule 8, Schedule 9 (items 3–13), Schedule 10 (items 19–35, 270) and Schedule 11 (items 1–3, 5): Royal Assent Schedule 9 (items 1, 2): (zzzzzv)	S. 4, Sch. 3 (item 22), Sch. 6 (item 1), Sch. 8 (item 5), Sch. 9 (items 2, 13), Sch. 10 (item 30) and Sch. 11 (item 5) [see Table A]
<i>Social Security Legislation Amendment (One-off Payments for Carers) Act 2005</i>	55, 2005	25 May 2005	25 May 2005	Sch. 2 (item 1) Sch. 4 (item 1) (am. by 19, 2008, Sch. 3 [item 70]) [see Table A]
as amended by <i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i>	19, 2008	26 May 2008	Schedule 3 (item 70): Royal Assent	—
<i>Tax Laws Amendment (2005 Measures No. 3) Act 2005</i>	63, 2005	26 June 2005	Schedule 1 (items 1–4, 23), Schedule 2 and Schedule 5: Royal Assent	Sch. 1 (item 23), Sch. 2 (item 3) and Sch. 5 (item 4) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005</i>	64, 2005	26 June 2005	Schedule 2: 27 June 2005 Schedule 5: (zzzzzw) Remainder: Royal Assent	Sch. 2 (item 11), Sch. 3 (item 4) and Sch. 4 (items 38, 39) [see Table A]
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005</i>	75, 2005	29 June 2005	29 June 2005	Sch. 1 (item 31) [see Table A]
<i>Tax Laws Amendment (2005 Measures No. 2) Act 2005</i>	78, 2005	29 June 2005	29 June 2005	—
<i>Superannuation (Consequential Amendments) Act 2005</i>	81, 2005	29 June 2005	Schedule 7 (item 1): 1 July 2005	—
<i>Human Services Legislation Amendment Act 2005</i>	111, 2005	6 Sept 2005	Schedule 2 (item 398): 1 Oct 2005	—
<i>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005</i>	147, 2005	14 Dec 2005	Schedule 1 (items 1–3, 169(1)), Schedule 2 (items 2–11, 27(1)–(4), 28(1)–(3)), Schedule 4 (items 1–3, 12), Schedule 5 (items 1–12, 20) and Schedule 7 (items 1–13, 19, 20): Royal Assent	Sch. 1 (item 169(1)), Sch. 2 (items 27(1)–(4), 28(1)–(3)), Sch. 4 (item 12), Sch. 5 (item 20) and Sch. 7 (item 19, 20) [see Table A]
<i>Tax Laws Amendment (Superannuation Contributions Splitting) Act 2005</i>	148, 2005	14 Dec 2005	14 Dec 2005	—
<i>Tax Laws Amendment (2005 Measures No. 4) Act 2005</i>	160, 2005	19 Dec 2005	Schedule 3: Royal Assent	Sch. 3 (item 3) [see Table A]
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005</i>	161, 2005	19 Dec 2005	19 Dec 2005	Sch. 1 (items 15, 19, 25, 73) and Sch. 2 (item 32) Sch. 1 (item 68) (am. by 80, 2006, Sch. 13 [item 1]) [see Table A]
as amended by <i>Tax Laws Amendment (2006 Measures No. 3) Act 2006</i>	80, 2006	30 June 2006	Schedule 13: (zzzzzx)	Sch. 13 (item 2) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2005 Measures No. 5) Act 2005</i>	162, 2005	19 Dec 2005	Schedule 1, Schedule 3 (items 8–15, 33), Schedule 5: Royal Assent Schedule 6 (items 14, 15): (zzzzzy)	Sch. 1 (item 5) and Sch. 3 (item 33) [see Table A]
<i>Tax Laws Amendment (2005 Measures No. 6) Act 2006</i>	13, 2006	29 Mar 2006	Schedule 4: Royal Assent	Sch. 4 (item 9) [see Table A]
<i>Offshore Petroleum (Repeals and Consequential Amendments) Act 2006</i>	17, 2006	29 Mar 2006	Schedule 2 (items 38–40): 1 July 2008 (see s. 2(1) and F2008L02273)	Sch. 2 (item 40) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 1) Act 2006</i>	32, 2006	6 Apr 2006	6 Apr 2006	Sch. 1 (item 40(8), (9)) [see Table A]
<i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006</i>	41, 2006	22 May 2006	22 May 2006	—
<i>Tax Laws Amendment (Personal Tax Reduction and Improved Depreciation Arrangements) Act 2006</i>	55, 2006	19 June 2006	Schedules 1, 3 and 4: 1 July 2006 Remainder: Royal Assent	Sch. 3 (item 4) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	S. 4 and Schedule 7 (items 35–50, 241–256): Royal Assent Schedule 7 (items 173, 175): (zzzzzz) Schedule 7 (item 174): 24 Oct 2002 Schedule 7 (items 176, 178): 30 June 2004 Schedule 7 (item 177): 24 Dec 1992	S. 4 and Sch. 7 (item 38) [see Table A]
<i>Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006</i>	65, 2006	22 June 2006	Schedule 4 (items 11, 12): Royal Assent	Sch. 4 (item 12) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i>	73, 2006	26 June 2006	Schedule 5 (items 4, 154, 155): 1 July 2006 (see s. 2(1))	—
<i>Tax Laws Amendment (2006 Measures No. 3) Act 2006</i>	80, 2006	30 June 2006	Schedule 1 (items 1, 4), Schedule 2, Schedule 4 (items 3, 4, 14, 21, 22, 30), Schedule 6 (item 2) and Schedule 9: Royal Assent Schedule 3 (items 1, 5): (zzzzza) Schedule 4 (items 15–19): 30 June 2002	Sch. 1 (item 4), Sch. 2 (item 1), Sch. 3 (item 5), Sch. 4 (items 14, 19, 30) and Sch. 9 (item 5) [see Table A]
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedules 3 and 4: 1 Jan 2008 Remainder: Royal Assent	Sch. 6 (items 1–4, 6–15) [see Table A]
<i>Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006</i>	125, 2006	4 Nov 2006	Schedules 1–3: 1 July 2007 (see s. 2(1)) Remainder: Royal Assent	—
<i>Tax Laws Amendment (2006 Measures No. 4) Act 2006</i>	168, 2006	12 Dec 2006	Schedule 3 (items 3–5): 13 Dec 2005 Remainder: Royal Assent	S. 4, Sch. 3 (item 5) and Sch. 4 (item 112) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 6) Act 2007</i>	4, 2007	19 Feb 2007	Schedule 2 (items 1–10): Royal Assent	Sch. 2 (item 2) [see Table A]
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (item 16): (zzzzzb)	—
<i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i>	9, 2007	15 Mar 2007	Schedule 1 (items 3, 4, 24(1), 26, 27, 37): Royal Assent	Sch. 1 (items 24(1), 37) [see Table A]
<i>Superannuation Legislation Amendment (Simplification) Act 2007</i>	15, 2007	15 Mar 2007	Schedule 1 (items 1–8, 22–149, 406(1)–(3)): (zzzzzc) Schedule 3 (items 6, 7): 15 Mar 2007	Sch. 1 (item 406(1)–(3)) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007</i>	32, 2007	30 Mar 2007	Schedule 3 (items 1–7): 1 July 2007	—
<i>Tax Laws Amendment (2006 Measures No. 7) Act 2007</i>	55, 2007	12 Apr 2007	12 Apr 2007	Sch. 6 (item 4) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 1) Act 2007</i>	56, 2007	12 Apr 2007	12 Apr 2007	Sch. 3 (item 39) [see Table A]
<i>Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007</i>	66, 2007	11 May 2007	Schedule 1 (item 16) and Schedule 3 (items 10–12): Royal Assent	—
<i>Tax Laws Amendment (2007 Budget Measures) Act 2007</i>	75, 2007	21 June 2007	21 June 2007	Sch. 1 (item 13) [see Table A]
<i>Tax Laws Amendment (Personal Income Tax Reduction) Act 2007</i>	76, 2007	21 June 2007	21 June 2007	Sch. 1 (item 11) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 2) Act 2007</i>	78, 2007	21 June 2007	S. 4, Schedule 3 (items 1–20), Schedule 7 (items 1, 15) and Schedule 8 (items 86–95): Royal Assent	S. 4, Sch. 3 (items 4, 6, 9, 11, 14, 16, 18, 20) and Sch. 7 (item 15) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 3) Act 2007</i>	79, 2007	21 June 2007	Schedule 1 (items 1–27, 33–38, 43(1), (4), (5)), Schedule 6 (items 1, 2, 8), Schedule 7 (items 1–16), Schedule 9 (items 1–13, 30–33) and Schedule 10 (items 3–9, 32): Royal Assent Schedule 8 (items 1, 4–11, 26(1), (2) and (4)): 1 July 2007	Sch. 1 (items 43(1), (4), (5)), Sch. 6 (item 8), Sch. 7 (item 16), Sch. 8 (item 26(1), (2), (4)), Sch. 9 (items 30–33) and Sch. 10 (item 32) [see Table A]
<i>Tax Laws Amendment (Small Business) Act 2007</i>	80, 2007	21 June 2007	21 June 2007	Sch. 8 (item 9) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007</i>	82, 2007	21 June 2007	Schedule 6 (item 38): 1 July 2007 Schedule 9: 1 July 2008 (see s. 2(1))	Sch. 9 (item 5) [see Table A]
<i>Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007</i>	89, 2007	21 June 2007	Schedule 4 (items 1, 2): 22 June 2007	—
<i>Corporations Legislation Amendment (Simpler Regulatory System) Act 2007</i>	101, 2007	28 June 2007	Schedule 1 (item 222): 1 Sept 2007 (see F2007L02629)	—
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Act 2007</i>	113, 2007	28 June 2007	1 July 2007	—
<i>Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007</i>	130, 2007	17 Aug 2007	18 Aug 2007	—
<i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i>	143, 2007	24 Sept 2007	Schedule 1 (items 2, 3, 18–127, 222, 223, 224(1), (2), 225, 226), Schedule 4 (items 1–46, 51, 52), Schedule 7 (items 9–17, 104(2)) and Schedule 8: Royal Assent	Sch. 1 (items 222, 223, 224(1), (2), 225, 226), Sch. 4 (items 51, 52), Sch. 7 (items 14, 17) and Sch. 8 (item 14) [see Table A]
<i>Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007</i>	154, 2007	24 Sept 2007	Schedule 1 (item 172A): 1 Jan 2008 Schedule 1 (item 296) and Schedule 3 (item 3): Royal Assent	Sch. 1 (item 296) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2007 Measures No. 5) Act 2007</i>	164, 2007	25 Sept 2007	S. 4, Schedule 1 (items 27–35, 71), Schedule 8 (items 1–5, 13(1)), Schedule 10 (items 2–6) and Schedule 11 (items 1–48, 78–80): Royal Assent Schedule 10 (items 26–56): [see Note 3] Schedule 12 (items 66–71): 27 Sept 2007 (see F2007L03842)	S. 4, Sch. 1 (item 71), Sch. 8 (item 13(1)) and Sch. 11 (items 78–80) [see Table A]
as amended by				
<i>Tax Laws Amendment (2008 Measures No. 4) Act 2008</i>	97, 2008	3 Oct 2008	Schedule 3 (items 187, 188): Royal Assent	—
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Act 2007</i>	182, 2007	28 Sept 2007	Schedule 1: 1 Oct 2007 Remainder: Royal Assent	—
<i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i>	19, 2008	26 May 2008	Schedule 1 (item 16) and Schedule 3 (items 11–13): Royal Assent	—
<i>Tax Laws Amendment (Personal Income Tax Reduction) Act 2008</i>	29, 2008	23 June 2008	Schedule 1 (items 1, 2, 10): 1 July 2008 Schedule 1 (items 11, 12, 20): [see Note 4 and Table A] Schedule 1 (items 21, 22, 30): [see Note 4 and Table A]	Sch. 1 (items 10, 20, 30) [see Table A]
<i>Tax Laws Amendment (Election Commitments No. 1) Act 2008</i>	32, 2008	23 June 2008	23 June 2008	Sch. 1 (item 58) [see Table A]
<i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>	38, 2008	24 June 2008	Schedule 9 (items 1, 4) and Schedule 11: Royal Assent	Sch. 9 (item 4) and Sch. 11 (item 2) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>First Home Saver Accounts (Consequential Amendments) Act 2008</i>	45, 2008	25 June 2008	26 June 2008	—
<i>Tax Laws Amendment (Budget Measures) Act 2008</i>	59, 2008	30 June 2008	30 June 2008	Sch. 1 (items 7, 13) [see Table A]
<i>Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008</i>	63, 2008	30 June 2008	S. 4: Royal Assent Schedule 1 (items 8–11, 16): 1 July 2008	S. 4 and Sch. 1 (item 16) [see Table A]
<i>First Home Saver Accounts (Further Provisions) Amendment Act 2008</i>	92, 2008	30 Sept 2008	Schedule 1 (items 5–9, 26) and Schedule 2 (item 38): 1 Oct 2008	Sch. 1 (item 26) [see Table A]
<i>Tax Laws Amendment (2008 Measures No. 4) Act 2008</i>	97, 2008	3 Oct 2008	Schedule 1 (items 1, 2, 12) and Schedule 3 (items 5–43): Royal Assent	Sch. 1 (item 12) and Sch. 3 (items 11, 14, 18) [see Table A]
<i>Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008</i>	105, 2008	17 Oct 2008	Schedule 1 (item 58): (zzzzzzd)	—
<i>Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008</i>	117, 2008	21 Nov 2008	Schedule 3 (item 15): 22 Nov 2008	—
<i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i>	131, 2008	1 Dec 2008	1 Dec 2008	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 14 (items 7–58): 10 Dec 2008	Sch. 14 (item 58) [see Table A]
<i>Tax Laws Amendment (2008 Measures No. 5) Act 2008</i>	145, 2008	9 Dec 2008	Schedules 3 and 5: Royal Assent	Sch. 3 (item 2) and Sch. 5 (items 9, 10) [see Table A]

Act Notes

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- (a) The *Salaries (Statutory Offices) Adjustment Act 1957*, the *Salaries (Statutory Offices) Adjustment Act 1960* and the *Salaries (Statutory Offices) Adjustment Act (No. 2) 1964* were repealed by section 7 of the *Statute Law Revision Act 1973*. Subsection 7(2) of that Act provides as follows:
- (2) The repeal of an Act by this section does not affect the operation of:
 - (a) any amendment of another Act made by the repealed Act; or
 - (b) any provision for the citation of that other Act as amended by the repealed Act.
- (aa) The repeal of the *Income Tax (Arrangements with the States) Act 1978* does not affect the operation of the amendments made by Parts III and IV of that Act.
- (b) The *Income Tax Assessment Act 1936* was amended by sections 116 and 117 only of the *Statute Law Revision Act 1981*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
 - (2) Parts III, X and XV and section 116 shall come into operation on a date to be fixed by Proclamation.
- (c) The *Income Tax Assessment Act 1936* was amended by Part XIV (section 45) only of the *Companies (Miscellaneous Amendments) Act 1981*, subsection 2(3) of which provides as follows:
- (3) The provisions of this Act other than the provisions referred to in subsections (1) and (2) shall come into operation on the day on which the *Companies Act 1981* comes into operation.
- (d) The *Income Tax Assessment Act 1936* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent.
- (e) The *Income Tax Assessment Act 1936* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(11) of which provides as follows:
- (11) The amendments of the *Income Tax Assessment Act 1936* made by this Act shall:
 - (a) in the case of the amendments of subparagraph 221ZC(5)(b)(i) of that Act—be deemed to have come into operation on 13 December 1982; and
 - (b) in the case of the other amendments of that Act—come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (f) The *Income Tax Assessment Act 1936* was amended by Part V (section 132) only of the *Health Legislation Amendment Act 1983*, subsection 2(2) of which provides as follows:
- (2) The remaining provisions of this Act shall come into operation on 1 February 1984.
- (g) The *Income Tax Assessment Act 1936* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2 (4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (h) The *Income Tax Assessment Act 1936* was amended by Part VII (sections 91–166) only of the *Taxation Laws Amendment Act 1984*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act shall come into operation on the fifty-sixth day after the day on which this Act receives the Royal Assent.
- (j) The *Taxation Laws Amendment Act 1984* was amended by section 61 only of the *Sales Tax Laws Amendment Act 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
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Act Notes

- (k) The *Taxation Laws Amendment Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(46) of which provides as follows:
- (46) The amendments of the *Taxation Laws Amendment Act 1984* made by this Act shall be deemed to have come into operation immediately after the commencement of section 1 of that first-mentioned Act.
- (l) The *Income Tax Assessment Act 1936* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(29) of which provides that section 9 and the amendments made to the *Income Tax Assessment Act 1936* shall come into operation on the day fixed by Proclamation for the purposes of subsection 2(20) of that Act.
- (m) The *Income Tax Assessment Act 1936* was amended by section 61 only of the *Sales Tax Laws Amendment Act 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (n) The *Income Tax Assessment Act 1936* was amended by Part VII (sections 18–43) only of the *Taxation Laws Amendment Act (No. 3) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (p) Section 13 of the *Taxation Laws Amendment Act (No. 4) 1985* was repealed by section 36 of the *Taxation Laws Amendment Act (No. 2) 1986* before a date was fixed before its commencement.
- (q) The *Taxation Laws Amendment Act (No. 2) 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(31) of which provides as follows:
- (31) The amendment of the *Taxation Laws Amendment Act (No. 2) 1986* made by this Act shall be deemed to have come into operation on the commencement of section 9 of the first-mentioned Act.
- (r) The *Income Tax Assessment Amendment (Capital Gains) Act 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(18) of which provides as follows:
- (18) The amendment of the *Income Tax Assessment Amendment (Capital Gains) Act 1986* made by this Act shall be deemed to have come into operation on the commencement of the first-mentioned Act.
- (s) The *Income Tax Assessment Amendment (Research and Development) Act 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(19) of which provides as follows:
- (19) The amendment of the *Income Tax Assessment Amendment (Research and Development) Act 1986* made by this Act shall be deemed to have come into operation on the commencement of the first-mentioned Act.
- (t) The *Income Tax Assessment Act 1936* was amended by sections 23–50 only of the *Taxation Laws Amendment Act (No. 4) 1986*, subsections 2(1) and (4) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (4) Paragraphs 26(b) and (c), sections 28 and 40 and subsections 49(3) and (7) shall come into operation on the day fixed by Proclamation for the purposes of section 2 of the *Student Assistance Amendment Act 1986*.
- (u) The *Income Tax Assessment Act 1936* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2(2) of which provides as follows:
- (2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.

Act Notes

(v) The *Income Tax Assessment Act 1936* was amended by sections 8–48 and 62 only of the *Taxation Laws Amendment Act (No. 2) 1987*, subsections 2(1), (3) and (4) of which provide as follows:

- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (3) If the *Taxation Laws Amendment Act 1987* has not commenced before the day on which this Act receives the Royal Assent, section 45 of this Act shall come into operation on the date of commencement of that Act.
- (4) Sections 36 to 43 (inclusive) shall come into operation, or be deemed to have come into operation, immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Distributions) Act 1987*.

Section 1 of the *Taxation Laws Amendment (Company Distributions) Act 1987* commenced on 5 June 1987.

(w) The *Income Tax Assessment Act 1936* was amended by Part VI (sections 30 and 31) only of the *Crimes Legislation Amendment Act 1987*, subsection 2(2) of which provides as follows:

- (2) Parts II, VI, VII, VIII (other than section 47) and IX and Schedule 4 shall come into operation on the day on which this Act receives the Royal Assent.

(x) (2) Section 6 and Parts IV and V (sections 63–88) shall come into operation immediately after the commencement of the *Occupational Superannuation Standards Act 1987*.

The *Occupational Superannuation Standards Act 1987* came into operation on 21 December 1987 (see *Gazette 1987*, No. S347).

(y) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:

- (6) Part XI shall be taken to have commenced on 5 April 1988.

(z) (2) Paragraph 44(a) and subsection 54(11) commence immediately after the commencement of the *Taxation Laws Amendment Act 1989*.

The *Taxation Laws Amendment Act 1989* came into operation on 16 March 1989.

(za) The *Taxation Laws Amendment (Tax File Numbers) Act 1988* was amended by Schedule 3 (item 122) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:

- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

(zb) The *Income Tax Assessment Act 1936* was amended by section 11 only of the *ANL (Conversion into Public Company) Act 1988*, subsection 2(3) of which provides as follows:

- (3) Section 6, subsection 7(2) and sections 9 and 11 commence on a day to be fixed by Proclamation.

(zc) The *Income Tax Assessment Act 1936* was amended by Chapter 4 (sections 79–85) only of the *Higher Education Funding Act 1988*, subsection 2(1) of which provides as follows:

- (1) Chapters 1, 2, 3, 4, 6 and 7 commence on the day on which this Act receives the Royal Assent.

(zd) (1) Subject to this section, this Act commences, or shall be taken to have commenced, as the case requires, immediately after the commencement of the *Taxation Laws Amendment Act (No. 2) 1989*.

The *Taxation Laws Amendment Act (No. 2) 1989* received the Royal Assent on 30 June 1989.

(ze) (2) Part 6 shall be taken to have commenced immediately after the *Taxation Laws Amendment Act (No. 4) 1988* received the Royal Assent.

The *Taxation Laws Amendment Act (No. 4) 1988* received the Royal Assent on 24 November 1988.

Act Notes

- (zf) The *Income Tax Assessment Act 1936* was amended by Part 4 (sections 18–20) only of the *Social Security and Veterans' Affairs Legislation Amendment Act (No. 3) 1989*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.
- (zg) The *Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1990* was amended by sections 22 and 23 only of the *Social Security Legislation Amendment Act 1991*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.
- Commencement of section 23 provides as follows:
Immediately after the commencement of section 2 of the Principal Act.
Section 2 commenced on Royal Assent (28 December 1990).
- (zh) The *Income Tax Assessment Act 1936* was amended by Part 7 (sections 94 and 95) only of the *Social Security Legislation Amendment Act 1990*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day shown by the note in italics at the foot of the provision.
- (zi) Sections 9, 15, 33, 70, 81, 82 and 83 and Part 6 are taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Foreign Income) Act 1990*.
The *Taxation Laws Amendment (Foreign Income) Act 1990* came into operation on 8 January 1991.
- (zj) Section 29 commences, or is taken to have commenced, immediately after the commencement of section 14 of the *Taxation Laws Amendment Act 1991*.
Section 14 of the *Taxation Laws Amendment Act 1991* commenced on 24 April 1991.
Section 77 commences, or is taken to have commenced, immediately after the commencement of section 76 of the *Taxation Laws Amendment Act 1991*.
Section 76 of the *Taxation Laws Amendment Act 1991* commenced on 24 April 1991.
Section 78 is taken to have commenced, immediately after the commencement of the *Taxation Laws Amendment (Foreign Income) Act 1990*.
Taxation Laws Amendment (Foreign Income) Act 1990 came into operation on 8 January 1991.
- (zk) The *Income Tax Assessment Act 1936* was amended by section 21 only of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1991*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.
- (zl) Subsection 2(5) of the *Taxation Laws Amendment Act (No. 3) 1991* provides as follows:
- (5) Sections 47, 52, 53 and 59, subsection 90(2) and section 97 are taken to have commenced at 3 p.m., by standard time in the Australian Capital Territory, on 20 August 1991.
- (zm) The *Taxation Laws Amendment Act (No. 3) 1991* was amended by Schedule 3 (item 119) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (zn) The *Income Tax Assessment Act 1936* was amended by the Schedule (Parts 8 and 9) only of the *Veterans' Affairs Legislation Amendment Act 1992*, subsections 2(12) and (13)(c) of which provide as follows:
- (12) Division 4 of Part 4 and Part 8 of the Schedule are taken to have commenced on 20 October 1991.

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- (13) The following provisions commence on 1 July 1992:
- (c) Part 9 of the Schedule.
- (zo) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (Parts 1 and 6) only of the *Social Security Legislation Amendment Act 1992*, subsections 2(1)(g) and 2(14)(c) of which provide as follows:
- (1) The following provisions commence on the day on which this Act receives the Royal Assent:
- (g) Part 1 of Schedule 1 and Part 1 of Schedule 2;
- (14) The following provisions commence on 1 July 1992:
- (c) Part 8 of Schedule 1 and Part 6 of Schedule 2.
- (zp) The *Taxation Laws Amendment (Self Assessment) Act 1992* was amended by Schedule 3 (item 121) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (zq) The *Income Tax Assessment Act 1936* was amended by sections 3–87 only of the *Taxation Laws Amendment Act (No. 5) 1992*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subsections 14(2), 15(2), 16(2) and 17(2) commence on 1 July 1993.
- (zr) Division 6 of Part 2 commences, or is taken to have commenced, on 1 January 1993, immediately after the commencement of the *Social Security Amendment Act (No. 2) 1992*.
- (zs) Division 5 of Part 2 and section 7 commence immediately after the commencement of Division 4 of Part 2 of the *Taxation Laws Amendment (Superannuation) Act 1992*.
Division 4 of Part 2 commenced on 1 July 1994.
- (zt) Part 4 is taken to have commenced immediately after the commencement of the *Sales Tax Amendment (Transitional) Act 1992*.
The *Sales Tax Amendment (Transitional) Act 1992* came into operation on 28 October 1992.
Part 6 is taken to have commenced immediately after the commencement of section 38 of the *Taxation Laws Amendment (No. 3) Act 1992*.
Section 38 commenced on 30 June 1992.
- (zta) The *Taxation Laws Amendment Act 1993* was amended by Schedule 16 (item 1) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(10) of which provides as follows:
- (10) Item 1 of Schedule 16 is taken to have commenced immediately after the commencement of section 44 of the *Taxation Laws Amendment Act 1993*.
Section 44 of the *Taxation Laws Amendment Act 1993* commenced on 9 June 1993.
- (zua) Divisions 1 and 7 of Part 3, and Part 4, are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.
The *Income Tax Assessment Amendment (Foreign Investment) Act 1992* came into operation on 1 January 1993.
- (zua) The *Income Tax Assessment Act 1936* was amended by sections 7–15 only of the *Taxation (Deficit Reduction) Act (No. 2) 1993*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) Subdivision D of Division 3 of Part 3 commences on 1 July 2000.
- (zub) The *Taxation (Deficit Reduction) Act (No. 2) 1993*, was amended by Schedule 7 only of the *Taxation Laws Amendment Act (No. 2) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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Act Notes

(zv) The *Income Tax Assessment Act 1936* was amended by sections 10–13 only of the *Taxation (Deficit Reduction) Act (No. 3) 1993*, section 2(1) of which provides as follows:

- (1) This Act (other than Divisions 3 and 4 of Part 2) commences on the day on which it receives the Royal Assent.

(zw) The *Income Tax Assessment Act 1936* was amended by sections 14–35 only of the *Superannuation Industry (Supervision) Consequential Amendments Act 1993*, subsections 2(1) and 2(2)(d) of which provide as follows:

- (1) Subject to subsection (2), this Act commences on 1 December 1993.
- (2) The following provisions commence on 1 July 1994:

(d) Part 5 (other than section 14 and subsection 16(2));

(zx) The *Income Tax Assessment Act 1936* was amended by Part 3 (sections 21–25) only of the *Higher Education Funding Legislation Amendment Act 1993*, subsection 2(2) of which provides as follows:

- (2) Part 2 (other than paragraph 4(b) and sections 18 and 20) and Parts 3 and 4 commence on 1 January 1994.

(zy) (5) Division 3 of Part 14 commences immediately after the commencement of the *Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992*.

The *Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992* came into operation on 1 April 1994.

(zz) Subsections 2(5)–(10) of the *Taxation Laws Amendment Act 1994* provide as follows:

- (5) Subsection 70(1) is taken to have commenced immediately after the commencement of section 16 of the *Taxation Laws Amendment (Superannuation) Act 1989*.

Section 16 of the *Taxation Laws Amendment (Superannuation) Act 1989* commenced on 30 June 1989.

- (6) Subsection 71(1) is taken to have commenced immediately after the commencement of section 11 of the *Taxation Laws Amendment Act (No. 5) 1989*.

Section 11 of the *Taxation Laws Amendment Act (No. 5) 1989* commenced on 17 January 1990.

- (7) Subsection 75(1) is taken to have commenced immediately after section 12 of the *Taxation Laws Amendment Act (No. 5) 1989*.

Section 12 of the *Taxation Laws Amendment Act (No. 5) 1989* commenced on 17 January 1990.

- (8) Subsection 83(1) is taken to have commenced immediately after the commencement of section 24 of the *Taxation Laws Amendment (Superannuation) Act 1989*.

Section 24 of the *Taxation Laws Amendment (Superannuation) Act 1989* commenced on 30 June 1989.

- (9) Subsections 70(2), 71(2) and 83(2) are taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Foreign Income) Act 1990*.

The *Taxation Laws Amendment (Foreign Income) Act 1990* came into operation on 8 January 1991.

- (10) Section 112 is taken to have commenced immediately after the commencement of section 17 of the *Taxation Laws Amendment (Superannuation) Act 1989*.

Section 17 of the *Taxation Laws Amendment (Superannuation) Act 1989* commenced on 30 June 1989.

(zza) Subsections 2(3)–(7) of the *Taxation Laws Amendment Act (No. 2) 1994* provide as follows:

- (3) Subdivision D of Division 4 of Part 3 is taken to have commenced immediately after the commencement of Division 15 of Part 3 of the *Taxation Laws Amendment Act 1993*.

Division 15 of Part 3 of the *Taxation Laws Amendment Act 1993* commenced on 9 June 1993.

Act Notes

- (4) Subdivisions A and B of Division 5 of Part 3 are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

The *Income Tax Assessment Amendment (Foreign Investment) Act 1992* came into operation on 1 January 1993.

- (5) Subdivisions B and C of Division 6 of Part 3 are taken to have commenced immediately after the commencement of Division 11 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1992*.

Division 11 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1992* commenced on 30 June 1992.

- (6) Section 113 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment Act (No. 4) 1992*.

The *Taxation Laws Amendment Act (No. 4) 1992* received the Royal Assent on 21 December 1992.

- (7) Part 4 is taken to have commenced immediately after the commencement of Division 2 of Part 2 of the *Taxation Laws Amendment Act (No. 6) 1992*.

Division 2 of Part 2 of the *Taxation Laws Amendment Act (No. 6) 1992* commenced on 24 December 1992.

(zzb) Subsections 2(2) and (3) of the *Taxation Laws Amendment Act (No. 3) 1994* provide as follows:

- (2) Division 1, and Subdivisions B, D, E, G, J, K, L and M of Division 3, of Part 2 are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

The *Income Tax Assessment Amendment (Foreign Investment) Act 1992* came into operation on 1 January 1993.

- (3) Subdivision A of Division 12 of Part 2 commences immediately after Subdivision B of that Division.

Subdivision B commenced on 28 November 1994.

(zzba) The *Taxation Laws Amendment Act (No. 3) 1994* was amended by Schedule 16 (items 2, 3) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(11) of which provides as follows:

- (11) Items 2 and 3 of Schedule 16 are taken to have commenced immediately after the commencement of Part 1 of the Schedule to the *Taxation Laws Amendment Act (No. 3) 1994*.

Part 1 of the Schedule to the *Taxation Laws Amendment Act (No. 3) 1994* commenced on 28 November 1994.

(zzc) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 163–174), Schedule 3 (items 34–38) and Schedule 4 (items 38–41 and 47–51) only of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*, subsections 2(1), (2) and (5) of which provide as follows:

- (1) Subject to this section, this Act commences on 1 July 1995.
 (2) Items 27 and 34 to 38 of Schedule 3 are taken to have commenced on 20 September 1994, and subsection 5(2) is taken to have commenced on that day to the extent necessary in order to enable those items to be taken to have commenced on that day.
 (5) Paragraph 6(1)(b), subsection 6(2), sections 14 and 15 and Parts 2 and 3 of Schedule 4 commence on 1 January 1995.

(zzd) 2 This Act commences on 1 January 1995 immediately after the commencement of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.

(zze) The *Income Tax Assessment Act 1936* was amended by Schedule 6 (item 50) only of the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995*, subsection 2(9) of which provides as follows:

- (9) Schedule 6 (except item 5) commences on 1 January 1997.

Act Notes

(zzf) The *Income Tax Assessment Act 1936* was amended by Schedule 12 (Parts 1 and 2) only of the *Veterans' Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995*, subsections 2(6) and (13) of which provide as follows:

(6) Schedule 8 and Part 2 of Schedule 12 commence, or are taken to have commenced on 1 January 1996.

(13) Schedule 1 (other than items 1 and 9) and Part 1 of Schedule 12 commence on 1 January 1997.

(zzg) The *Income Tax Assessment Act 1936* was amended by the *Taxation Laws Amendment Act (No. 2) 1995*, subsections 2(1), (2), (5), (8) and (10) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 6 of Schedule 3 is taken to have commenced immediately after section 19 of the *Taxation Laws Amendment (Superannuation) Act 1992*.

Section 19 of the *Taxation Laws Amendment (Superannuation) Act 1992* commenced on 1 July 1994.

(5) Part 2 of Schedule 10 is taken to have commenced immediately after the commencement of item 60 of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1994*.

Item 60 of Schedule 1 of the *Taxation Laws Amendment Act (No. 4) 1994* commenced on 13 October 1994.

(8) Item 7 of Schedule 10 is taken to have commenced immediately after the commencement of section 92 of the *Taxation Laws Amendment Act (No. 3) 1994*.

Section 92 of the *Taxation Laws Amendment Act (No. 3) 1994* commenced on 28 November 1994.

(10) Part 5 of Schedule 10 is taken to have commenced immediately after the commencement of Division 9 of Part 2 of the *Taxation Laws Amendment (Superannuation) Act 1992*.

Division 9 *Taxation Laws Amendment (Superannuation) Act 1992* commenced on 1 July 1994.

(zzh) (2) Schedule 4 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Drought Relief Measures) Act 1995*.

The *Taxation Laws Amendment (Drought Relief Measures) Act 1995* came into operation on 7 April 1995.

(zzi) The *Taxation Laws Amendment Act (No. 4) 1995* was amended by Schedule 6 (items 1–5) only of the *Taxation Laws Amendment Act (No. 2) 1996*, subsections 2(5) and (6) of which provide as follows:

(5) Items 1, 2 and 3 of Schedule 6 are taken to have commenced immediately after the commencement of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1995*.

(6) Items 4 and 5 of Schedule 6 are taken to have commenced immediately after the commencement of items 1 and 2 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

Schedules 1 and 2 of the *Taxation Laws Amendment Act (No. 4) 1995* commenced on 16 December 1995.

(zzia) The *Taxation Laws Amendment Act (No. 4) 1995* was amended by Schedule 2 only of the *Taxation Laws Amendment Act (No. 1) 1997*, subsection 2(5) of which provides as follows:

(5) Schedule 2 is taken to have commenced immediately after the commencement of item 159 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

Item 159 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995* commenced on 1 July 1995.

Act Notes

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- (zzib) The *Taxation Laws Amendment Act (No. 4) 1995* was amended by Schedule 16 (items 4–6) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsections 2(12) and (13) of which provide as follows:
- (12) Item 4 of Schedule 16 is taken to have commenced immediately after the commencement of item 1 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.
- Item 1 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995* commenced on 16 December 1995.
- (13) Items 5 and 6 of Schedule 16 are taken to have commenced immediately after the commencement of item 134 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.
- Item 134 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995* commenced on 1 July 1995.
- (zzic) The *Taxation Laws Amendment Act (No. 4) 1995* was amended by the *Taxation Laws (Technical Amendments) Act 1998*, subsections 2(11) and (12) of which provide as follows:
- (11) Item 20 of Schedule 6 is taken to have commenced immediately after the commencement of item 12 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.
- (12) Item 21 of Schedule 6 is taken to have commenced immediately after the commencement of item 134 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.
- Items 12 and 134 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995* commenced on 1 July 1995.
- (zzj) The *Income Tax Assessment Act 1936* was amended by Schedule 11 only of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*, subsections 2(4)(d), (5)(d) and (6) of which provide as follows:
- (4) The following provisions commence, or are taken to have commenced, on 1 July 1996:
- (d) Part 1 of Schedule 11;
- (5) The following provisions commence, or are taken to have commenced, on 20 September 1996:
- (d) Division 1 of Part 2 of Schedule 11;
- (6) Division 2 of Part 2 of Schedule 11 commences on 1 July 1997.
- (zzl) The *Income Tax Assessment Act 1936* was amended by Schedule 4 (item 93) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (zzm) The *Income Tax Assessment Act 1936* was amended by Schedule 19 (items 19, 20) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzma) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
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Act Notes

(zzn) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 1–47), Schedule 2 and Schedule 4 (items 19–24) only of the *Taxation Laws Amendment Act (No. 2) 1996*, subsections 2(1)–(4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 44, 45 and 46 of Schedule 1 are taken to have commenced on 1 January 1993.
- (3) Schedule 2 is taken to have commenced on 27 June 1996.
- (4) Schedule 4 commences on the 60th day after the day on which this Act receives the Royal Assent.

(zzo) Sections 2(2) and (4) of the *Taxation Laws Amendment Act (No. 3) 1996* provide as follows:

- (2) Item 11 of Schedule 1 is taken to have commenced immediately after item 10 of that Schedule.

Item 10 of Schedule 1 to the *Taxation Laws Amendment Act (No. 3) 1996* commenced on 19 December 1996.

- (4) Items 56 and 57 of Schedule 4 are taken to have commenced at 5.00 pm, by legal time in the Australian Capital Territory, on 23 July 1996.

(zzoa) The *Taxation Laws Amendment Act (No. 3) 1996* was amended by Schedule 11 (item 13) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(5) of which provides as follows:

- (5) Schedule 11 is taken to have commenced immediately after the commencement of item 38 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996*.

Item 38 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996* commenced on 19 December 1996.

(zzp) The *Income Tax Assessment Act 1936* was amended by Schedule 2 only of the *Industry Research and Development Amendment Act 1996*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzq) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 13–15) only of the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, subsection 2(4) of which provides as follows:

- (4) Schedules 1, 2, 14, 15 and 16 commence on 1 July 1997.

(zzr) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (item 135) only of the *Defence Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(zzs) The *Income Tax (Consequential Amendments) Act 1997* was amended by Schedule 1 (item 24) only of the *Taxation Laws Amendment Act (No. 2) 1997*, subsection 2(2) of which provides as follows:

- (2) Item 24 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of the *Income Tax (Consequential Amendments) Act 1997*.

The *Income Tax (Consequential Amendments) Act 1997* came into operation on 1 July 1997.

(zzt) The *Income Tax (Consequential Amendments) Act 1997* was amended by Schedule 12 (items 24–29) only of the *Tax Law Improvement Act 1997*, subsection 2(4) of which provides as follows:

- (4) If a note specifies the commencement of an item in Schedule 12, the item commences as specified in the note.

Items 24–29 of Schedule 12 are taken to have commenced immediately before 1 July 1997.

Act Notes

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- (zzu) The *Income Tax (Consequential Amendments) Act 1997* was amended by Schedule 14 (items 61–63) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(8) of which provides as follows:
- (8) Part 5 of Schedule 14 commences, or is taken to have commenced, on 1 July 1997, immediately after the commencement of the *Income Tax (Consequential Amendments) Act 1997*.
- (zzua) The *Income Tax (Consequential Amendments) Act 1997* was amended by Schedule 8 (items 1, 2) only of the *Taxation Laws Amendment Act (No. 1) 1998*, subsection 2(2) of which provides as follows:
- (2) Schedule 8 is taken to have commenced immediately before 1 July 1997.
- (zzv) Subsection 2(4) of the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997* provides as follows:
- (4) Schedule 2 commences on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.
- (zzva) The *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997* was amended by Schedule 16 (item 9) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(16) of which provides as follows:
- (16) Item 9 of Schedule 16 is taken to have commenced immediately after the commencement of item 1 of Schedule 3 to the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997*.
- Item 1 of Schedule 3 to the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997* commenced on 30 April 1997.
- (zzw) The *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997* was amended by Schedule 3 (items 5 and 6) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(6) of which provides as follows:
- (6) Items 5 and 6 of Schedule 3 are taken to have commenced immediately after the commencement of item 6 of Schedule 2 to the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997*.
- Item 6 of Schedule 2 of the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997* commenced on 1 July 1997.
- (zzx) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 1–22), Schedule 2, Schedule 3 (items 1–14), Schedule 4, Schedule 5 (items 1–9, 12, 13, 17–21) and Schedule 6 of the *Taxation Laws Amendment Act (No. 2) 1997*, subsections 2(1), (3) and (4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) Items 9 and 10 of Schedule 3 commence immediately after item 10 of Schedule 1.
- Item 10 of Schedule 1 to the *Taxation Laws Amendment Act (No. 2) 1997* commenced on 30 June 1997.
- (4) Part 1 of Schedule 5 commences immediately after the commencement of Schedule 2.
- Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1997* commenced on 30 June 1997.
- (zzy) The *Taxation Laws Amendment Act (No. 2) 1997* was amended by Schedule 16 (item 8) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(15) of which provides as follows:
- (15) Item 8 of Schedule 16 is taken to have commenced immediately after the commencement of item 9 of Schedule 1 to the *Taxation Laws Amendment Act (No. 2) 1997*.
- Item 9 of Schedule 1 to the *Taxation Laws Amendment Act (No. 2) 1997* commenced on 30 June 1997.
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Act Notes

(zzya) The *Taxation Laws Amendment Act (No. 2) 1997* was amended by Schedule 6 (item 22) only of the *Taxation Laws (Technical Amendments) Act 1998*, subsection 2(13) of which provides as follows:

- (13) Item 22 of Schedule 6 is taken to have commenced immediately after the commencement of items 9 and 10 of Schedule 3 to the *Taxation Laws Amendment Act (No. 2) 1997*.

Items 9 and 10 of Schedule 3 to the *Taxation Laws Amendment Act (No. 2) 1997* commenced on 30 June 1997.

(zzz) The *Income Tax Assessment Act 1936* was amended by Schedule 5 (items 30 and 31) only of the *Aged Care (Consequential Provisions) Act 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences immediately after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

The *Aged Care Act 1997* (other than Division 1) commenced on 1 October 1997.

(zzza) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 18–37), Schedule 3 (items 31–61), Schedule 4 (items 63–138), Schedule 5 (items 43–93), Schedule 6 (items 68–132), Schedule 7 (items 5–7), Schedule 8 (items 32–51), Schedule 9 (items 16–40), Schedule 10 (items 12–15), Schedule 11 (items 37–57) and Schedule 12 (items 15–23) only of the *Tax Law Improvement Act 1997*, subsections 2(2), (3) and (5) provide as follows:

- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
- (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (5) If there is no note specifying the commencement of an item in Schedule 12, the item commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.

(zzzaa) The *Tax Law Improvement Act 1997* was amended by Schedule 4 (items 11 and 12) only of the *Taxation Laws Amendment Act (No. 6) 1999*, subsection 2(1) of which provides as follows:

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zzzaa) The *Income Tax Assessment Act 1936* was amended by Schedules 1, 3, 4, 6 and 8 only of the *Taxation Laws Amendment Act (No. 1) 1997*, subsections 2(1)–(4), (6)–(9) and (11) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 17, 18 and 19 of Schedule 1 are taken to have commenced on 3 June 1990.
- (3) Item 24 of Schedule 1 is taken to have commenced on 1 January 1993.
- (4) Items 22 and 23 of Schedule 1 are taken to have commenced on 1 September 1994.
- (6) Items 3 and 4 of Schedule 3 are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Capital Gains) Act 1986*.

The *Income Tax Assessment Amendment (Capital Gains) Act 1986* came into operation on 24 October 1986.

- (7) Item 5 of Schedule 3 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*.

The *Taxation Laws Amendment (Self Assessment) Act 1992* came into operation on 30 June 1992.

- (8) Schedule 4 is taken to have commenced on 20 January 1997.
- (9) Schedule 6 is taken to have commenced immediately after the commencement of Schedule 2C to the *Income Tax Assessment Act 1936*.

Act Notes

Schedule 2C to the *Income Tax Assessment Act 1936* commenced on 27 June 1996.

- (11) Schedule 8 is taken to have commenced immediately after the commencement of Part 5 of Schedule 1 to the *Taxation Laws Amendment Act (No. 3) 1996*.

Part 5 of Schedule 1 to the *Taxation Laws Amendment Act (No. 3) 1996* commenced on 19 December 1996.

(zzzab) The *Taxation Laws Amendment Act (No. 1) 1997* was amended by Schedule 1 (item 23) only of the *Taxation Laws Amendment Act (No. 2) 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzb) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 1–43), Schedule 2 (item 1), Schedules 3–5, Schedule 6 (items 1–8), Schedule 8, Schedule 10 (items 1–5), Schedule 11 (items 1–11), Schedule 13, Schedule 14 (items 1–42), Schedule 15 (items 1–6) and Schedule 17 only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsections 2(1), (2), (4), (5) and (6A) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Item 4 of Schedule 6 commences, or is taken to have commenced, immediately after the commencement of item 76 of Schedule 6 to the *Tax Law Improvement Act 1997*.

Item 76 of Schedule 6 to the *Tax Law Improvement Act 1997* commenced on 1 July 1997.

- (4) Items 2 and 5 of Schedule 10 commence immediately after the later of the commencement of item 1 of that Schedule or the *Retirement Savings Accounts Act 1997*.

Item 1 of Schedule 10 commenced on 14 October 1997.

- (5) Schedule 11 is taken to have commenced immediately after the commencement of item 38 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996*.

Item 38 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996* commenced on 19 December 1996.

- (6A) Item 40 of Schedule 14 is taken to have commenced on 1 July 1997, immediately before the commencement of item 248 of Schedule 1 to the *Income Tax (Consequential Amendments) Act 1997*.

(zzzc) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 3–7) only of the *Foreign Affairs and Trade Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzd) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 877–880) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

(zzze) The *Income Tax Assessment Act 1936* was amended by Schedule 1 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzf) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 17, 18) only of the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*, subsection 2(5) of which provides as follows:

- (5) Items 11, 17, 18, 19, 20, 21 and 41 of Schedule 1 commence on the commencement of the *Child Care Payments Act 1997*.

Act Notes

- (zzzg) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 313–337) only of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*, subsection 2(2) of which provides as follows:
- (2) Part 3 of Schedule 1 commences on 1 July 1998. The remaining items of Schedule 1 commence on 20 March 1998.
- (zzzga) The *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* was amended by Schedule 3 (items 7 and 8) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(7) of which provides as follows:
- (7) Items 7 and 8 of Schedule 3 are taken to have commenced immediately after the commencement of item 322 of Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*.
- Item 322 of Schedule 1 of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* commenced on 20 March 1998.
- (zzzh) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 41–43) only of the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedule 1 (other than items 44 and 45), Schedules 6 and 8, Schedule 15 (other than items 17, 18, 25, 29 and 30) and Schedule 19 commence, or are taken to have commenced, on 1 January 1998.
- (zzzi) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 1–25 and 27–57), Schedule 6 (items 1–16) and Schedule 10 (items 20–56) only of the *Taxation Laws Amendment Act (No. 1) 1998*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
 - (2) Items 35, 46, 47, 50, 51 and 54 of Schedule 1 commence immediately after the commencement of item 17 of that Schedule.
- (zzzia) The *Taxation Laws Amendment Act (No. 1) 1998* was amended by Schedule 3 (items 3 and 4) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(5) of which provides as follows:
- (5) Items 3 and 4 of Schedule 3 are taken to have commenced immediately after the commencement of section 2 of the *Taxation Laws Amendment Act (No. 1) 1998*.
- Section 2 of the *Taxation Laws Amendment Act (No. 1) 1998* commenced on 16 April 1998.
- (zzzib) The *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* was amended by Schedule 11 (items 2–10) only of the *Taxation Laws Amendment Act (No. 2) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzj) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 4–26), Schedule 2 (items 1–4), Schedule 3 (items 1–3 and 7(1)), Schedule 4 (items 4 and 5), Schedule 5 (items 16–19) and Schedule 6 (items 1–18 and 27) only of the *Taxation Laws (Technical Amendments) Act 1998*, subsections 2(1), (2), (5)–(7), (9) and (10) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) If Schedule 1 to the *Taxation Laws Amendment Act (No. 2) 1998* has not commenced when this Act receives the Royal Assent, item 17 of Schedule 1 to this Act commences immediately after Schedule 1 to that Act commences.
 - (5) Items 17 and 19 of Schedule 5 are taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995*.

The *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995* came into operation on 12 December 1995.

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- (6) Item 3 of Schedule 6 is taken to have commenced immediately after the commencement of section 16 of the *Taxation Laws Amendment Act (No. 4) 1985*.

Section 16 of the *Taxation Laws Amendment Act (No. 4) 1985* commenced on 16 December 1985.

- (7) Item 6 of Schedule 6 is taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

The *Income Tax Assessment Amendment (Foreign Investment) Act 1992* came into operation on 1 January 1993.

- (9) If, when this section commences, Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* has already commenced, item 14 of Schedule 6 to this Act does not commence.

Schedule 1 of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* commenced on 20 March 1998.

- (10) Item 16 of Schedule 6 commences on 1 July 1998.

(zzzk) The *Income Tax Assessment Act 1936* was amended by the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, subsection 2(1) of which provides as follows:

- (1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.

(zzzl) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 49–522), Schedule 3 (items 13–20), Schedule 4 (items 12–27), Schedule 5 (items 6–9), Schedule 6 (items 8–29), Schedule 7 (items 12–18), Schedule 8 (items 2–9) and Schedule 9 (item 7) only of the *Tax Law Improvement Act (No. 1) 1998*, subsections 2(1)–(4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
- (3) Schedule 3 commences immediately after the commencement of Schedule 2 (except item 4 of it).
- (4) Each of Schedules 4 to 8 commences immediately after the commencement of the immediately preceding Schedule.

Schedule 1 commenced on 22 June 1998.

(zzzla) The *Taxation Laws Amendment Act (No. 3) 1998* was amended by Schedule 3 (item 8) only of the *Taxation Laws Amendment Act (No. 2) 2000*, subsection 2(7) of which provides as follows:

- (7) Item 8 of Schedule 3 is taken to have commenced on 23 June 1998, immediately after the commencement of Schedule 7 to the *Taxation Laws Amendment Act (No. 3) 1998*.

(zzzm) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 83–97) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:

- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

(zzzn) The *Income Tax Assessment Act 1936* was amended by Schedules 1–5 only of the *Taxation Laws Amendment (Company Law Review) Act 1998*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on a day to be fixed by Proclamation. However, if that day is the same day as the day on which Schedule 3 to the *Company Law Review Act 1997* commences, this Act commences immediately after item 32 of that Schedule commences.

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- (zzzna) Subsection 2(2) of the *Taxation Laws Amendment Act (No. 7) 1999* provides as follows:
- (2) Schedule 1 is taken to have commenced immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998*.
Section 1 commenced on 1 July 1998 (see *Gazette* 1998, No. S325)
- (zzznb) Subsection 2(1) (item 20) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
20. Schedule 10, item 267	Immediately after the start of the day on which the <i>Taxation Laws Amendment (Company Law Review) Act 1998</i> received the Royal Assent.	29 June 1998

- (zzzo) The *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998* was amended by Schedule 7 (Part 3) only of the *Taxation Laws Amendment Act (No. 1) 1999*, subsection 2(2) of which provides as follows:
- (2) Part 3 of Schedule 7 is taken to have commenced immediately after the commencement of section 2 of the *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998*.
Section 2 of the *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998* commenced on 14 July 1998.
- (zzzp) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 12–276), Schedule 2 and Schedule 3 (items 1 and 2) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsections 2(1)–(4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) If Part 2 of Schedule 1 to the *Taxation Laws Amendment Act (No. 1) 1999* does not commence before the day on which this Act receives the Royal Assent, then Schedule 2 to this Act commences immediately after the commencement of that Part.
 - (3) Subject to subsections (4) and (5), Schedule 1 commences on 1 July 1999.
 - (4) An item of Schedule 1 that is specified in the third column of the following table commences immediately after the commencement of the matching item in the second column:

Commencement of items of Schedule 1

Item	First commencing item	Second commencing item
1	118	119
2	185	186
3	192	193
4	195	196
5	211	213
6	212	211

Commencement of items of Schedule 1

Item	First commencing item	Second commencing item
7	222	224
8	223	222
9	304	305

(zzzq) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 126 and 127) and Schedule 2 (items 56–63) only of the *Assistance for Carers Legislation Amendment Act 1999*, subsections 2(2)(b) and (3) of which provide as follows:

(2) The following provisions:

(b) Schedule 2 (other than items 1 and 3);

commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*.

Note: Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* commences on 1 July 1999.

(3) Part 2 of Schedule 1 is taken to have commenced immediately after Schedule 1 to the *Tax Law Improvement Act 1997*.

Note: Schedule 1 to the *Tax Law Improvement Act 1997* commenced on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(zzzr) The *Income Tax Assessment Act 1936* was amended by Schedule 1, Schedule 3 (items 8–10 and 12(3)), Schedules 5 and 6, Schedule 7 (items 1–8) and Schedules 8–11 only of the *Taxation Laws Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zzzs) The *Income Tax Assessment Act 1936* was amended by Schedule 7 (items 59–104) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(1), (2)(e) and (16) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The following provisions commence on the transfer date:

(e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).

(16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

(zzzt) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 2–13), Schedule 3, Schedule 5 (items 11–14), Schedule 6 and Schedule 7 (item 1) only of the *Taxation Laws Amendment Act (No. 6) 1999*, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zzzu) The *Income Tax Assessment Act 1936* was amended by Schedule 8 (items 1–25) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*, subsection 2(2) of which provides as follows:

(2) Schedule 1, item 3 of Schedule 2 and Schedules 3 to 8 commence, or are taken to have commenced, immediately after the commencement of:

(a) the *A New Tax System (Family Assistance) Act 1999*; and

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- (b) Schedules 1, 2 and 3 of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.

The *A New Tax System (Family Assistance) Act 1999* and Schedules 1, 2 and 3 of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* commenced on 1 July 2000.

(zzzv) The *Income Tax Assessment Act 1936* was amended by Schedule 10 (Items 7–23) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, subsections 2(2) and (6A) of which provide as follows:

- (2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than items 22, 63, 66 and 67) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.

(6A) Items 22 and 66 of Schedule 10 commence on the earlier of:

- (a) the day on which the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999* receives the Royal Assent; or
- (b) 1 January 2000.

The *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999* received the Royal Assent on 12 December 1999.

(zzzva) The *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999* was amended by Schedule 2 (items 1 and 2) of the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999*, subsection 2(4) of which provides as follows:

- (4) Schedule 2 commences, or is taken to have commenced, immediately after the commencement of section 2 of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

Section 2 commenced on 8 July 1999.

(zzzvb) Subsection 2(1) (item 7) of the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
7. Schedule 7, item 171	Immediately after the commencement of item 20 of Schedule 10 to the <i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i> .	1 July 2000

(zzzw) The *Income Tax Assessment Act 1936* was amended by Schedule 3 (items 1 and 2), Schedule 4 (item 1), Schedule 5 (items 23–34) and Schedule 6 (items 67–72) only of the *Taxation Laws Amendment Act (No. 4) 1999*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzx) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 1–4) only of the *Taxation Laws Amendment Act (No. 7) 1999*, subsection 2(2) of which provides as follows:

- (2) Schedule 1 is taken to have commenced immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998*.

Section 1 commences immediately after the commencement of item 32 of Schedule 3 of the *Company Law Review Act 1998*.

Item 32 of Schedule 3 commenced on 1 July 1998 (see *Gazette* 1998, No. S317)

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- (zzzy) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 5 and 6) only of the *Superannuation Legislation Amendment Act (No. 3) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzz) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 3–11) and Schedule 3 (items 1, 4) only of the *Superannuation (Unclaimed Money and Lost Members) consequential and Transitional Act 1999*, subsections 2(1), (2), (5) and (6) of which provide as follows:
- (1) In this section, **commencing time** means the time when the *Superannuation (Unclaimed Money and Lost Members) Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
 - (5) Items 1, 2 and 3 of Schedule 3 are taken to have commenced at the same time as the *Retirement Savings Accounts (Consequential Amendments) Act 1997*.
 - (6) Items 4, 5 and 6 of Schedule 3 commence on the day on which this Act receives the Royal Assent.
- (zzzza) The *Income Tax Assessment Act 1936* was amended by Schedule 4 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzb) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 525–531) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1), (2) and (5)(a) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
 - (5) If:
 - (a) an item (the **amending item**) of a Schedule to this Act is expressed to amend, or to amend a part of, a specified subsection or definition (the **amended provision**); and
 then the amending item commences immediately after the commencement of the amended provision
- (zzzzc) The *Income Tax Assessment Act 1936* was amended by Schedule 3 (items 11–13) only of the *New Business Tax System (Capital Allowances) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzd) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 54–60) only of the *New Business Tax System (Capital Gains Tax) Act 1999*, section 2 of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
 - (2) If item 1 of Schedule 9 to the *New Business Tax System (Integrity and Other Measures) Act 1999* has not commenced before that day, Schedule 1 to this Act commences immediately after that item commences.
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(zzzzda) The *New Business Tax System (Capital Gains Tax) Act 1999* was amended by Schedule 3 (item 16) only of the *Taxation Laws Amendment Act (No. 7) 2000*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzze) The *Income Tax Assessment Act 1936* was amended by Schedule 9 (items 15–21) of the *New Business Tax System (Integrity and Other Measures) Act 1999*, subsection 2(5) of which provides as follows:

- (5) The amendment of subsection 6AD(4) of the *Income Tax Assessment Act 1936* made by Schedule 9 commences immediately after the start of the day on which the *A New Tax System (Tax Administration) Act 1999* receives the Royal Assent if that day is on or after the day on which this Act receives the Royal Assent.

The *A New Tax System (Tax Administration) Act 1999* received the Royal Assent on 22 December 1999.

(zzzzea) The *New Business Tax System (Integrity and Other Measures) Act 1999* was amended by Schedule 8 (item 10) only of the the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzzf) The *Income Tax Assessment Act 1936* was amended by Schedule 8 (items 16–25) only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*, subsection 2(17) of which provides as follows:

Schedule 8—Other Acts

- (17) Schedule 8 commences immediately after the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

The *A New Tax System (Goods and Services Tax) Act 1999* came into operation on 1 July 2000.

(zzzzg) The *A New Tax System (Pay As You Go) Act 1999* was amended by Schedule 10 (items 19–21) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.

Section 1 commenced on 22 December 1999.

(zzzzh) The *Income Tax Assessment Act 1936* was amended by the *A New Tax System (Tax Administration) Act 1999*, subsections 2(1), (4), (7)(b)–(d), (9) and (12) of which provide as follows:

- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- (4) Schedule 3 commences immediately after the commencement of item 3 of Schedule 2.
- (7) The following provisions commence on the day on which this Act receives the Royal Assent:
 - (b) Part 2 of Schedule 5, and the amendments of the *Taxation Administration Act 1953* made by Part 1 of that Schedule;
 - (c) items 1 to 22 and 24 of Schedule 6;
 - (d) Schedules 7, 8, 9 and 17;

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- (9) The following provisions commence on 1 July 2000:
- (a) the provisions of Schedule 5 (other than Part 2 of that Schedule and the amendments of the *Taxation Administration Act 1953* made by Part 1 of that Schedule);
 - (b) Schedule 11 (other than item 44).

- (12) Schedules 12 (other than item 21) and 15 commence, or are taken to have commenced, at the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 1 of the *A New Tax System (Pay As You Go) Act 1999* commenced on 22 December 1999.

The *A New Tax System (Goods and Services Tax) Act 1999* came into operation on 1 July 2000.

- (zzzzj) The *Income Tax Assessment Act 1936* was amended by Schedule 11 (item 5) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsection 2(11) of which provides as follows:

- (11) Item 5 of Schedule 11 commences at the same time as item 5 of Schedule 10.

- (zzzzj) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 34 and 35) only of the *Timor Gap Treaty (Transitional Arrangements) Act 2000*, subsection 2(2) of which provides as follows:

- (2) Sections 3 to 7 and Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) are taken to have commenced at the transition time. [see Table A]

- (zzzzk) The *Income Tax Assessment Act 1936* was amended by Schedule 3 (items 14–37) and Schedule 4 (items 4, 6, 8, 10–12) only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsections 2(1), (4), (5) and (11) of which provide as follows:

- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.
- (4) Item 34 of Schedule 3 commences, or is taken to have commenced, on 1 July 2000, immediately after the commencement of item 49 of Schedule 11 to the *A New Tax System (Tax Administration) Act 1999*.
- (5) Item 35 of Schedule 3 commences, or is taken to have commenced, on 1 July 2000, immediately after the commencement of item 58 of Schedule 11 to the *A New Tax System (Tax Administration) Act 1999*.
- (11) Items 4 to 9 of Schedule 4 to this Act commence, or are taken to have commenced, on 1 July 2000, immediately after the commencement of the amendments of the *Income Tax Assessment Act 1936* made by Part 1 of Schedule 5 to the *A New Tax System (Tax Administration) Act 1999*.

Section 1 of the *A New Tax System (Tax Administration) Act 1999* commenced on 22 December 1999, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.

- (zzzzl) The *Income Tax Assessment Act 1936* was amended by Schedule 4 (items 11–28) only of the *A New Tax System (Family Assistance and Related Measures) Act 2000*, subsections 2(1), (10) and (11) of which provide as follows:

- (1) Sections 1, 2 and 3 and items 1, 29 and 31 of Schedule 4 commence on the day on which this Act receives the Royal Assent.
- (10) Items 11 to 27 and item 30 of Schedule 4 commence immediately after the commencement of Schedule 8 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
- (11) Item 28 of Schedule 4 commences immediately after the commencement of Schedule 10 (other than items 22, 63, 66 and 67A) to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

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Schedule 8 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* commenced on 1 July 2000.

Schedule 10 (other than item 63) to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999* commenced on 1 July 2000.

(zzzzla) The *A New Tax System (Family Assistance and Related Measures) Act 2000* was amended by Schedule 2 (item 1) only of the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*, subsection 2(5) of which provides as follows:

- (5) Item 1 of Schedule 2 is taken to have commenced on 3 May 2000, immediately after the *A New Tax System (Family Assistance and Related Measures) Act 2000* received the Royal Assent.

(zzzzlb) Subsection 2(1) (item 11) of the *Family and Community Services Legislation Amendment Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
11. Schedule 2, item 87	Immediately after the commencement of section 2 of the <i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>	3 May 2000

(zzzzm) The *Income Tax Assessment Act 1936* was amended by the *Taxation Laws Amendment Act (No. 2) 2000*, subsections 2(1)–(6), (12) and (13) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Part 2 of Schedule 1 commences immediately after Part 1 of that Schedule.
- (3) Item 1 of Schedule 3 is taken to have commenced immediately after the commencement of item 5 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
- (4) Items 2, 4 and 5 of Schedule 3 are taken to have commenced immediately after the commencement of item 8 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
- (5) Item 6 of Schedule 3 is taken to have commenced immediately after the commencement of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 1999*.
- (6) Item 7 of Schedule 3 is taken to have commenced immediately after the commencement of item 22 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
- (12) Item 33 of Schedule 6 commences, or is taken to have commenced, immediately after item 72 of Schedule 6 to the *Taxation Laws Amendment Act (No. 4) 1999*.
- (13) Schedule 8, apart from items 18 and 20, is taken to have commenced immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998*. Items 18 and 20 are taken to have commenced on 1 July 1999.

Schedule 4 (items 5, 8, 22) and Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 1999* commenced on 16 July 1999.

Schedule 6 (item 72) to the *Taxation Laws Amendment Act (No. 4) 1999* commenced on 16 July 1999.

Section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998* commenced on 1 July 1998.

Act Notes

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- (zzzzn) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (item 2) only of the *Taxation Laws Amendment Act (No. 3) 2000*, subsection 2(3) of which provides as follows:
- (3) Schedule 2 is taken to have commenced on 7 December 1998.
- (zzzzo) Subsection 2(4) of the *New Business Tax System (Miscellaneous) Act (No. 1) 2000* provides as follows:
- (4) Schedule 5 is taken to have commenced immediately after Schedule 3 to the *New Business Tax System (Capital Gains Tax) Act 1999* commences.
- Schedule 3 to the *New Business Tax System (Capital Gains Tax) Act 1999* commenced on 10 December 1999.
- (zzzzp) Subsection 2(2) of the *New Business Tax System (Alienation of Personal Services Income) Act 2000* provides as follows:
- (2) Part 3 of Schedule 1 (other than items 61, 62 and 72) commences immediately after the commencement of item 2 of Schedule 5 to the *A New Tax System (Tax Administration) Act 1999*.
- Schedule 5 (item 2) commenced on 1 July 2000.
- (zzzzq) The *Income Tax Assessment Act 1936* was amended by the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*, subsections 2(1), (2) (4) and (7)–(9) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 18 and 67 of Schedule 1 are taken to have commenced at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.
- (4) Items 25 and 26 of Schedule 2 commence, or are taken to have commenced, on 1 July 2000, immediately after the commencement of Subdivision D of Division 3 of Part 3 of the *Taxation (Deficit Reduction) Act (No. 2) 1993*.
- (7) Parts 1 and 4 of Schedule 3 commence on the day on which this Act receives the Royal Assent.
- (8) Part 2 of Schedule 3 commences, or is taken to have commenced, on 1 July 2000.
- (9) Part 3 of Schedule 3 commences, or is taken to have commenced, immediately after the commencement of item 13 in Schedule 3 to the *New Business Tax System (Miscellaneous) Act (No. 1) 2000*.
- Schedule 3 (item 13) commenced on 1 July 2000.
- (zzzzr) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 13–48, 130–142, 145 and 146) only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.
- Section 1-1 commenced on 1 July 2000.
- (zzzzs) The *Income Tax Assessment Act 1936* was amended by Schedule 7 (items 26 and 27) only of the *Indirect Tax Legislation Amendment Act 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences immediately after the commencement of Part 1 of Schedule 1 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*.
- Part 1 of Schedule 1 commenced on 1 July 2000.
- (zzzzt) The *Income Tax Assessment Act 1936* was amended by Schedule 4 only of the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, subsection 2(5) of which provides as follows:
- (5) Part 1 of Schedule 2, and Schedules 4 and 5, commence, or are taken to have commenced, on 1 July 2000.
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Act Notes

- (zzzzu) The *Income Tax Assessment Act 1936* was amended by Schedule 5 (items 2–4) only of the *Youth Allowance Consolidation Act 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzv) The *Income Tax Assessment Act 1936* was amended by Schedule 7 (items 13 and 14) only of the *Taxation Laws Amendment Act (No. 8) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzw) The *Income Tax Assessment Act 1936* was amended by Schedule 4 (items 1–5) only of the *Taxation Laws Amendment Act (No. 7) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzx) The *Income Tax Assessment Act 1936* was amended by Schedule 3 (items 220–263) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (zzzzz) The *Income Tax Assessment Act 1936* was amended by Schedule 5 (items 68, 69) only of the *Child Support Legislation Amendment Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzzzz) The *Income Tax Assessment Act 1936* was amended by Schedule 2 (items 20–148) only of the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (zzzzza) Subsection 2(1) (item 9) of the *Taxation Laws Amendment Act (No. 5) 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
9. Items 79 to 99 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001

(zzzzza) Section 2 of the *Family Law Legislation (Superannuation) (Consequential Provisions) Act 2001*, section 2 of which provides as follows:

- 2 This Act commences immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.

The *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation on 28 December 2002.

(zzzzzb) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 238, 239) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provides as follows:

- (1) In this section:

Act Notes

FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.

(zzzzzc) The *Income Tax Assessment Act 1936* was amended by Schedule 3 (item 3) only of the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzzzd) The *Income Tax Assessment Act 1936* was amended by Schedule 4 (items 41–91) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.

(zzzzze) The *Income Tax Assessment Act 1936* was amended by Schedule 1 (items 2–13) only of the *New Business Tax System (Thin Capitalisation) Act 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to subsections (2) and (3), this Act is taken to have commenced on 1 July 2001, immediately after the commencement of the *New Business Tax System (Debt and Equity) Act 2001*.

(zzzzzf) Subsection 2(2) of the *Taxation Laws Amendment (No. 2) Act 2001* provides as follows:

- (2) Schedule 5 is taken to have commenced immediately after both of the following commenced:
- Schedule 2 to the *New Business Tax System (Miscellaneous) Act (No. 1) 2000*;
 - Part 2 of Schedule 3 to the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*.

Schedule 2 and Part 2 of Schedule 3 commenced on 1 July 2000.

(zzzzzg) The *Income Tax Assessment Act 1936* was amended by Schedules 2, 3 and Schedule 6 (items 16A–16K) only of the *Taxation Laws Amendment Act (No. 6) 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzzzzh) Subsections 2(2) and (3) of the *Taxation Laws Amendment (Research and Development) Act 2001* provide as follows:

- (2) Division 1 of Part 3 of Schedule 2 is taken to have commenced at 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.
- (3) Division 2 of Part 3 of Schedule 2 commences, or is taken to have commenced, immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.

(zzzzzha) Subsection 2(1) (item 21) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
21. Schedule 10, item 268	Immediately after the commencement of Schedule 4 to the <i>Taxation Laws Amendment (Research and Development) Act 2001</i> .	1 October 2001

Act Notes

(zzzzzi) Subsection 2(1) (items 21–23, 25, 26, 42, 44, 46, 47, 51, 54, 55 and 61–65) of the *Taxation Laws Amendment (Superannuation) Act (No. 2) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
21. Schedule 12, item 4	Immediately after item 22 of Schedule 5 to the <i>Taxation Laws Amendment (Company Law Review) Act 1998</i> commenced	1 July 1998
22. Schedule 12, items 5 and 6	Immediately after the time specified in the <i>Taxation Laws Amendment (Private Health Insurance) Act 1998</i> for the commencement of item 3 of Schedule 1 to that Act	21 December 1998
23. Schedule 12, item 7	Immediately after the time specified in the <i>Taxation Laws Amendment (Film Licensed Investment Company) Act 1998</i> for the commencement of item 12 of Schedule 1 to that Act	7 December 1998
25. Schedule 12, item 11	Immediately after the time specified in the <i>Financial Sector Reform (Consequential Amendments) Act 1998</i> for the commencement of item 92 of Schedule 1 to that Act	1 July 1998
26. Schedule 12, items 12 and 13	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 3) 1998</i> for the commencement of item 19 of Schedule 3 to that Act	23 June 1998
42. Schedule 12, item 38	Immediately after the time specified in the <i>Aged Care (Consequential Provisions) Act 1997</i> for the commencement of item 30 of Schedule 5 to that Act	1 October 1997
44. Schedule 12, item 40	Immediately after the time specified in the <i>A New Tax System (Pay As You Go) Act 1999</i> for the commencement of item 62 of Schedule 2 to that Act	22 December 1999
46. Schedule 12, item 42	Immediately after the time specified in the <i>A New Tax System (Tax Administration) Act 1999</i> for the commencement of item 33 of Schedule 11 to that Act	1 July 2000
47. Schedule 12, item 43	Immediately after the time specified in the <i>Income Tax (Consequential Amendments) Act 1997</i> for the commencement of item 30 of Schedule 1 to that Act	1 July 1997

Act Notes

Provision(s)	Commencement	Date/Details
51. Schedule 12, item 50	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 1) 1997</i> for the commencement of item 8 of Schedule 3 to that Act	8 July 1997
54. Schedule 12, item 54	Immediately after the commencement of section 2 of the <i>Taxation Laws Amendment Act (No. 3) 1997</i>	14 October 1997
55. Schedule 12, item 55	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 3) 1999</i> for the commencement of items 165 and 167 of Schedule 1 to that Act	1 July 1999
61. Schedule 12, item 63	Immediately after section 2 of the <i>Taxation Laws Amendment (Research and Development) Act 2001</i> commenced	1 October 2001
62. Schedule 12, item 64	Immediately after item 23 of Schedule 1 to the <i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i> commenced	16 April 1998
63. Schedule 12, item 65	Immediately after the time specified in the <i>Tax Law Improvement Act 1997</i> for the commencement of item 69 of Schedule 6 to that Act	1 July 1997
64. Schedule 12, item 66 and 67	Immediately after the time specified in the <i>Tax Law Improvement Act (No. 1) 1998</i> for the commencement of items 373 and 374 of Schedule 2 to that Act	22 June 1998
65. Schedule 12, item 68	Immediately after the time specified in the <i>Tax Law Improvement Act (No. 1) 1998</i> for the commencement of item 519 of Schedule 2 to that Act	22 June 1998
(zzzzzj)	Subsection 2(1) (items 2 and 4) of the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i> provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.	
Provision(s)	Commencement	Date/Details
2. Schedules 1 to 12	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	24 October 2002
4. Schedules 14 and 15	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	24 October 2002

Act Notes

(zzzzzja) Subsection 2(1) (item 9) of the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
9. Schedules 6 to 15	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002

(zzzzzjb) Subsection 2(1) (item 10) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
10. Schedules 15 to 18	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002

(zzzzzk) Subsection 2(1) (item 3(b)) of the *Taxation Laws Amendment Act (No. 3) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
3. Schedule 3	The earlier of: (b) immediately before Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2002</i> commences	3 July 2002 (paragraph (b) applies)

(zzzzzl) Subsection 2(1) (item 9) of the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
9. Schedules 6 to 15	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002

Act Notes

(zzzzzm) Subsection 2(1) (item 3) of the *Taxation Laws Amendment Act (No. 5) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
3. Items 1 to 12 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001

(zzzzzn) Subsection 2(1) (items 4–6, 13, 20 and 22) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
4. Schedules 5 to 8	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
5. Schedule 9	Immediately after the commencement of Schedule 8 to this Act	24 October 2002
6. Schedule 10	Immediately after the commencement of Schedule 9 to this Act	24 October 2002
13. Schedules 20 to 23	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
20. Schedule 29, items 1 to 11	Immediately after the commencement of item 13 of Schedule 29 to this Act	29 June 2002
22. Schedule 29, item 14	Immediately after the commencement of item 13 of Schedule 29 to this Act	29 June 2002

(zzzzzo) Subsection 2(1) (item 6) of the *Taxation Laws Amendment Act (No. 2) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
6. Schedule 5, item 1	Immediately after the commencement of item 26 of Schedule 1 to the <i>Taxation Laws Amendment Act (No. 2) 1999</i>	16 July 1999

Act Notes

(zzzzzp) Subsection 2(1) (items 5(a) and 5A) of the *Taxation Laws Amendment Act (No. 4) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
5. Schedule 3, item 46	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and	30 June 2003
5A. Schedule 3, item 46A	Immediately after the commencement of Schedule 27 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	29 June 2002

(zzzzzq) Subsection 2(1) (items 10, 12, 13, 15, 32, 34, 35, 39 and 40) of the *Taxation Laws Amendment Act (No. 3) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
10. Schedule 6, item 3	Immediately after the time specified in the <i>A New Tax System (Pay As You Go) Act 1999</i> for the commencement of items 44 and 45 of Schedule 2 to that Act	22 December 1999
12. Schedule 6, item 5	Immediately after the commencement of item 3 of Schedule 8 to the <i>Taxation Laws Amendment Act (No. 2) 2000</i>	1 July 1998
13. Schedule 6, item 6	Immediately after the commencement of Schedule 1 to the <i>Taxation Laws Amendment (Self Assessment) Act 1992</i>	30 June 1992
15. Schedule 6, item 14	Immediately after the commencement of items 12 and 13 of Schedule 6 to this Act	14 October 2003
32. Schedule 6, items 36 and 37	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 3) 1999</i> for the commencement of items 84 and 85 of Schedule 1 to that Act	1 July 1999
34. Schedule 6, item 39	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 4) 1997</i> for the commencement of item 9 of Schedule 5 to that Act	21 November 1997
35. Schedule 6, item 40	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 4) 2000</i> for the commencement of item 2 of Schedule 4 to that Act	5 September 2000

Act Notes

Provision(s)	Commencement	Date/Details
39. Schedule 6, item 44	Immediately after the time specified in the <i>Tax Law Improvement Act (No. 1) 1998</i> for the commencement of item 94 of Schedule 2 to that Act	22 June 1998
40. Schedule 6, item 45	Immediately after the time specified in the <i>Tax Law Improvement Act (No. 1) 1998</i> for the commencement of item 11 of Schedule 6 to that Act	22 June 1998

(zzzzzr) Subsection 2(1) (item 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

(zzzzzs) Subsection 2(1) (item 16) of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
16. Schedule 2, items 120 to 169	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

(zzzzzt) Subsection 2(1) (items 2 and 22) of the *Tax Laws Amendment (2004 Measures No. 2) Act 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1, items 1 to 84	Immediately after the commencement of item 84 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000
22. Schedule 10, items 1 and 2	Immediately after the commencement of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 1) 2000</i> .	1 July 2000

Act Notes

(zzzzzu) Subsection 2(1) (items 11, 13, 14 and 16) of the *Taxation Laws Amendment Act (No. 1) 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
11. Schedule 11, Part 1	Immediately after the commencement of item 51 of Schedule 5 to the <i>Taxation Laws Amendment Act (No. 2) 1999</i>	16 July 1999
13. Schedule 11, Part 3	Immediately after the start of 30 June 2000	30 June 2000
14. Schedule 11, Part 4	Immediately after the start of 1 July 2000	1 July 2000
16. Schedule 11, Part 6	Immediately after the start of 1 July 2001	1 July 2001

(zzzzzv) Subsection 2(1) (item 3) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 9, Part 1	Immediately after the commencement of item 3 of Schedule 8 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	29 June 2004

(zzzzzw) Subsection 2(1) (item 5) of the *New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
5. Schedule 5	Immediately after the commencement of item 140 of Schedule 2 to the <i>New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004</i> .	29 June 2004

Act Notes

(zzzzzx) Subsection 2(1) (item 13) of the *Tax Laws Amendment (2006 Measures No. 3) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
13. Schedule 13	Immediately after the commencement of the <i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005</i> .	19 December 2005

(zzzzzy) Subsection 2(1) (item 6) of the *Tax Laws Amendment (2005 Measures No. 5) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
6. Schedule 6, Part 2	Immediately after the commencement of the <i>New Business Tax System (Debt and Equity) Act 2001</i> .	1 July 2001

(zzzzzz) Subsection 2(1) (items 9 and 11) of the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
9. Schedule 7, item 173	Immediately after the commencement of item 82 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000
11. Schedule 7, item 175	Immediately after the commencement of item 82 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000

(zzzzzza) Subsection 2(1) (items 2 and 3) of the *Tax Laws Amendment (2006 Measures No. 3) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	30 June 2006
3. Schedule 3	Immediately after the provision(s) covered by table item 2.	30 June 2006

Act Notes

(zzzzzzb) Subsection 2(1) (item 13) of the *Statute Law Revision Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
13. Schedule 1, item 16	Immediately after the commencement of item 3 of Schedule 1 to the <i>Superannuation Contributions Tax (Consequential Amendments) Act 1997</i> .	5 June 1997

(zzzzzzc) Subsection 2(1) (item 2) of the *Superannuation Legislation Amendment (Simplification) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .	15 March 2007

(zzzzzzd) Subsection 2(1) (items 2 and 3) of the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the provision(s) covered by table item 3.	18 October 2008
3. Schedules 2 to 5	The day after this Act receives the Royal Assent.	18 October 2008

Table of Amendments**Table of Amendments**

The amendment history of the *Income Tax Assessment Act 1936* appears in the Table below. For repealed provisions up to and including Act No. 132, 2000 see the Repeal Table.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 1.....	rs. No. 48, 1950; No. 103, 1965
S. 2.....	am. No. 4, 1945; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 101, 2006
S. 3.....	am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 4.....	am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 6.....	am. No. 88, 1936; No. 30, 1939; No. 50, 1942; No. 3, 1944; No. 6, 1946; No. 44, 1948; No. 48, 1950; No. 1, 1953; No. 65, 1957; No. 55, 1958; No. 85, 1959; Nos. 18 and 108, 1960; No. 17, 1961; No. 69, 1963; No. 110, 1964; No. 103, 1965; No. 85, 1967; Nos. 4, 60 and 87, 1968; No. 93, 1969; No. 54, 1971; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 143 and 205, 1976; Nos. 87 and 172, 1978; No. 27, 1979; No. 24, 1980; Nos. 108 and 154, 1981; No. 103, 1983; Nos. 47 and 123, 1984; No. 168, 1985; Nos. 41, 48, 52 and 154, 1986; No. 138, 1987; Nos. 73, 97, 105 and 107, 1989; Nos. 20, 35 and 135, 1990; Nos. 4, 5, 100 and 216, 1991; Nos. 80, 98 and 224, 1992; Nos. 17, 18, 57 and 82, 1993; Nos. 138 and 181, 1994; Nos. 5 and 169, 1995; Nos. 39, 62, 95, 121, 122, 147 and 174, 1997; Nos. 45, 46, 48, 63 and 85, 1998; Nos. 11, 17, 44, 54, 117, 176, 178 and 179, 1999; Nos. 25, 89, 91 and 92, 2000; Nos. 77 and 163, 2001; Nos. 15, 90, 96, 117 and 136, 2002; Nos. 10, 16 and 66, 2003; Nos. 52, 83, 95 and 101, 2004; Nos. 23, 41, 75 and 161, 2005; Nos. 58, 80, 101 and 168, 2006; Nos. 9, 15, 78, 79, 80 and 143, 2007; Nos. 32, 45, 92, 97 and 144, 2008
S. 6AA.....	ad. No. 87, 1968 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 80, 1975; No. 108, 1981; No. 11, 1988; No. 10, 2003; Nos. 17 and 101, 2006; No. 117, 2008
S. 6A.....	ad. No. 103, 1965 am. No. 51, 1973; No. 108, 1981
S. 6AB.....	ad. No. 51, 1986 am. No. 78, 1988; Nos. 5 and 48, 1991; No. 190, 1992; No. 181, 1994; Nos. 22 and 170, 1995; No. 163, 2001; No. 66, 2003; No. 96, 2004; Nos. 15 and 143, 2007
S. 6AC.....	ad. No. 51, 1986 am. No. 5, 1991; No. 190, 1992; No. 163, 2001; No. 96, 2004 rep. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 6AD.....	ad. No. 179, 1999 am. No. 169, 1999; No. 95, 2004 rep. No. 161, 2005
S. 6B	ad. No. 85, 1967 am. No. 51, 1973; No. 108, 1981; No. 51, 1986; No. 5, 1991; No. 163, 2001; No. 143, 2007
Heading to s. 6BA.....	am. No. 63, 1998
S. 6BA.....	ad. No. 57, 1978 am. No. 146, 1979; No. 108, 1981; No. 47, 1984; No. 52, 1986; No. 120, 1995; No. 121, 1997; No. 63, 1998; No. 58, 2000; No. 163, 2001; No. 101, 2003; No. 101, 2006
S. 6C.....	ad. No. 4, 1968 am. No. 51, 1973; No. 26, 1974; Nos. 50 and 143, 1976; No. 126, 1977; No. 12, 1979; No. 57, 1980; No. 108, 1981; No. 224, 1992; No. 39, 1997; No. 101, 2006
S. 6CA.....	ad. No. 154, 1986 am. No. 22, 1995; No. 39, 1997; No. 101, 2006
S. 6D.....	ad. No. 117, 1999 rep. No. 80, 2006 ad. No. 143, 2007
S. 6E	ad. No. 181, 1994 am. No. 169, 2001 rep. No. 15, 2007
S. 6F	ad. No. 35, 1990 am. No. 101, 2006
S. 6G.....	ad. No. 17, 1993 rep. No. 101, 2006
S. 6H.....	ad. No. 57, 1993 am. No. 181, 1994; No. 101, 2004
S. 7A	ad. No. 164, 1973
S. 7B	ad. No. 146, 2001
Part II	
S. 8.....	rs. No. 1, 1953
S. 14.....	rs. No. 39, 1983 am. No. 123, 1984
S. 16.....	am. No. 46, 1938; No. 58, 1941; No. 10, 1943; No. 28, 1944; No. 44, 1948; No. 44, 1951; No. 90, 1952; No. 1, 1953; No. 18, 1960; No. 68, 1964; No. 143, 1965; No. 87, 1968; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 50, 1976; Nos. 36 and 87, 1978; No. 108, 1981; Nos. 38, 39, 76, 80 and 106, 1982; Nos. 42 and 47, 1984; No. 123, 1984 (as am. by No. 65, 1985); Nos. 124, 165 and 174, 1984; Nos. 49, 104, 123 and 168, 1985; Nos. 46, 48 and 49, 1986; Nos. 108 and 138, 1987; Nos. 59, 75, 78 and 97, 1988; Nos. 73 and 107, 1989; Nos. 98 and 191, 1992; Nos. 18 and 82, 1993; Nos. 82, 163 and 184, 1994; Nos. 29, 56, 191 and 196, 1997; Nos. 45, 48 and 128, 1998; Nos. 83 and 179, 1999; No. 91, 2000; Nos. 75, 144 and 146, 2001; No. 122, 2003; Nos. 52 and 105, 2004; Nos. 111 and 160, 2005; No. 101, 2006; Nos. 32, 143 and 164, 2007; Nos. 92 and 97, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 16A	ad. No. 120, 1987 am. No. 97, 1988
Part III	
Division I	
S. 17.....	am. No. 22, 1942; No. 10, 1943; Nos. 4 and 37, 1945; No. 11, 1947 rs. No. 48, 1950; No. 103, 1965 am. No. 51, 1973; No. 108, 1981; No. 39, 1997 rep. No. 101, 2006
S. 18.....	am. No. 108, 1981; No. 39, 1997; No. 136, 2002; No. 101, 2006
Heading to s. 18A	am. No. 78, 2007
S. 18A	ad. No. 136, 2002 am. No. 78, 2007
S. 19.....	am. No. 52, 1986; No. 39, 1997 rep. No. 101, 2006
S. 20.....	am. No. 51, 1986 rep. No. 133, 2003
S. 21.....	am. No. 95, 1988
S. 21A.....	ad. No. 95, 1988 am. No. 30, 1995; Nos. 39 and 121, 1997
S. 22.....	rep. No. 101, 2006
S. 22A	ad. No. 121, 1997 am. No. 54, 1999; No. 101, 2004 rep. No. 101, 2006
S. 23.....	am. No. 88, 1936; No. 46, 1938; No. 17, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; No. 3, 1944; No. 4, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; No. 43, 1954; Nos. 30 and 101, 1956; Nos. 70 and 85, 1959; No. 18, 1960; No. 98, 1962; No. 34, 1963; Nos. 68 and 110, 1964; Nos. 33 and 103, 1965; Nos. 19 and 85, 1967; No. 60, 1968; No. 65, 1972; Nos. 51, 52, 164 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 26, 1974; No. 80, 1975; Nos. 50 and 205, 1976; Nos. 57 and 127, 1977; Nos. 36, 57 and 123, 1978; Nos. 61, 108 and 154, 1981; Nos. 39 and 76, 1982; Nos. 54 and 103, 1983; Nos. 47 and 123, 1984; Nos. 123 and 168, 1985; Nos. 49, 51, 52, 112 and 154, 1986; Nos. 61, 108 and 138, 1987; Nos. 78 and 153, 1988; Nos. 97 and 107, 1989; Nos. 57 and 135, 1990; No. 100, 1991; No. 35, 1992; No. 118, 1993; No. 56, 1994; No. 169, 1995; No. 78, 1996; Nos. 39, 121, 122, 134, 147 and 174, 1997; No. 23, 1998; No. 118, 1999; No. 114, 2000; No. 163, 2001; No. 66, 2003 rep. No. 101, 2006
Note to s. 23(pa)	ad. No. 39, 1997 rep. No. 101, 2006
Ss. 23AAAA, 23AAAB.....	ad. No. 174, 1997 rep. No. 101, 2006
S. 23AAA	ad. No. 80, 1975 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 23AA.....	ad. No. 69, 1963 am. No. 38, 1967; No. 93, 1971; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 117, 1975; No. 108, 1981; No. 82, 1994
S. 23AB.....	ad. No. 68, 1964 am. No. 143, 1965; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 117, 1975; No. 56, 1976; No. 108, 1981; No. 29, 1982; No. 124, 1984; No. 173, 1985 (as am. by No. 49, 1986); Nos. 75 and 78, 1988; No. 208, 1991; Nos. 70 and 224, 1992; Nos. 18 and 27, 1993; No. 138, 1994; Nos. 82 and 179, 1999; No. 45, 2000; No. 101, 2004; No. 101, 2006; No. 75, 2007
Note 1 to s. 23AB(7)	ad. No. 82, 1999 am. No. 45, 2000
Note 2 to s. 23AB(7)	ad. No. 82, 1999
S. 23AC.....	ad. No. 103, 1965 am. No. 51, 1973; No. 108, 1981; No. 167, 1989; No. 135, 1990; No. 216, 1991; No. 80, 1992; No. 18, 1993; No. 58, 2006
Subhead. to s. 23AD(6)	am. No. 58, 2006
S. 23AD.....	ad. No. 18, 1993 am. No. 58, 2006
Subhead. to s. 23ADA(5)	am. No. 58, 2006 rep. No. 101, 2006
S. 23ADA	ad. No. 18, 1993 am. No. 58, 2006 rep. No. 101, 2006
S. 23AE.....	ad. No. 27, 1979 am. No. 121, 1997 rep. No. 101, 2006
Note to s. 23AE(1A).....	am. No. 66, 2003 rep. No. 101, 2006
S. 23AF	ad. No. 133, 1980 am. No. 108, 1981; No. 123, 1984; No. 51, 1986; Nos. 100 and 216, 1991; No. 181, 1994; No. 39, 1996; No. 147, 1997; Nos. 69 and 83, 1999; No. 64, 2005; No. 15, 2007
S. 23AG	ad. No. 51, 1986 am. No. 78, 1988; Nos. 100 and 216, 1991; No. 181, 1994; Nos. 147 and 150, 1997; Nos. 69 and 83, 1999; No. 10, 2003; Nos. 64 and 162, 2005; No. 15, 2007
Heading to s. 23AH.....	rs. No. 66, 2003; No. 96, 2004
S. 23AH.....	ad. No. 5, 1991 am. No. 48, 1991; No. 80, 1992; Nos. 121 and 155, 1997; No. 46, 1998; No. 77, 2001; No. 66, 2003 rs. No. 96, 2004 am. Nos. 41 and 63, 2005; No. 168, 2006
Heading to s. 23AI	rs. No. 66, 2003
S. 23AI	ad. No. 5, 1991 am. No. 216, 1991; No. 66, 2003; No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 23AJ.....	rs. No. 66, 2003; No. 96, 2004
S. 23AJ	ad. No. 5, 1991 am. No. 66, 2003 rs. No. 96, 2004
Heading to s. 23AK.....	rs. No. 66, 2003
S. 23AK.....	ad. No. 190, 1992 am. No. 181, 1994; No. 66, 2003; No. 58, 2006; No. 143, 2007
S. 23AL	ad. No. 101, 2004 rep. No. 101, 2006
S. 23C.....	ad. No. 44, 1951 am. No. 12, 1959; No. 18, 1960; No. 18, 1969; Nos. 51 and 164, 1973; No. 80, 1975; No. 108, 1981; No. 153, 1988 rep. No. 101, 2006
S. 23D.....	ad. No. 90, 1952 rs. No. 62, 1955 am. No. 25, 1956; No. 18, 1960; No. 27, 1961; Nos. 51 and 164, 1973; No. 108, 1981 rep. No. 101, 2006
S. 23E	ad. No. 85, 1959 am. No. 108, 1981; No. 107, 1989; No. 224, 1992; No. 66, 2003; No. 97, 2008
S. 23G.....	ad. No. 126, 1974 am. No. 108, 1981; No. 57, 1993; No. 44, 1999
S. 23GA	ad. No. 58, 2000 rep. No. 143, 2007
S. 23H.....	ad. No. 111, 1981 am. No. 14, 1983; No. 14, 1984; No. 168, 1985; No. 101, 2006 rep. No. 101, 2006
S. 23J.....	ad. No. 76, 1982 am. No. 124, 1984; No. 138, 1994; No. 121, 1997; No. 66, 2003
S. 23K	ad. No. 124, 1984
Heading to s. 23L.....	rs. No. 66, 2003
S. 23L.....	ad. No. 41, 1986 am. No. 95, 1988; No. 66, 2003; No. 101, 2006; No. 97, 2008
Heading to Div. 1AA..... of Part III	am. No. 184, 1994 rs. No. 122, 1997 rep. No. 101, 2006
Div. 1AA of Part III	ad. No. 100, 1991 rep. No. 101, 2006
Subdiv. AA of Div. 1AA of Part III.....	ad. No. 121, 1997 rep. No. 101, 2006
S. 24.....	ad. No. 121, 1997 am. No. 54, 1999 rep. No. 101, 2006
S. 24A	ad. No. 100, 1991 am. No. 216, 1991; No. 56, 1994; No. 120, 1995; No. 1, 1996 rep. No. 101, 2006
S. 24AA.....	ad. No. 100, 1991 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 24AAA	ad. No. 100, 1991 am. Nos. 125 and 184, 1994; No. 122, 1997 rep. No. 101, 2006
S. 24AB	ad. No. 100, 1991 am. No. 216, 1991; Nos. 35, 69, 81, 191 and 227, 1992; Nos. 56, 138 and 174, 1994; Nos. 120, 106 and 169, 1995; Nos. 1, 63 and 84, 1996; No. 202, 1997 rep. No. 101, 2006
S. 24ABA	ad. No. 100, 1991 am. No. 216, 1991; Nos. 69 and 191, 1992; Nos. 56, 138 and 174, 1994; Nos. 120, 143 and 169, 1995; Nos. 1 and 84, 1996; No. 114, 1997 (as am. by No. 57, 2002) rep. No. 101, 2006
S. 24ABB	ad. No. 100, 1991 rep. No. 101, 2006
S. 24ABC	ad. No. 100, 1991 am. No. 216, 1991; No. 69, 1992 rep. No. 101, 2006
S. 24ABD	ad. No. 100, 1991 rs. No. 216, 1991 am. Nos. 69 and 191, 1992 rs. No. 120, 1995 rep. No. 101, 2006
Ss. 24ABDB, 24ABDC	ad. No. 216, 1991 rep. No. 101, 2006
S. 24ABE	ad. No. 100, 1991 am. No. 216, 1991; No. 69, 1992 rep. No. 101, 2006
Heading to s. 24ABF	rs. No. 84, 1996 rep. No. 101, 2006
S. 24ABF	ad. No. 100, 1991 am. No. 216, 1991; No. 69, 1992; No. 56, 1994; No. 84, 1996 rep. No. 101, 2006
S. 24ABG	ad. No. 100, 1991 am. No. 216, 1991; No. 69, 1992 rep. No. 101, 2006
S. 24ABH	ad. No. 100, 1991 am. No. 69, 1992; No. 174, 1994 rep. No. 101, 2006
S. 24ABI	ad. No. 100, 1991 am. No. 69, 1992 rep. No. 101, 2006
S. 24ABJA	ad. No. 120, 1995 rep. No. 101, 2006
S. 24ABJ	ad. No. 174, 1994 rep. No. 101, 2006
S. 24ABM	ad. No. 100, 1991 rs. No. 216, 1991 am. No. 69, 1992; Nos. 56 and 174, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 24ABMA	ad. No. 56, 1994 rep. No. 101, 2006
S. 24ABMB	ad. No. 56, 1994 am. No. 169, 1995 rep. No. 101, 2006
S. 24ABMC	ad. No. 1, 1996 rep. No. 101, 2006
S. 24ABN	ad. No. 100, 1991 rep. No. 101, 2006
S. 24ABNA	ad. No. 35, 1992 rep. No. 101, 2006
S. 24ABO	ad. No. 100, 1991 rs. No. 216, 1991 am. No. 69, 1992; Nos. 56 and 174, 1994 rep. No. 101, 2006
S. 24ABP	ad. No. 100, 1991 am. No. 216, 1991; No. 69, 1992; Nos. 56 and 174, 1994 rep. No. 101, 2006
S. 24ABPA	ad. No. 138, 1994 rep. No. 101, 2006
S. 24ABQ	ad. No. 100, 1991 am. No. 216, 1991 rep. No. 101, 2006
S. 24ABR	ad. No. 100, 1991 rs. No. 216, 1991 am. No. 191, 1992 rs. No. 120, 1995 rep. No. 101, 2006
S. 24ABS	ad. No. 100, 1991 am. No. 216, 1991 rep. No. 101, 2006
Ss. 24ABT–24ABV	ad. No. 100, 1991 rep. No. 101, 2006
S. 24ABW	ad. No. 100, 1991 am. No. 216, 1991 rs. No. 69, 1992 rep. No. 101, 2006
S. 24ABX	ad. No. 227, 1992 rep. No. 101, 2006
S. 24ABXAA	ad. No. 106, 1995 rep. No. 101, 2006
S. 24ABXAAA	ad. No. 202, 1997 rep. No. 101, 2006
S. 24ABXAB	ad. No. 63, 1996 rep. No. 101, 2006
S. 24ABXA	ad. No. 138, 1994 am. No. 174, 1994 rep. No. 101, 2006
S. 24ABXB	ad. No. 174, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 24ABY, 24ABZ.....	ad. No. 100, 1991 am. No. 216, 1991 rep. No. 101, 2006
S. 24ABZA	ad. No. 100, 1991 rep. No. 101, 2006
S. 24ABZAA.....	ad. No. 81, 1992 rep. No. 101, 2006
S. 24ABZB	ad. No. 100, 1991 am. No. 191, 1992 rep. No. 101, 2006
Ss. 24ABZC, 24ABZD.....	ad. No. 56, 1994 rep. No. 101, 2006
Subdiv. BA of Div. 1AA of Part III	ad. No. 184, 1994 rs. No. 122, 1997 rep. No. 101, 2006
S. 24ABZE	ad. No. 184, 1994 am. No. 169, 1995 rs. No. 122, 1997 am. No. 45, 1998; No. 150, 2003 rep. No. 101, 2006
S. 24ABZF	ad. No. 184, 1994 rs. No. 122, 1997 am. No. 45, 1998 rep. No. 101, 2006
S. 24AC.....	ad. No. 100, 1991 am. No. 216, 1991; No. 70, 1992; No. 146, 1995 rep. No. 101, 2006
S. 24ACA	ad. No. 100, 1991 am. No. 146, 1995; No. 114, 1997 rep. No. 101, 2006
S. 24ACB	ad. No. 100, 1991 rep. No. 101, 2006
S. 24ACC.....	ad. No. 100, 1991 rs. No. 146, 1995 rep. No. 101, 2006
S. 24ACD.....	ad. No. 100, 1991 rep. No. 101, 2006
Ss. 24ACE–24ACH.....	ad. No. 100, 1991 am. No. 216, 1991 rs. No. 146, 1995 rep. No. 101, 2006
S. 24ACHA.....	ad. No. 146, 1995 rep. No. 101, 2006
Ss. 24ACI–24ACV	ad. No. 100, 1991 rep. No. 101, 2006
Heading to s. 24ACW	am. No. 146, 1995 rep. No. 101, 2006
S. 24ACW	ad. No. 100, 1991 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 24ACWA.....	ad. No. 70, 1992 rep. No. 101, 2006
Ss. 24AE–24AI.....	ad. No. 100, 1991 rep. No. 101, 2006
Subdiv. IA of Div. 1AA..... of Part III	ad. No. 125, 1994 rep. No. 101, 2006
S. 24AIA.....	ad. No. 125, 1994 am. No. 1, 1996 rep. No. 101, 2006
S. 24AIB.....	ad. No. 125, 1994 rep. No. 101, 2006
Subdiv. IB of Div. 1AA..... of Part III	ad. No. 102, 1998 rep. No. 101, 2006
S. 24AIC.....	ad. No. 102, 1998 rep. No. 101, 2006
S. 24AJ.....	ad. No. 100, 1991 am. No. 81, 2005 rep. No. 101, 2006
Division 1AB	
Div. 1AB of Part III.....	ad. No. 169, 1995
Subdivision A	
Subdiv. A of Div. 1AB..... of Part III	ad. No. 169, 1995
S. 24AK.....	ad. No. 169, 1995
S. 24AL.....	ad. No. 169, 1995 am. No. 41, 2005
S. 24AM.....	ad. No. 169, 1995
S. 24AN.....	ad. No. 169, 1995 am. No. 101, 2004
Note 3 to s. 24AN.....	rep. No. 101, 2004
Ss. 24AO–24AS.....	ad. No. 169, 1995
S. 24AT.....	ad. No. 169, 1995 am. No. 169, 2001; No. 101, 2006
S. 24AU.....	ad. No. 169, 1995
S. 24AV.....	ad. No. 169, 1995 am. No. 58, 2006
Subdivision B	
Subdiv. B of Div. 1AB..... of Part III	ad. No. 169, 1995
S. 24AW.....	ad. No. 169, 1995 rs. No. 39, 1997 am. No. 94, 1999
S. 24AX.....	ad. No. 169, 1995 am. No. 39, 1997; No. 46, 1998
S. 24AY.....	ad. No. 169, 1995 am. No. 39, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 24AYA	ad. No. 169, 1995 am. No. 15, 2007
Heading to s. 24AZ	rs. No. 39, 1997
S. 24AZ	ad. No. 169, 1995 am. No. 39, 1997
Division 1A	
Div. 1A of Part III	ad. No. 164, 1973
S. 24B	ad. No. 164, 1973 am. No. 52, 1986; No. 11, 1988; No. 101, 2006
S. 24BA	ad. No. 49, 1985 am. No. 100, 1991 rep. No. 101, 2006
S. 24BB	ad. No. 100, 1991 rep. No. 101, 2006
Ss. 24C, 24D	ad. No. 164, 1973 am. No. 108, 1981
Note to s. 24D(7)	ad. No. 144, 2008
S. 24E	ad. No. 164, 1973 am. No. 108, 1981
S. 24F	ad. No. 164, 1973 am. No. 12, 1979; No. 108, 1981
Note to s. 24F(4)	ad. No. 144, 2008
S. 24G	ad. No. 164, 1973 am. No. 108, 1981
Note to s. 24G(3)	ad. No. 144, 2008
S. 24H	ad. No. 164, 1973
S. 24J	ad. No. 164, 1973 am. No. 108, 1981
S. 24K	ad. No. 164, 1973
S. 24L	ad. No. 164, 1973 am. No. 26, 1974; No. 50, 1976; No. 108, 1981; No. 101, 2006
S. 24M	ad. No. 164, 1973
Note to s. 24M(1)	ad. No. 144, 2008
Note to s. 24M(2)	ad. No. 144, 2008
S. 24N	ad. No. 164, 1973 am. No. 108, 1981 rep. No. 101, 2006
S. 24P	ad. No. 100, 1991 am. Nos. 41 and 46, 1998; No. 101, 2006
Division 2	
Subdivision A	
S. 25	am. No. 47, 1984; No. 39, 1997; No. 73, 2004 rep. No. 101, 2006
S. 25A	ad. No. 47, 1984 am. No. 52, 1986; No. 121, 1997; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 25B	ad. No. 121, 1997 rep. No. 101, 2006
S. 26.....	am. No. 58, 1941; No. 10, 1943; No. 6, 1946; No. 63, 1947; No. 43, 1954; No. 69, 1963; No. 110, 1964; Nos. 103 and 143, 1965; No. 4, 1968; No. 51, 1973; No. 26, 1974; No. 143, 1976; No. 123, 1978; No. 12, 1979; Nos. 108 and 175, 1981; No. 14, 1983; No. 47, 1984; No. 41, 1986; No. 17, 1993; No. 181, 1994; Nos. 56 and 121, 1997; No. 70, 1999; No. 163, 2001; No. 83, 2004 rep. No. 101, 2006
S. 26AAAC.....	ad. No. 173, 1985 am. No. 39, 1997 (as rep. by No. 121, 1997); No. 121, 1997 rep. No. 101, 2006
S. 26AAB	ad. No. 57, 1980 am. No. 108, 1981; No. 121, 1997 rep. No. 101, 2006
Note to s. 26AAB(1).....	ad. No. 121, 1997 rep. No. 101, 2006
S. 26AAC	ad. No. 126, 1974 am. No. 108, 1981; No. 52, 1986; No. 153, 1988; No. 101, 1992; No. 169, 1995; No. 122, 1997; No. 46, 1998; No. 55, 2001; No. 147, 2005; No. 101, 2006
S. 26AAD	ad. No. 147, 2005
S. 26AB.....	ad. No. 110, 1964 am. No. 51, 1973; No. 108, 1981; No. 121, 1997; No. 101, 2006
Note to s. 26AB(1A).....	rs. No. 46, 1998 am. No. 101, 2006
S. 26AC.....	ad. No. 123, 1978 rep. No. 15, 2007
S. 26AD.....	ad. No. 123, 1978 am. No. 149, 1979; No. 49, 1985; No. 100, 1991; No. 101, 2006 rep. No. 15, 2007
S. 26AF	ad. No. 124, 1980 am. No. 108, 1981; No. 47, 1984; No. 49, 1985; No. 138, 1987; No. 15, 2007
S. 26AFA.....	ad. No. 115, 1984 am. No. 49, 1985; No. 138, 1987; No. 15, 2007
Heading to s. 26AFB.....	rs. No. 62, 1997 rep. No. 15, 2007
S. 26AFB.....	ad. No. 138, 1987 am. No. 97, 1989; No. 82, 1993; No. 62, 1997 rep. No. 15, 2007
S. 26AG	ad. No. 111, 1981 am. No. 14, 1983; No. 49, 1985; No. 51, 1986; No. 176, 1999; No. 101, 2006
S. 26AH.....	ad. No. 14, 1984 am. No. 55, 1993; No. 62, 1997; No. 89, 2000; No. 12, 2003; No. 83, 2004; No. 15, 2007; No. 45, 2008
S. 26AJ	ad. No. 216, 1991 am. No. 30, 1995; No. 39, 1997; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 26A	ad. No. 11, 1947 rs. No. 85, 1967 am. No. 51, 1973; No. 163, 2001 rep. No. 143, 2007
S. 26B	ad. No. 28, 1952 am. No. 101, 1956; No. 18, 1960; Nos. 51 and 164, 1973; No. 80, 1975; No. 108, 1981; No. 101, 1992; No. 121, 1997 rep. No. 101, 2006
Note to s. 26B(2).....	ad. No. 121, 1997 rep. No. 101, 2006
S. 26BA.....	ad. No. 103, 1965 rs. No. 50, 1966 am. No. 76, 1967; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 101, 1992; No. 121, 1997 rep. No. 101, 2006
S. 26BB.....	ad. No. 107, 1989 am. No. 133, 2003
S. 26BC.....	ad. No. 57, 1990 am. No. 100, 1991; No. 82, 1994; No. 46, 1998; No. 101, 2004
S. 26C.....	ad. No. 85, 1959 am. No. 34, 1963; No. 103, 1965; No. 70, 1968; No. 108, 1981
S. 26D.....	ad. No. 190, 1992 rep. No. 143, 2007
S. 26E.....	ad. No. 62, 1997
S. 27.....	am. No. 51, 1973; No. 108, 1981
Subdivision AA	
Heading to Subdiv. AA..... of Div. 2 of Part III	rs. No. 15, 2007
Subdiv. AA of Div. 2..... of Part III	ad. No. 47, 1984
S. 27A.....	ad. No. 47, 1984 am. Nos. 49, 123, 129 and 173, 1985; No. 138, 1987; Nos. 11 and 87, 1988; Nos. 97, 105, 129 and 167, 1989; Nos. 61 and 135, 1990; No. 100, 1991; No. 208, 1992; Nos. 7 and 82, 1993; No. 181, 1994; Nos. 53 and 169, 1995; Nos. 60 and 78, 1996; Nos. 62, 147 and 191, 1997; No. 41, 1998; Nos. 44, 94, 128, 131 and 165, 1999; No. 163, 2001; Nos. 15, 51 and 105, 2002; No. 66, 2003; Nos. 83, 101 and 102, 2004; Nos. 78 and 148, 2005; No. 101, 2006 rep. No. 15, 2007
S. 27AAAA.....	ad. No. 169, 1995 am. No. 66, 2003 rep. No. 15, 2007
S. 27AAA.....	ad. No. 7, 1993 am. No. 53, 1995; No. 78, 2005 rep. No. 15, 2007
Note to s. 27AAA(2).....	ad. No. 78, 2005 rep. No. 15, 2007
S. 27AAB.....	ad. No. 102, 2004 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 27AA.....	ad. No. 105, 1989 am. Nos. 61 and 135, 1990; No. 208, 1992 (as am. by No. 7, 1993); No. 53, 1995; No. 147, 1997 rep. No. 15, 2007
S. 27AB.....	ad. No. 105, 1989 am. No. 61, 1990; No. 208, 1992; No. 53, 1995; No. 147, 1997; No. 66, 2003; No. 148, 2005 rep. No. 15, 2007
S. 27AC.....	ad. No. 208, 1992 am. No. 208, 1992; No. 53, 1995; No. 147, 1997 rep. No. 15, 2007
Ss. 27ACA, 27ACB.....	ad. No. 114, 2001 am. No. 78, 2005 rep. No. 15, 2007
Note to s. 27ACB(1).....	ad. No. 78, 2005 rep. No. 15, 2007
S. 27B.....	ad. No. 47, 1984 am. No. 173, 1985 rs. No. 105, 1989 am. No. 61, 1990; No. 208, 1992; No. 7, 1993 rep. No. 15, 2007
S. 27C.....	ad. No. 47, 1984 rs. No. 105, 1989 am. No. 208, 1992 rep. No. 15, 2007
S. 27CAA.....	ad. No. 181, 1994 rs. No. 83, 2004 rep. No. 15, 2007
S. 27CAB.....	ad. No. 83, 2004 rep. No. 15, 2007
S. 27CA.....	ad. No. 105, 1989 rep. No. 15, 2007
S. 27CB.....	ad. No. 208, 1992 am. No. 147, 1997; No. 46, 1998 rep. No. 15, 2007
Heading to s. 27CC.....	am. No. 128, 1999 rep. No. 15, 2007
S. 27CC.....	ad. No. 82, 1993 am. No. 128, 1999 rep. No. 15, 2007
Ss. 27CD, 27CE.....	ad. No. 181, 1994 rep. No. 15, 2007
S. 27D.....	ad. No. 47, 1984 am. No. 105, 1989; No. 208, 1992; Nos. 62 and 147, 1997; No. 66, 2003; No. 148, 2005 rep. No. 15, 2007
Ss. 27E, 27F.....	ad. No. 47, 1984 am. No. 129, 1985; No. 208, 1992 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 27G.....	ad. No. 47, 1984 am. No. 208, 1992 rep. No. 15, 2007
S. 27GA	ad. No. 15, 2002 rep. No. 15, 2007
S. 27H.....	ad. No. 47, 1984 am. No. 129, 1985; No. 138, 1987; No. 105, 1989; No. 35, 1990; No. 208, 1992; No. 181, 1994; No. 169, 1995; No. 139, 2002; No. 15, 2007
Note to s. 27H(1).....	ad. No. 139, 2002
S. 27HA.....	ad. No. 148, 2005 rep. No. 15, 2007
S. 27J.....	ad. No. 47, 1984 am. No. 61, 1990 rep. No. 15, 2007
Subdiv. B of Div. 2	rep. No. 101, 2006
of Part III	
Ss. 28, 29.....	am. No. 121, 1997 rep. No. 101, 2006
S. 31.....	rs. No. 69, 1963 am. No. 108, 1981; No. 190, 1992; No. 121, 1997 rep. No. 101, 2006
S. 31C.....	ad. No. 57, 1977 am. No. 108, 1981; No. 121, 1997 rep. No. 101, 2006
S. 32.....	rs. No. 168, 1985 am. No. 112, 1986 rs. No. 224, 1992 am. No. 121, 1997 rep. No. 101, 2006
S. 32A.....	ad. No. 224, 1992 am. No. 121, 1997 rep. No. 101, 2006
S. 33.....	am. No. 121, 1997 rep. No. 101, 2006
S. 34.....	am. No. 44, 1951; No. 112, 1986; No. 95, 1988; No. 101, 1992; No. 120, 1995; No. 121, 1997 rep. No. 101, 2006
S. 36.....	am. No. 88, 1936; No. 58, 1941; No. 4, 1945; No. 90, 1952; No. 62, 1955; No. 18, 1960; No. 50, 1966; No. 76, 1967; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 57, 1978; No. 146, 1979; No. 108, 1981; No. 101, 1992; No. 171, 1995; No. 121, 1997 rep. No. 101, 2006
Note to s. 36(1)	ad. No. 16, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 36AAA	ad. No. 76, 1967 am. Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 124, 1980; No. 108, 1981; No. 112, 1986; No. 57, 1990; No. 4, 1991; No. 101, 1992; No. 121, 1997; No. 101, 2006 rep. No. 101, 2006
S. 36AA	ad. No. 94, 1961 am. Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 108, 1981; No. 57, 1990; No. 101, 1992; No. 121, 1997 rep. No. 101, 2006
S. 36A	ad. No. 90, 1952 am. No. 94, 1961; No. 51, 1973; No. 57, 1977; No. 146, 1979; No. 108, 1981; No. 101, 1992; No. 121, 1997 rep. No. 101, 2006
S. 37	am. No. 88, 1936; No. 90, 1952; No. 51, 1973; No. 108, 1981; No. 101, 1992; No. 121, 1997 rep. No. 101, 2006
Subdiv. C of Div. 2 of Part III	rep. No. 101, 2006
Ss. 38, 39	am. No. 176, 1999 rep. No. 101, 2006
S. 40	am. No. 108, 1981 rep. No. 101, 2006
S. 41	rep. No. 101, 2006
S. 42	am. No. 46, 1938 rep. No. 101, 2006
S. 43	rep. No. 101, 2006
Subdivision D	
S. 43A	ad. No. 100, 1991 rs. No. 23, 2005
S. 43B	ad. No. 163, 2001
S. 44	am. No. 46, 1938; No. 17, 1940; No. 58, 1941; No. 50, 1942; No. 11, 1947; No. 44, 1951; No. 45, 1953; No. 43, 1954; No. 62, 1955; No. 85, 1959; No. 18, 1960; Nos. 34 and 69, 1963; No. 46, 1964; No. 103, 1965; No. 85, 1967; No. 93, 1969; No. 87, 1970; Nos. 51, 164 and 165, 1973; No. 80, 1975; No. 50, 1976; No. 57, 1980; No. 108, 1981; Nos. 46 and 51, 1986; No. 62, 1987; No. 63, 1998; No. 163, 2001; No. 90, 2002; No. 64, 2005
Note to s. 44(1) Renumbered Note 1	No. 147, 2005
Note 2 to s. 44(1)	ad. No. 147, 2005
S. 45	ad. No. 63, 1998 am. No. 101, 2006
S. 45A	ad. No. 63, 1998 am. No. 58, 2000; No. 163, 2001; No. 101, 2006
S. 45B	ad. No. 63, 1998 am. No. 58, 2000; No. 163, 2001 rs. No. 90, 2002 am. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 45BA.....	ad. No. 90, 2002
Heading to s. 45C.....	rs. No. 90, 2002
Subhead. to s. 45C(5).....	am. No. 101, 2006
S. 45C.....	ad. No. 63, 1998 am. No. 58, 2000; No. 163, 2001; No. 90, 2002; No. 101, 2006
S. 45D.....	ad. No. 63, 1998 am. No. 58, 2000; No. 90, 2002
S. 45Z.....	ad. No. 35, 1992 am. No. 47, 1998; No. 93, 1999; No. 163, 2001 rep. No. 101, 2006
S. 45ZA.....	ad. No. 93, 1999 rep. No. 101, 2006
S. 45ZB.....	ad. No. 93, 1999 am. No. 58, 2000 rep. No. 101, 2006
S. 46AA.....	ad. No. 117, 2002 am. No. 16, 2003 rep. No. 101, 2006
S. 46AB.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 46AC.....	ad. No. 117, 2002 am. No. 58, 2006 rep. No. 101, 2006
S. 46AD.....	ad. No. 117, 2002 rep. No. 16, 2003
S. 46AE.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 46.....	am. No. 88, 1936; No. 30, 1939; Nos. 17 and 65, 1940; No. 58, 1941; No. 22, 1942; No. 44, 1948; No. 44, 1951; No. 17, 1961 rs. No. 110, 1964 am. No. 143, 1965; No. 47, 1972; Nos. 51 and 165, 1973; No. 80, 1975; No. 172, 1978; No. 108, 1981; No. 49, 1985; Nos. 46 and 51, 1986; No. 62, 1987; No. 95, 1988; No. 105, 1989; No. 35, 1992; No. 181, 1994; Nos. 120 and 169, 1995; Nos. 39, 62 and 121, 1997; No. 93, 1999; No. 89, 2000; No. 163, 2001 rep. No. 101, 2006
S. 46A.....	ad. No. 47, 1972 am. Nos. 51 and 165, 1973; No. 80, 1975; Nos. 57 and 172, 1978; No. 108, 1981; No. 49, 1985; Nos. 46 and 51, 1986; Nos. 62 and 108, 1987; No. 95, 1988; No. 105, 1989; No. 35, 1992; No. 181, 1994; Nos. 120 and 169, 1995; No. 39, 1997 (as am. by No. 57, 2002); No. 62 and 121, 1997; No. 46, 1998; No. 89, 2000; No. 163, 2001; No. 101, 2006; No. 143, 2007 rep. No. 101, 2006
S. 46B.....	ad. No. 57, 1978 am. No. 172, 1978; No. 46, 1986; No. 108, 1987; No. 46, 1998 rep. No. 101, 2006
S. 46C.....	ad. No. 61, 1987 am. No. 58, 1987 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 46D	ad. No. 58, 1987 rep. No. 163, 2001
S. 46E	ad. No. 108, 1987 am. No. 46, 1998 rep. No. 101, 2006
Heading to s. 46F.....	am. No. 95, 1997 rs. No. 79, 2000 rep. No. 101, 2006
S. 46F	ad. No. 95, 1988 am. No. 95, 1997; No. 47, 1998; No. 93, 1999; No. 79, 2000; Nos. 57 and 97, 2002 rs. No. 117, 2002 am. No. 16, 2003; No. 95, 2004 rep. No. 101, 2006
S. 46FA.....	ad. No. 79, 2000 am. No. 57, 2002; No. 95, 2004; No. 101, 2006; No. 143, 2007
S. 46FB.....	ad. No. 79, 2000 am. No. 95, 2004; No. 23, 2005; No. 101, 2006; No. 143, 2007
S. 46G.....	ad. No. 170, 1995 rep. No. 79, 2007
S. 46H.....	ad. No. 170, 1995 am. No. 63, 1998 rep. No. 79, 2007
S. 46I.....	ad. No. 170, 1995 rep. No. 79, 2007
S. 46J.....	ad. No. 170, 1995 am. No. 63, 1998 rep. No. 79, 2007
Ss. 46K, 46L	ad. No. 170, 1995 rep. No. 79, 2007
S. 46M.....	ad. No. 170, 1995 am. No. 171, 1995 (as am. by No. 76, 1996; No. 147, 1997); No. 93, 1999 rep. No. 79, 2007
S. 47.....	am. No. 58, 1941; No. 85, 1967; No. 51, 1973; No. 108, 1981; Nos. 58 and 62, 1987; Nos. 46 and 63, 1998; No. 114, 2000; No. 41, 2005
S. 47A	ad. No. 5, 1991 am. Nos. 48 and 100, 1991; No. 224, 1992; Nos. 121 and 122, 1997; No. 70, 1999; No. 66, 2003; No. 96, 2004; Nos. 15 and 143, 2007; No. 97, 2008
Heading to Div. 2A	ad. No. 172, 1978 rep. No. 101, 2006
of Part III	
Div. 2A of Part III.....	rep. No. 101, 2006
Heading to Subdiv. A of	ad. No. 48, 1950 rep. No. 101, 2006
Div. 2A (formerly Div. 3) of Part III	
S. 48.....	am. No. 39, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 49.....	am. No. 108, 1981 rep. No. 101, 2006
S. 50.....	am. No. 46, 1938; No. 22, 1942; No. 163, 2001 rep. No. 101, 2006
Subdiv. B of Div. 2A..... of Part III	ad. No. 172, 1978 rep. No. 101, 2006
S. 50A.....	ad. No. 172, 1978 am. No. 108, 1981; No. 39, 1997 rep. No. 101, 2006
Note to s. 50A(1).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 50B.....	ad. No. 172, 1978 am. No. 14, 1983; No. 98, 1992; No. 147, 1997 rep. No. 101, 2006
S. 50C.....	ad. No. 172, 1978 am. No. 133, 1980; Nos. 108, 109, 111 and 154, 1981; No. 123, 1982; No. 14, 1983; No. 95, 1988; No. 107, 1989; No. 57, 1990; No. 18, 1993; No. 31, 1995; No. 147, 1997 rep. No. 101, 2006
S. 50D.....	ad. No. 172, 1978 am. No. 108, 1981 rep. No. 101, 2006
S. 50E.....	ad. No. 172, 1978 am. No. 108, 1981; No. 14, 1983; No. 112, 1986; No. 95, 1988; No. 147, 1997 rep. No. 101, 2006
S. 50F.....	ad. No. 172, 1978 am. No. 133, 1980; Nos. 109, 111 and 154, 1981; No. 123, 1982; No. 168, 1985; No. 95, 1988; No. 107, 1989; No. 57, 1990; No. 18, 1993; No. 31, 1995 rep. No. 101, 2006
S. 50G.....	ad. No. 172, 1978 am. No. 149, 1979; Nos. 57 and 159, 1980; Nos. 108, 109, 111 and 154, 1981; No. 29, 1982; No. 14, 1983; Nos. 14 and 47, 1984; No. 168, 1985; No. 90, 1986; No. 95, 1988; No. 107, 1989; No. 57, 1990; No. 216, 1991 rep. No. 101, 2006
S. 50H.....	ad. No. 172, 1978 am. Nos. 108 and 111, 1981; No. 57, 1990; No. 147, 1997; No. 58, 2000 rep. No. 101, 2006
Ss. 50HA–50HC.....	ad. No. 58, 2000 rep. No. 101, 2006
S. 50J.....	ad. No. 172, 1978 rep. No. 101, 2006
S. 50K.....	ad. No. 172, 1978 am. No. 108, 1981; No. 58, 2000 rep. No. 101, 2006
S. 50KA.....	ad. No. 58, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 50L.....	ad. No. 172, 1978 am. No. 108, 1987 rep. No. 101, 2006
S. 50N.....	ad. No. 172, 1978 am. No. 35, 1992 rep. No. 101, 2006
Ss. 50P, 50Q.....	ad. No. 58, 2000 rep. No. 101, 2006
Division 3	
Heading to Div. 3 of Part III.....	ad. No. 172, 1978
Subdivision A	
Heading to Subdiv. A of Div. 3 of Part III	ad. No. 172, 1978
S. 51AAA	ad. No. 52, 1986 am. No. 121, 1997; No. 46, 1998; No. 77, 2001; No. 101, 2004
S. 51.....	am. No. 171, 1978; No. 123, 1984; Nos. 41, 46 and 51, 1986; No. 78, 1988; No. 2, 1989; No. 60, 1990; Nos. 55 and 203, 1991; Nos. 35, 92, 101, 138, 223 and 224, 1992; Nos. 17, 57 and 116, 1993; No. 169, 1995; No. 76, 1996; No. 39, 1997 (as am. by No. 121, 1997); Nos. 121, 134 and 147, 1997; Nos. 16 and 23, 1998 rep. No. 101, 2006
Note to s. 51(6AA)	am. No. 45, 1998; No. 150, 2003 rep. No. 101, 2006
S. 51AB.....	ad. No. 126, 1974 am. No. 57, 1993; No. 121, 1997 rep. No. 101, 2006
S. 51AD.....	ad. No. 14, 1984 am. No. 169, 1995; Nos. 121 and 174, 1997; Nos. 72 and 77, 2001; No. 101, 2006; No. 164, 2007
Note to s. 51AD(1)	ad. No. 77, 2001
S. 51AE.....	ad. No. 173, 1985 am. No. 41, 1986; No. 139, 1987; No. 11, 1989; No. 135, 1990; Nos. 98 and 101, 1992; No. 57, 1993; No. 82, 1994; No. 39, 1997 (as rep. by No. 121, 1997); No. 121, 1997 rep. No. 101, 2006
S. 51AEA	ad. No. 145, 1995
S. 51AEB	ad. No. 145, 1995 am. No. 41, 1998
S. 51AEC	ad. No. 145, 1995
S. 51AF.....	ad. No. 173, 1985 am. No. 135, 1990; No. 30, 1995; No. 39, 1997; No. 101, 2006
S. 51AG	ad. No. 173, 1985 am. No. 135, 1990; No. 57, 1993; No. 30, 1995; Nos. 39 and 121, 1997 rep. No. 101, 2006
S. 51AGA.....	ad. No. 237, 1992
S. 51AH.....	ad. No. 41, 1986 am. No. 139, 1987; No. 101, 2006; Nos. 59 and 97, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 51AJ	ad. No. 139, 1987 am. No. 101, 2006
S. 51AK.....	ad. No. 95, 1988
Subheads. to ss. 51AL(13), (14)	am. No. 171, 1995 rep. No. 101, 2006
Subhead. to s. 51AL(24).....	am. No. 171, 1995 rep. No. 101, 2006
S. 51AL	ad. No. 227, 1992 am. No. 82, 1994; No. 171, 1995; No. 121, 1997; No. 146, 1999 rep. No. 101, 2006
S. 52.....	am. No. 58, 1941; No. 47, 1984; No. 52, 1986; No. 121, 1997
S. 52A.....	ad. No. 57, 1978 am. No. 146, 1979; No. 108, 1981; Nos. 39 and 121, 1997; No. 63, 1998; No. 163, 2001
S. 53.....	am. No. 47, 1984; No. 121, 1997 rep. No. 101, 2006
S. 53AA.....	ad. No. 69, 1963 am. No. 121, 1997 rep. No. 101, 2006
S. 53F	ad. No. 103, 1965 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 53G.....	ad. No. 51, 1973 am. No. 108, 1981 rep. No. 101, 2006
S. 53I.....	ad. No. 121, 1997 (as am. by No. 57, 2002) am. No. 57, 2002 rep. No. 101, 2006
S. 54.....	am. No. 6, 1946; No. 11, 1947; No. 28, 1952; No. 55, 1958; No. 94, 1961; No. 69, 1963; No. 50, 1966; No. 76, 1967; No. 93, 1969; No. 51, 1973; No. 126, 1974; No. 50, 1976; Nos. 58, 124 and 159, 1980; No. 108, 1981; No. 90, 1986; No. 107, 1989; No. 35, 1992; No. 57, 1993; No. 82, 1994; No. 76, 1996 rep. No. 101, 2006
S. 54AA.....	ad. No. 98, 1992 am. No. 224, 1992; No. 147, 1997; No. 46, 1998 rep. No. 101, 2006
S. 54AB.....	ad. No. 147, 1997 am. No. 174, 1997 rep. No. 101, 2006
S. 54AC.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 54AD.....	ad. No. 147, 1997 am. No. 174, 1997 rep. No. 101, 2006
S. 54AE.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 54A	ad. No. 35, 1992 am. No. 41, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 55.....	am. No. 6, 1946; No. 126, 1974; No. 108, 1981 rs. Nos. 35 and 80, 1992 am. No. 17, 1993; No. 82, 1994; No. 120, 1995 rep. No. 101, 2006
S. 56.....	am. No. 11, 1947; No. 65, 1957; No. 39, 1962; No. 69, 1963; No. 51, 1973; No. 50, 1976; No. 149, 1979; Nos. 57 and 159, 1980; No. 108, 1981; No. 90, 1986; No. 95, 1988; No. 107, 1989; Nos. 35, 80 and 101, 1992; No. 18, 1993; No. 31, 1995; No. 76, 1996 rep. No. 101, 2006
S. 57AF.....	ad. No. 57, 1980 am. No. 108, 1981; No. 14, 1983; No. 35, 1992; No. 17, 1993 (as am. by No. 147, 1997); No. 46, 1998 rep. No. 101, 2006
S. 57AK.....	ad. No. 29, 1982 am. No. 14, 1983; No. 95, 1988; Nos. 35, 80 and 101, 1992; No. 76, 1996; No. 39, 1997 rep. No. 101, 2006
S. 57AM.....	ad. No. 14, 1984 am. No. 124, 1984; No. 51, 1986; Nos. 78, 95 and 127, 1988; No. 58, 1990; Nos. 98 and 101, 1992; No. 170, 1995; No. 76, 1996; No. 122, 1997 rep. No. 101, 2006
S. 58.....	ad. No. 35, 1992 am. Nos. 80 and 224, 1992; No. 120, 1995 rep. No. 101, 2006
S. 59.....	am. No. 50, 1942; No. 101, 1956; No. 65, 1957; No. 51, 1973; No. 149, 1979; No. 57, 1980; No. 108, 1981; No. 90, 1986; Nos. 35, 101 and 224, 1992; No. 17, 1993; No. 76, 1996; No. 147, 1997; No. 66, 2003 rep. No. 101, 2006
S. 59AAA.....	ad. No. 30, 1995 am. No. 76, 1996; No. 39, 1997 rep. No. 101, 2006
S. 59AA.....	ad. No. 90, 1952 am. No. 149, 1979; No. 57, 1980; No. 35, 1992 rep. No. 101, 2006
S. 59AB.....	ad. No. 65, 1957 am. No. 110, 1964; No. 51, 1973; No. 108, 1981; No. 138, 1987; No. 7, 1993 rep. No. 101, 2006
S. 60.....	am. No. 3, 1944; No. 4, 1945; No. 65, 1957; No. 51, 1973; No. 149, 1979; No. 108, 1981 rep. No. 101, 2006
S. 61.....	am. No. 6, 1946; No. 28, 1952; No. 51, 1973; No. 16, 1999 rep. No. 101, 2006
S. 61A.....	ad. No. 16, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 62.....	am. No. 50, 1942 rs. No. 4, 1945 am. No. 101, 1956; No. 51, 1973; No. 149, 1979; No. 57, 1980; No. 108, 1981; No. 76, 1996 rep. No. 101, 2006
S. 62AAA	ad. No. 103, 1965 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
Ss. 62AAB–62AAH	ad. No. 35, 1992 rep. No. 101, 2006
Ss. 62AAJ–62AAL	ad. No. 35, 1992 rep. No. 101, 2006
Ss. 62AAM, 62AAN.....	ad. No. 35, 1992 am. No. 76, 1996 rep. No. 101, 2006
S. 62AAO	ad. No. 35, 1992 rep. No. 101, 2006
S. 62AAP	ad. No. 35, 1992 am. No. 80, 1992; No. 76, 1996 rep. No. 101, 2006
S. 62AAQ.....	ad. No. 35, 1992 rep. No. 101, 2006
S. 62AAR	ad. No. 35, 1992 am. No. 76, 1996 rep. No. 101, 2006
Ss. 62AAS–62AAV	ad. No. 35, 1992 rep. No. 101, 2006
S. 63.....	am. No. 43, 1954; No. 69, 1963; No. 49, 1986; No. 48, 1991; No. 98, 1992; No. 82, 1994; No. 76, 1996; No. 39, 1997 (as rep. by 121, 1997); Nos. 95 and 121, 1997; No. 101, 2006
S. 63A	ad. No. 51, 1973 am. Nos. 108 and 111, 1981; No. 57, 1990; No. 98, 1992; Nos. 39 and 121, 1997; No. 46, 1998; No. 58, 2000 rep. No. 101, 2006
Ss. 63AA–63AD.....	ad. No. 58, 2000 rep. No. 101, 2006
S. 63B	ad. No. 51, 1973 am. No. 108, 1981; No. 98, 1992; Nos. 121 and 147, 1997; No. 46, 1998; No. 58, 2000 rep. No. 101, 2006
S. 63C	ad. No. 51, 1973 am. No. 98, 1992; No. 121, 1997; No. 46, 1998 rep. No. 101, 2006
S. 63CA.....	ad. No. 39, 1997 am. No. 121, 1997; No. 46, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 63CA (first occurring).....	ad. No. 58, 2000 am. No. 41, 2005
Renumbered s. 63CB and relocated	No. 41, 2005
S. 63CB.....	rep. No. 101, 2006
S. 63CB	ad. No. 58, 2000
Renumbered s. 63CC and relocated	No. 41, 2005
Heading to s. 63CC.....	am. No. 41, 2005 rep. No. 101, 2006
S. 63CC	am. No. 41, 2005 rep. No. 101, 2006
Heading to s. 63D	rs. No. 96, 2004
S. 63D.....	ad. No. 48, 1991 am. No. 100, 1991; No. 98, 1992; Nos. 39 and 121, 1997; No. 46, 1998; No. 96, 2004
S. 63E	ad. No. 98, 1992 am. Nos. 39 and 121, 1997; No. 46, 1998; No. 101, 2006
S. 63F	ad. No. 98, 1992 am. Nos. 39 and 121, 1997; No. 101, 2006
S. 63G.....	ad. No. 17, 1998 am. No. 101, 2006
S. 64.....	am. No. 121, 1997 rep. No. 101, 2006
S. 64A.....	ad. No. 69, 1963 am. No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 39, 1997 (as rep. by No. 121, 1997); No. 121, 1997 rep. No. 101, 2006
S. 65.....	am. No. 110, 1964; No. 51, 1973; No. 108, 1981; No. 107, 1989; No. 135, 1990; No. 121, 1997; No. 101, 2006
S. 67.....	rs. No. 69, 1963 am. No. 143, 1965; No. 108, 1981; No. 47, 1984; No. 76, 1996; No. 121, 1997 rep. No. 101, 2006
S. 67AAA	ad. No. 224, 1992 am. No. 181, 1994; No. 89, 2001; No. 101, 2004 rep. No. 15, 2007
S. 67AA.....	ad. No. 61, 1987 am. No. 35, 1992; No. 39, 1997 rep. No. 101, 2006
S. 67A	ad. No. 69, 1963 am. No. 121, 1997 rep. No. 101, 2006
S. 68.....	am. No. 69, 1963 rs. No. 47, 1984 am. No. 121, 1997 rep. No. 101, 2006
S. 68A	ad. No. 101, 1956 rs. No. 47, 1984 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 69.....	ad. No. 69, 1963 am. No. 51, 1973 rs. No. 20, 1990 am. No. 216, 1991; No. 39, 1997 (as rep. by No. 121, 1997); No. 121, 1997 rep. No. 101, 2006
S. 70.....	ad. No. 69, 1963 am. No. 51, 1973; No. 108, 1981; No. 76, 1996; No. 121, 1997 rep. No. 101, 2006
S. 70A.....	ad. No. 108, 1981 am. No. 95, 1988; No. 76, 1996; No. 39, 1997 (as rep. by No. 121, 1997); No. 121, 1997 rep. No. 101, 2006
S. 70B.....	ad. No. 107, 1989 am. No. 224, 1992; No. 89, 2000; No. 133, 2003; No. 58, 2006; No. 15, 2007
S. 71.....	rs. No. 69, 1963 am. No. 121, 1997 rep. No. 101, 2006
S. 72.....	am. No. 88, 1936; Nos. 22 and 50, 1942; No. 48, 1950; No. 85, 1959; No. 18, 1960; No. 69, 1963; Nos. 51, 164 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); Nos. 80 and 117, 1975; No. 108, 1981; No. 121, 1997 rep. No. 101, 2006
S. 72A.....	ad. No. 145, 1987 am. No. 216, 1991; No. 39, 1997 rep. No. 101, 2006
S. 73.....	am. No. 58, 1960; Nos. 103 and 143, 1965; No. 108, 1981; No. 121, 1997 rep. No. 101, 2006
S. 73A.....	ad. No. 6, 1946 am. No. 65, 1957; No. 18, 1960; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 50, 1976; No. 27, 1979; No. 108, 1981; No. 80, 1982; No. 165, 1984; No. 112, 1986; No. 11, 1988; Nos. 97 and 167, 1989; No. 35, 1992; No. 76, 1996; No. 176, 1999; No. 101, 2006; No. 97, 2008
Heading to s. 73AA.....	rs. No. 46, 1998
S. 73AA.....	ad. No. 35, 1992 am. No. 224, 1992; No. 46, 1998; No. 144, 2008
Heading to s. 73B.....	am. No. 170, 2001
Subheads. to s. 73B(1AAA), (1AA), (1AB)	ad. No. 164, 2007
Subhead. to s. 73B(1).....	ad. No. 164, 2007
Subheads. to s. 73B(1A)–(1C)..	ad. No. 164, 2007
Subhead. to s. 73B(2).....	ad. No. 164, 2007
Subhead. to s. 73B(2A).....	ad. No. 164, 2007
Subhead. to s. 73B(3).....	ad. No. 164, 2007
Subhead. to s. 73B(3A).....	ad. No. 164, 2007
Subhead. to s. 73B(4).....	ad. No. 164, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subheads. to s. 73B(4A),..... (4C), (4D)	ad. No. 164, 2007
Subhead. to s. 73B(5).....	ad. No. 164, 2007
Subhead. to s. 73B(5A).....	ad. No. 164, 2007
Subhead. to s. 73B(6).....	ad. No. 164, 2007
Subheads. to s. 73B(9)–(14).....	ad. No. 164, 2007
Subheads. to s. 73B(14AA), (14A), (14B)	ad. No. 164, 2007
Subhead. to s. 73B(15).....	ad. No. 164, 2007
Subheads. to s. 73B(15AA), (15A)	ad. No. 164, 2007
Subhead. to s. 73B(17A).....	ad. No. 164, 2007
Subhead. to s. 73B(18).....	ad. No. 164, 2007
Subhead. to s. 73B(20).....	ad. No. 164, 2007
Subhead. to s. 73B(23).....	ad. No. 164, 2007
Subhead. to s. 73B(27).....	ad. No. 164, 2007
Subhead. to s. 73B(31).....	ad. No. 164, 2007
Subhead. to s. 73B(33).....	ad. No. 164, 2007
Subhead. to s. 73B(36).....	ad. No. 164, 2007
S. 73B	ad. No. 90, 1986 am. Nos. 11, 59 and 153, 1988; Nos. 97 and 167, 1989; Nos. 35 and 135, 1990; No. 216, 1991; Nos. 35, 80, 98 and 224, 1992; No. 181, 1994; Nos. 78 and 82, 1996; Nos. 39, 121 and 147, 1997; Nos. 16 and 41, 1998; Nos. 72, 77, 89 and 170, 2001; No. 101, 2006; Nos. 15 and 164, 2007
Note to s. 73B(15AA).....	ad. No. 164, 2007
Note to s. 73B(23).....	ad. No. 16, 2003
Note to s. 73B(24B)	ad. No. 16, 2003
S. 73BAA	ad. No. 117, 2002 am. No. 20, 2004
S. 73BAB	ad. No. 117, 2002
S. 73BABA.....	ad. No. 20, 2004
Heading to s. 73BAC	am. No. 20, 2004
S. 73BAC	ad. No. 117, 2002 am. No. 164, 2007
Note to s. 73BAC	am. No. 164, 2007
S. 73BACA.....	ad. No. 20, 2004
Heading to s. 73BAD	am. No. 20, 2004
S. 73BAD	ad. No. 117, 2002 am. No. 164, 2007
Note to s. 73BAD	am. No. 164, 2007
Ss. 73BAE, 73BAF.....	ad. No. 117, 2002
S. 73BAG	ad. No. 16, 2003 am. No. 58, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 73BA(4).....	am. No. 80, 2007
S. 73BA.....	ad. No. 170, 2001 am. No. 80, 2007
S. 73BB.....	ad. No. 170, 2001
S. 73BC.....	ad. No. 170, 2001
Note to s. 73BC(2) Renumbered Note 1.....	No. 164, 2007
Note 2 to s. 73BC(2).....	ad. No. 164, 2007
Ss. 73BD, 73BE.....	ad. No. 170, 2001 am. No. 164, 2007
S. 73BF.....	ad. No. 170, 2001 am. No. 16, 2003
Note to s. 73BF(1) Renumbered Note 1.....	No. 16, 2003
Note 2 to s. 73BF(1).....	ad. No. 146, 2001
S. 73BG.....	ad. No. 170, 2001
Ss. 73BH–73BJ.....	ad. No. 170, 2001
Ss. 73BK, 73BL.....	ad. No. 170, 2001 am. No. 164, 2007
Ss. 73BM, 73BN.....	ad. No. 170, 2001
S. 73C.....	ad. No. 167, 1989 am. No. 216, 1991; Nos. 80 and 224, 1992; No. 181, 1994; No. 169, 1995; No. 78, 1996; No. 170, 2001
S. 73CA.....	ad. No. 35, 1990 am. No. 35, 1992; No. 170, 2001; No. 101, 2006
S. 73CB.....	ad. No. 224, 1992 am. No. 169, 1995 rs. No. 171, 1995 am. No. 170, 2001
S. 73D.....	ad. No. 167, 1989 am. No. 35, 1990; No. 80, 1992; No. 121, 1997 rep. No. 101, 2006
Heading to s. 73E.....	rs. No. 46, 1998
S. 73E.....	ad. No. 224, 1992 am. No. 120, 1995; No. 121, 1997; No. 46, 1998; No. 169, 1999; No. 77, 2001; No. 117, 2002; No. 101, 2006
S. 73EA.....	ad. No. 170, 2001 am. No. 117, 2002
S. 73EB.....	ad. No. 170, 2001 am. No. 117, 2002
Heading to s. 73F.....	rs. No. 46, 1998 rep. No. 101, 2006
S. 73F.....	ad. No. 224, 1992 am. No. 39, 1997; No. 46, 1998; Nos. 77 and 170, 2001; No. 117, 2002 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 73G	rs. No. 46, 1998
S. 73G	ad. No. 224, 1992 am. No. 46, 1998; No. 77, 2001; No. 117, 2002
S. 73H	ad. No. 170, 2001 am. No. 78, 2007
Heading to s. 73I	am. No. 164, 2007
S. 73I	ad. No. 170, 2001 am. Nos. 78 and 164, 2007
S. 73IA	ad. No. 78, 2007
S. 73J	ad. No. 170, 2001 am. Nos. 78 and 164, 2007
Note to s. 73J(1)	am. No. 78, 2007
Ss. 73K–73M	ad. No. 170, 2001
S. 73P	ad. No. 170, 2001 am. Nos. 78 and 164, 2007
S. 73Q	ad. No. 170, 2001 am. No. 78, 2007 rep. No. 164, 2007
Ss. 73QA, 73QB	ad. No. 164, 2007
S. 73R	ad. No. 170, 2001 am. No. 164, 2007
Ss. 73RA–73RE	ad. No. 164, 2007
S. 73S	ad. No. 170, 2001 am. Nos. 78 and 164, 2007
S. 73T	ad. No. 170, 2001 am. No. 164, 2007
S. 73U	ad. No. 170, 2001 rep. No. 164, 2007
S. 73V	ad. No. 170, 2001 am. No. 164, 2007
S. 73W	ad. No. 170, 2001 rep. No. 164, 2007
S. 73X	ad. No. 170, 2001 am. No. 78, 2007 rep. No. 164, 2007
S. 73Y	ad. No. 170, 2001 rep. No. 164, 2007
S. 73Z	ad. No. 170, 2001 am. No. 164, 2007
S. 74	am. No. 24, 1980; No. 108, 1981; No. 167, 1989; No. 121, 1997 rep. No. 101, 2006
S. 74A	ad. No. 123, 1985 am. No. 167, 1989 rep. No. 101, 2006
S. 74B	ad. No. 173, 1985 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
S. 75A	ad. No. 165, 1973 am. No. 80, 1975; No. 50, 1976; Nos. 58 and 159, 1980; No. 108, 1981; No. 103, 1983; No. 76, 1996 rep. No. 101, 2006
S. 75AA	ad. No. 118, 1993 am. No. 76, 1996; No. 121, 1997 rep. No. 101, 2006
S. 75B	ad. No. 58, 1980 am. No. 108, 1981; Nos. 173 and 174, 1985; No. 107, 1989; No. 76, 1996; No. 121, 1997; No. 54, 1999 rep. No. 101, 2006
S. 75D	ad. No. 159, 1980 am. No. 108, 1981; No. 173, 1985; No. 100, 1991; No. 121, 1997 rep. No. 101, 2006
S. 77F	ad. No. 47, 1984 am. No. 163, 1987; No. 11, 1988; No. 167, 1989; No. 138, 1994 rep. No. 101, 2006
S. 78	am. No. 88, 1936; No. 46, 1938; No. 17, 1940; No. 58, 1941; Nos. 22 and 50, 1942; No. 10, 1943; No. 3, 1944; No. 4, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 48, 1950; No. 44, 1951; No. 90, 1952; No. 45, 1953; No. 43, 1954; No. 62, 1955; No. 101, 1956; No. 65, 1957; No. 70, 1959; Nos. 18 and 58, 1960; No. 94, 1961; No. 39, 1962; Nos. 34 and 69, 1963; Nos. 33 and 143, 1965; No. 50, 1966; No. 60, 1968; No. 93, 1969; No. 93, 1971; Nos. 51, 52, 164 and 165, 1973; Nos. 80 and 117, 1975; No. 57, 1977; Nos. 57, 123 and 171, 1978; Nos. 27 and 149, 1979; Nos. 19, 24, 57, 124, 133 and 159, 1980; Nos. 61, 108 and 154, 1981; Nos. 29, 76 and 106, 1982; No. 39, 1983; Nos. 47, 123 and 124, 1984; Nos. 49, 123 and 168, 1985; Nos. 46, 49 and 112, 1986; Nos. 108 and 138, 1987; Nos. 80, 95 and 153, 1988; No. 107, 1989; Nos. 20, 35, 57, 58 and 135, 1990; Nos. 4, 100, 203 and 216, 1991; Nos. 80, 224 and 227, 1992; No. 17, 1993 rs. No. 18, 1993 am. No. 118, 1993; Nos. 82 and 138, 1994; No. 120, 1995; Nos. 31 and 76, 1996; No. 39, 1997 (as rep. by 121, 1997); Nos. 121 and 147, 1997; No. 41, 1998; No. 167, 2001; No. 57, 2002; Nos. 86 and 101, 2003 rep. No. 101, 2006
Note to s. 78(4)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(5)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(6)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(6A)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(7)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(8)	ad. No. 121, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 78(9)	ad. No. 121, 1997 rep. No. 101, 2006
Note to s. 78(11)	ad. No. 121, 1997 rep. No. 101, 2006
S. 78AA	ad. No. 216, 1991 am. No. 224, 1992 rep. No. 101, 2006
S. 78AB	ad. No. 224, 1992 rep. No. 101, 2006
S. 78A	ad. No. 57, 1978 am. No. 108, 1981; No. 124, 1984; No. 18, 1993; No. 121, 1997; No. 65, 2006
S. 78B	ad. No. 123, 1982 am. No. 48, 1986; No. 216, 1991; No. 118, 1999 rep. No. 101, 2006
S. 79A	ad. No. 4, 1945 am. No. 11, 1947; No. 62, 1955; No. 101, 1956; No. 55, 1958; No. 94, 1961; No. 69, 1963; No. 68, 1964; No. 143, 1965; No. 51, 1973; No. 117, 1975; No. 56, 1976; No. 108, 1981; No. 29, 1982; No. 103, 1983; No. 124, 1984; No. 49, 1986; No. 78, 1988; Nos. 4 and 100, 1991; No. 224, 1992; Nos. 125, 138 and 184, 1994; No. 1, 1996; No. 179, 1997; No. 45, 1998; No. 82, 1999; Nos. 45 and 144, 2000; No. 75, 2007
Note 1 to s. 79A(4)	ad. No. 82, 1999 am. No. 45, 2000
Note 2 to s. 79A(4)	ad. No. 82, 1999
S. 79B	ad. No. 63, 1947 am. No. 101, 1956; No. 55, 1958; No. 18, 1960; No. 94, 1961; No. 98, 1962; No. 69, 1963; Nos. 103 and 143, 1965; Nos. 51 and 164, 1973; Nos. 80 and 117, 1975; No. 56, 1976; No. 108, 1981; No. 29, 1982; No. 124, 1984; No. 135, 1990; No. 224, 1992; No. 18, 1993; No. 138, 1994; No. 1, 1997; No. 82, 1999; No. 45, 2000; No. 101, 2004; No. 75, 2007
Note 1 to s. 79B(6)	ad. No. 82, 1999 am. No. 45, 2000
Note 2 to s. 79B(6)	ad. No. 82, 1999
S. 79C	ad. No. 94, 1961 am. No. 69, 1963; Nos. 68 and 110, 1964; No. 50, 1966; No. 60, 1968; Nos. 93 and 101, 1969; No. 51, 1973 rs. No. 117, 1975 am. No. 205, 1976; No. 124, 1980; Nos. 108 and 111, 1981; No. 123, 1982; Nos. 47 and 124, 1984; No. 107, 1989; No. 57, 1990; No. 39, 1997 rep. No. 101, 2006
S. 79D	ad. No. 78, 1988 rs. No. 5, 1991 rep. No. 143, 2007
S. 79DA	ad. No. 39, 1997 rep. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 79E	rs. No. 39, 1997 rep. No. 101, 2006
S. 79E	ad. No. 57, 1990 am. No. 5, 1991; Nos. 101 and 190, 1992; No. 170, 1995; No. 76, 1996; Nos. 39 and 147, 1997; No. 17, 1998 rep. No. 101, 2006
S. 79EA.....	ad. No. 98, 1992 am. No. 39, 1997 rep. No. 101, 2006
Note to s. 79EA(1)	ad. No. 39, 1997 rep. No. 101, 2006
S. 79EB.....	ad. No. 98, 1992 am. No. 39, 1997 rep. No. 101, 2006
Heading to s. 79F.....	rs. No. 39, 1997 rep. No. 101, 2006
S. 79F	ad. No. 57, 1990 am. No. 170, 1995; No. 76, 1996; No. 39, 1997; No. 17, 1998 rep. No. 101, 2006
S. 80.....	am. No. 22, 1942; No. 3, 1944; No. 11, 1947; No. 48, 1950; No. 43, 1954; No. 101, 1956; No. 85, 1959; No. 18, 1960; No. 69, 1963; No. 110, 1964; No. 50, 1966; No. 85, 1967; Nos. 51, 164 and 165, 1973; No. 80, 1975; No. 172, 1978; Nos. 147 and 149, 1979; No. 19, 1980; Nos. 108, 110 and 111, 1981; No. 49, 1985; No. 51, 1986; No. 62, 1987; No. 78, 1988; No. 107, 1989; No. 57, 1990; No. 5, 1991; Nos. 101 and 190, 1992; No. 170, 1995; No. 76, 1996 rep. No. 101, 2006
S. 80AAA	ad. No. 111, 1981 am. No. 14, 1983; No. 57, 1990; No. 5, 1991; No. 170, 1995; No. 76, 1996 rep. No. 101, 2006
S. 80AA.....	ad. No. 50, 1966 am. No. 83, 1966; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 172, 1978; No. 147, 1979; Nos. 108 and 110, 1981; No. 107, 1989; No. 57, 1990; No. 5, 1991; No. 224, 1992; No. 170, 1995; No. 76, 1996; No. 39, 1997 rep. No. 101, 2006
Ss. 80AB, 80AC.....	ad. No. 50, 1966 am. No. 51, 1973; No. 108, 1981 rs. No. 111, 1981; No. 57, 1990 rep. No. 101, 2006
S. 80A	ad. No. 110, 1964 am. No. 103, 1965; No. 50, 1966 rs. No. 51, 1973 am. Nos. 108 and 111, 1981; No. 57, 1990 rep. No. 101, 2006
S. 80B	ad. No. 110, 1964 am. No. 103, 1965; No. 50, 1966; No. 51, 1973; Nos. 108 and 111, 1981; No. 57, 1990; No. 147, 2005 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 80DA.....	ad. No. 51, 1973 am. Nos. 108 and 111, 1981; No. 57, 1990; No. 147, 1997 rep. No. 101, 2006
S. 80E.....	ad. No. 103, 1965 am. No. 50, 1966; No. 51, 1973; No. 111, 1981; No. 57, 1990 rep. No. 101, 2006
S. 80F.....	ad. No. 103, 1965 rs. No. 51, 1973 am. Nos. 108 and 111, 1981; No. 57, 1990; No. 98, 1992; No. 39, 1997 rep. No. 101, 2006
S. 80G.....	ad. No. 124, 1984 am. No. 168, 1985; No. 138, 1987; No. 11, 1988; Nos. 35 and 57, 1990; No. 5, 1991; Nos. 98 and 101, 1992; Nos. 39, 95 and 147, 1997 rep. No. 101, 2006
S. 81.....	ad. No. 48, 1950 rep. No. 101, 2006
S. 82.....	am. No. 55, 1958; No. 70, 1959; No. 60, 1968; No. 93, 1969; No. 51, 1973; No. 108, 1981; No. 107, 1989; No. 39, 1997; No. 101, 2006
S. 82A.....	ad. No. 117, 1975 am. No. 123, 1985; No. 2, 1989; No. 138, 1992; No. 116, 1993; No. 39, 1997; No. 45, 1998; No. 150, 2003
Subdiv. AA of Div. 3 of Part III.....	ad. No. 110, 1964 rep. No. 15, 2007
S. 82AAA.....	ad. No. 110, 1964 am. No. 103, 1965; Nos. 51 and 164, 1973; No. 80, 1975; No. 138, 1987; No. 97, 1989; No. 82, 1993; No. 89, 2001 rep. No. 15, 2007
S. 82AAC.....	ad. No. 110, 1964 am. No. 47, 1984; No. 123, 1985 rs. No. 97, 1989 am. No. 61, 1990; Nos. 80 and 208, 1992; No. 181, 1994; No. 169, 1995; No. 95, 1997; Nos. 78 and 147, 2005; No. 101, 2006 rep. No. 15, 2007
Notes 1, 2 to s. 82AAC(1).....	ad. No. 86, 2000 rep. No. 15, 2007
Note 3 to s. 82AAC(1).....	ad. No. 51, 2002 rep. No. 15, 2007
S. 82AAD.....	ad. No. 181, 1994 am. No. 123, 2001; No. 147, 2005; No. 101, 2006 rep. No. 15, 2007
S. 82AADA.....	ad. No. 62, 1997 am. No. 147, 2005 rep. No. 15, 2007
S. 82AAE.....	ad. No. 181, 1994 rep. No. 89, 2001
S. 82AAF.....	ad. No. 53, 1995 am. No. 147, 2005; No. 101, 2006 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82AAQ.....	ad. No. 110, 1964 am. No. 181, 1994; No. 147, 2005; No. 101, 2006 rep. No. 15, 2007
S. 82AAQA.....	ad. No. 53, 1995 rep. No. 15, 2007
S. 82AAQB.....	ad. No. 62, 1997 rep. No. 15, 2007
S. 82AAR.....	ad. No. 110, 1964 am. No. 51, 1973; No. 117, 1975; No. 97, 1989; No. 181, 1994; No. 53, 1995; No. 62, 1997; No. 147, 2005 rep. No. 15, 2007
Subdiv. AB of Div. 3 of Part III.....	ad. No. 124, 1980 rep. No. 15, 2007
S. 82AAS.....	ad. No. 124, 1980 am. No. 108, 1981; No. 47, 1984; No. 49, 1985; Nos. 108 and 138, 1987; No. 97, 1989; No. 135, 1990; Nos. 80 and 208, 1992; No. 82, 1993; No. 53, 1995; No. 17, 1999; No. 51, 2002; No. 111, 2003; No. 148, 2005 rep. No. 15, 2007
S. 82AAT.....	ad. No. 124, 1980 am. No. 123, 1985; No. 138, 1987; No. 11, 1988; Nos. 97 and 105, 1989; No. 135, 1990; No. 208, 1992; No. 7, 1993; No. 170, 1995; No. 62, 1997; No. 51, 2002; Nos. 78 and 148, 2005 rep. No. 15, 2007
Note to s. 82AAT(1).....	ad. No. 51, 2002 rs. No. 92, 2004 rep. No. 15, 2007
Heading to Subdiv. B of Div. 3 of Part III.....	am. No. 98, 1992 rep. No. 101, 2006
Subdiv. B of Div. 3 of Part III.....	ad. No. 50, 1976 rep. No. 101, 2006
S. 82AAAA.....	ad. No. 98, 1992 rep. No. 101, 2006
S. 82AA.....	ad. No. 50, 1976 am. No. 14, 1984; No. 98, 1992; No. 82, 1994 rep. No. 101, 2006
S. 82AB.....	ad. No. 50, 1976 am. No. 126, 1977; No. 147, 1979; Nos. 108 and 109, 1981; Nos. 14 and 124, 1984; No. 138, 1987; No. 95, 1988; Nos. 80 and 98, 1992 rep. No. 101, 2006
S. 82ABA.....	ad. No. 76, 1996 rep. No. 101, 2006
S. 82AC.....	ad. No. 50, 1976 am. No. 133, 1980; No. 111, 1981; No. 107, 1989; No. 57, 1990; No. 18, 1993; No. 31, 1995; No. 39, 1997 rep. No. 101, 2006
S. 82AD.....	ad. No. 50, 1976 am. No. 14, 1984; No. 98, 1992; No. 82, 1994; No. 39, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82AE	ad. No. 50, 1976 am. No. 159, 1980; No. 108, 1981; No. 98, 1992; No. 121, 1997; No. 77, 2001 rep. No. 101, 2006
S. 82AF	ad. No. 50, 1976 am. No. 159, 1980; No. 108, 1981; No. 14, 1984; No. 107, 1989; No. 98, 1992; No. 18, 1993 rep. No. 101, 2006
S. 82AG	ad. No. 50, 1976 am. No. 57, 1980; No. 14, 1984; No. 98, 1992; No. 82, 1994 rep. No. 101, 2006
S. 82AH	ad. No. 50, 1976 am. No. 57, 1980; No. 108, 1981; No. 14, 1984; No. 98, 1992; No. 82, 1994 rep. No. 101, 2006
S. 82AHA	ad. No. 14, 1984 am. No. 98, 1992; No. 72, 2001 rep. No. 101, 2006
S. 82AI	ad. No. 50, 1976 am. No. 14, 1984; No. 98, 1992 rep. No. 101, 2006
S. 82AIA	ad. No. 72, 2001 rep. No. 101, 2006
S. 82AJ	ad. No. 50, 1976 am. No. 57, 1980; No. 108, 1981; No. 14, 1984; No. 98, 1992; No. 82, 1994 rep. No. 101, 2006
S. 82AJA	ad. No. 57, 1980 am. No. 108, 1981; No. 14, 1984; No. 98, 1992; No. 82, 1994 rep. No. 101, 2006
S. 82AK	ad. No. 50, 1976 rep. No. 101, 2006
S. 82AL	ad. No. 50, 1976 am. No. 108, 1981; No. 98, 1992 rep. No. 101, 2006
S. 82AM	ad. No. 50, 1976 am. Nos. 57, 124 and 159, 1980; No. 108, 1981; No. 107, 1989; No. 57, 1990; No. 98, 1992; No. 82, 1994; Nos. 39 and 121, 1997; No. 164, 1999; Nos. 77 and 170, 2001; No. 58, 2006 rep. No. 101, 2006
S. 82AN	ad. No. 50, 1976 rep. No. 101, 2006
S. 82AO	ad. No. 50, 1976 am. No. 121, 1997 rep. No. 101, 2006
S. 82APA	ad. No. 98, 1992 rep. No. 101, 2006
S. 82AQ	ad. No. 50, 1976 am. No. 14, 1984; Nos. 98, 167 and 224, 1992; No. 82, 1994; Nos. 121 and 174, 1997; No. 34, 2000; Nos. 72 and 77, 2001 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdiv. BA of Div. 3 of Part III	ad. No. 18, 1993 rep. No. 101, 2006
S. 82AR	ad. No. 18, 1993 rep. No. 101, 2006
S. 82ARA	ad. No. 76, 1996 rep. No. 101, 2006
Ss. 82AS–82AV	ad. No. 18, 1993 rep. No. 101, 2006
S. 82AX	ad. No. 18, 1993 rep. No. 101, 2006
Subdivision C	
Subdiv. C of Div. 3 of Part III	ad. No. 216, 1991 rep. No. 101, 2006
Ss. 82B, 82BA	ad. No. 216, 1991 rep. No. 101, 2006
S. 82BAA	ad. No. 76, 1996 rep. No. 101, 2006
S. 82BB	ad. No. 216, 1991 am. No. 39, 1997; No. 46, 1998 rep. No. 101, 2006
S. 82BC	ad. No. 216, 1991 am. No. 77, 2001 rep. No. 101, 2006
S. 82BD	ad. No. 216, 1991 rep. No. 101, 2006
S. 82BE	ad. No. 216, 1991 am. No. 121, 1997 rep. No. 101, 2006
S. 82BF	ad. No. 216, 1991 rep. No. 101, 2006
S. 82BG	ad. No. 216, 1991 am. No. 46, 1998 rep. No. 101, 2006
Note to s. 82BG	ad. No. 46, 1998 rep. No. 101, 2006
Subdiv. CA of Div. 3 of Part III	ad. No. 224, 1992 rep. No. 101, 2006
Ss. 82BH, 82BJ	ad. No. 224, 1992 rep. No. 101, 2006
S. 82BK	ad. No. 224, 1992 am. No. 39, 1997; No. 46, 1998 rep. No. 101, 2006
Ss. 82BL–82BN	ad. No. 224, 1992 rep. No. 101, 2006
S. 82BP	ad. No. 224, 1992 am. No. 121, 1997 rep. No. 101, 2006
S. 82BQ	ad. No. 224, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82BR.....	ad. No. 224, 1992 am. No. 46, 1998 rep. No. 101, 2006
Note to s. 82BR.....	ad. No. 46, 1998 rep. No. 101, 2006
Subdivision CB	
Subdiv. CB of Div. 3..... of Part III	ad. No. 138, 1994
S. 82C.....	ad. No. 138, 1994
S. 82CA.....	ad. No. 138, 1994
S. 82CB.....	ad. No. 138, 1994 am. No. 77, 2001
Ss. 82CC, 82CD.....	ad. No. 138, 1994
S. 82CE.....	ad. No. 138, 1994 am. No. 58, 2006
Subdivision D	
Subdiv. D of Div. 3..... of Part III	ad. No. 12, 1979
S. 82KH.....	ad. No. 12, 1979 am. Nos. 146 and 147, 1979; No. 19, 1980; Nos. 108 and 111, 1981; No. 76, 1982; Nos. 49, 123 and 168, 1985; Nos. 73 and 107, 1989; No. 57, 1990; No. 100, 1991; No. 98, 1992; Nos. 39 and 121, 1997; No. 46, 1998; No. 54, 1999; No. 77, 2001; No. 101, 2006; No. 79, 2007
S. 82KJ.....	ad. No. 12, 1979 am. No. 146, 1979
S. 82KK.....	ad. No. 12, 1979 am. No. 146, 1979; No. 108, 1981
S. 82KL.....	ad. No. 146, 1979 am. No. 76, 1982; No. 48, 1986; No. 216, 1991; No. 121, 1997
Heading to Subdiv. F..... of Div. 3 of Part III	am. No. 30, 1995 rep. No. 101, 2006
Subdiv. F of Div. 3..... of Part III	ad. No. 173, 1985 rep. No. 101, 2006
S. 82KS.....	ad. No. 30, 1995 am. No. 39, 1997 rep. No. 101, 2006
S. 82KT.....	ad. No. 173, 1985 am. Nos. 62 and 139, 1987; No. 95, 1988; Nos. 11 and 167, 1989; No. 135, 1990; No. 216, 1991 rep. No. 101, 2006
S. 82KTAA.....	ad. No. 139, 1987 rep. No. 101, 2006
Ss. 82KTA, 82KTB.....	ad. No. 62, 1987 rs. No. 11, 1989 rep. No. 101, 2006
S. 82KTBA.....	ad. No. 95, 1988 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82KTC	ad. No. 62, 1987 rs. No. 95, 1988 rep. No. 101, 2006
S. 82KTD	ad. No. 62, 1987 am. No. 11, 1989 rep. No. 101, 2006
Ss. 82KTE, 82KTF	ad. No. 62, 1987 rep. No. 101, 2006
S. 82KTG	ad. No. 62, 1987 am. No. 139, 1987; Nos. 11 and 167, 1989 rep. No. 101, 2006
S. 82KTH	ad. No. 62, 1987 rep. No. 101, 2006
S. 82KTJ	ad. No. 62, 1987 am. No. 95, 1988 rep. No. 101, 2006
S. 82KTK.....	ad. No. 62, 1987 rep. No. 101, 2006
S. 82KU.....	ad. No. 173, 1985 am. No. 49, 1986 (as am. by No. 141, 1987); No. 62, 1987 rep. No. 101, 2006
S. 82KUA	ad. No. 62, 1987 rep. No. 101, 2006
S. 82KUB	ad. No. 62, 1987 am. No. 95, 1988; No. 11, 1989 rep. No. 101, 2006
Ss. 82KUC–82KUE	ad. No. 62, 1987 am. No. 95, 1988 rep. No. 101, 2006
S. 82KV	ad. No. 173, 1985 am. No. 62, 1987; No. 135, 1990 rep. No. 101, 2006
S. 82KW	ad. No. 173, 1985 am. No. 62, 1987 rep. No. 101, 2006
S. 82KX.....	ad. No. 173, 1985 am. Nos. 62 and 139, 1987 rep. No. 101, 2006
S. 82KY	ad. No. 173, 1985 am. Nos. 62 and 139, 1987; No. 101, 1992 rep. No. 101, 2006
S. 82KZ.....	ad. No. 173, 1985 am. No. 11, 1989 rep. No. 101, 2006
S. 82KZA.....	ad. No. 173, 1985 am. No. 62, 1987; Nos. 11 and 167, 1989 rep. No. 101, 2006
S. 82KZAA	ad. No. 4, 1991 am. No. 216, 1991 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82KZB.....	ad. No. 173, 1985 am. No. 139, 1987 rep. No. 101, 2006
S. 82KZBA	ad. No. 139, 1987 rep. No. 101, 2006
S. 82KZBB	ad. No. 139, 1987 am. No. 11, 1989 rep. No. 101, 2006
Heading to Subdiv. GA of Div. 3 of Part III	rs. No. 39, 1997 rep. No. 101, 2006
Subdiv. GA of Div. 3..... of Part III	ad. No. 30, 1995 rep. No. 101, 2006
Ss. 82KZBC, 82KZBD.....	ad. No. 30, 1995 rep. No. 101, 2006
S. 82KZBE	ad. No. 30, 1995 am. No. 39, 1997 rep. No. 101, 2006
Note to s. 82KZBE	ad. No. 39, 1997 rep. No. 101, 2006
S. 82KZBF	ad. No. 30, 1995 rep. No. 101, 2006
Subdiv. G of Div. 3..... of Part III	ad. No. 46, 1986 rep. No. 101, 2006
S. 82KZC	ad. No. 46, 1986 rep. No. 101, 2006
S. 82KZD	ad. No. 46, 1986 am. No. 138, 1987 rep. No. 101, 2006
S. 82KZE.....	ad. No. 46, 1986 rs. No. 52, 1986 rep. No. 101, 2006
S. 82KZF	ad. No. 46, 1986 am. No. 52, 1986 rep. No. 101, 2006
S. 82KZG	ad. No. 46, 1986 rs. No. 52, 1986 rep. No. 101, 2006
Ss. 82KZH, 82KZJ	ad. No. 46, 1986 rep. No. 101, 2006
S. 82KZK.....	ad. No. 41, 1986 rep. No. 101, 2006
Subdivision H	
Subdiv. H of Div. 3..... of Part III	ad. No. 95, 1988
S. 82KZL	ad. No. 95, 1988 am. No. 169, 1999; Nos. 89 and 90, 2000; Nos. 78 and 170, 2001; No. 97, 2002; No. 80, 2007
S. 82KZLA.....	ad. No. 164, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 82KZM	rs. No. 169, 1999 am. No. 78, 2001; No. 80, 2007
S. 82KZM	ad. No. 95, 1988 am. No. 76, 1996; No. 39, 1997 (as am. by No. 16, 1998); No. 169, 1999; No. 89, 2000; Nos. 78 and 170, 2001; No. 101, 2006; Nos. 80 and 164, 2007
Heading to s. 82KZMA	am. No. 169, 1999
S. 82KZMA	ad. No. 169, 1999 am. No. 169, 1999; No. 89, 2000; Nos. 78 and 170, 2001; Nos. 80 and 164, 2007
Note to s. 82KZMA(1) Renumbered Note 1	No. 90, 2000 rep. No. 78, 2001
Note 2 to s. 82KZMA(1)	ad. No. 90, 2000 rep. No. 78, 2001
S. 82KZMB	ad. No. 169, 1999 am. No. 89, 2000; No. 78, 2001 rep. No. 169, 1999
Note to s. 82KZMB(1) Renumbered Note 1	No. 90, 2000 rep. No. 169, 1999
Note 2 to s. 82KZMB(1)	ad. No. 90, 2000 rep. No. 169, 1999
S. 82KZMC	ad. No. 169, 1999 am. No. 89, 2000; No. 78, 2001 rep. No. 169, 1999
Heading to s. 82KZMD	rs. No. 169, 1999 (as. rs. by No. 78, 2001) am. No. 80, 2007
S. 82KZMD	ad. No. 169, 1999 am. No. 169, 1999
Note to s. 82KZMD	ad. No. 80, 2007
Heading to s. 82KZME	rs. No. 78, 2001
S. 82KZME	ad. No. 90, 2000 am. No. 90, 2000; Nos. 78 and 170, 2001; No. 164, 2007
Note 1 to s. 82KZME(1)	rep. No. 78, 2001
Note 2 to s. 82KZME(1) Renumbered Note	No. 78, 2001
S. 82KZMF	ad. No. 90, 2000 am. No. 90, 2000; No. 170, 2001; No. 164, 2007
S. 82KZMG	ad. No. 26, 2002 am. No. 26, 2002; No. 162, 2005
Ss. 82KZMGA, 82KZMGB	ad. No. 79, 2007
Ss. 82KZLN, 82KZO	ad. No. 95, 1988 am. No. 39, 1997; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3A	
Div. 3A of Part III.....	ad. No. 87, 1970
S. 82LA.....	ad. No. 163, 2001
S. 82L.....	ad. No. 87, 1970 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); Nos. 92 and 108, 1981; No. 63, 1998; No. 163, 2001
S. 82M.....	ad. No. 87, 1970 am. No. 108, 1981
S. 82N.....	ad. No. 87, 1970
S. 82P.....	ad. No. 87, 1970 am. No. 51, 1973; No. 50, 1976; No. 108, 1981; No. 101, 2006
S. 82Q.....	ad. No. 87, 1970 am. No. 108, 1981; No. 63, 1998
S. 82R.....	ad. No. 87, 1970 am. No. 51, 1973; No. 50, 1976; No. 108, 1981; No. 121, 1997; No. 101, 2006
S. 82S.....	ad. No. 87, 1970 am. No. 51, 1973; No. 50, 1976; No. 108, 1981; No. 63, 1998 rep. No. 101, 2006
S. 82SA.....	ad. No. 50, 1976 am. No. 108, 1981; No. 63, 1998
S. 82T.....	ad. No. 87, 1970 am. No. 50, 1976; No. 108, 1981; No. 123, 1984; No. 101, 2006
Div. 3B of Part III.....	ad. No. 61, 1987 rep. No. 133, 2003
S. 82U.....	ad. No. 61, 1987 am. No. 39, 1997 rep. No. 133, 2003
S. 82V.....	ad. No. 61, 1987 am. No. 46, 1998 rep. No. 133, 2003
Ss. 82W–82Y.....	ad. No. 61, 1987 rep. No. 133, 2003
S. 82Z.....	ad. No. 61, 1987 am. No. 35, 1992; No. 121, 1997; No. 41, 1998 rep. No. 133, 2003
S. 82ZA.....	ad. No. 61, 1987 rep. No. 133, 2003
S. 82ZB.....	ad. No. 61, 1987 am. No. 39, 1997 rep. No. 133, 2003
Div. 4 of Part III.....	rep. No. 101, 2006
S. 83.....	am. No. 46, 1938; No. 4, 1945; No. 6, 1946; Nos. 28 and 90, 1952; No. 110, 1964; No. 51, 1973; No. 108, 1981; No. 121, 1997; No. 77, 2001 rep. No. 101, 2006
S. 83AA.....	ad. No. 110, 1964 am. No. 103, 1965; No. 60, 1968; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 83A	ad. No. 90, 1952 am. No. 51, 1973; No. 108, 1981; No. 101, 1992 rep. No. 101, 2006
S. 84	am. No. 88, 1936 rs. No. 90, 1952 rep. No. 101, 2006
S. 85	am. No. 88, 1936 rs. No. 90, 1952 am. No. 110, 1964; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 85A	ad. No. 90, 1952 rep. No. 101, 2006
S. 86	am. No. 58, 1941; No. 110, 1964; No. 51, 1973; No. 108, 1981; No. 7, 1993; No. 46, 1998; No. 70, 1999 rep. No. 101, 2006
S. 87	am. No. 88, 1936; No. 28, 1952; No. 108, 1981 rep. No. 101, 2006
S. 88	am. No. 88, 1936; No. 28, 1952; No. 108, 1981; No. 101, 1992 rep. No. 101, 2006
S. 88A	ad. No. 88, 1936 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 88B	ad. No. 43, 1954 am. No. 18, 1960; No. 60, 1968; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 101, 2006
S. 89	am. No. 6, 1946; No. 28, 1952; No. 108, 1981 rep. No. 101, 2006
Division 5	
S. 90	am. No. 22, 1942; No. 48, 1950; No. 50, 1966; No. 51, 1973 rs. No. 12, 1979 am. No. 124, 1980; No. 107, 1989; No. 57, 1990; No. 39, 1997; No. 66, 2003; No. 15, 2007
S. 91	am. No. 110, 1964
S. 92	rs. No. 12, 1979 am. No. 89, 2000; No. 136, 2002; No. 66, 2003; No. 101, 2004; No. 58, 2006; Nos. 15 and 78, 2007
S. 92A	ad. No. 136, 2002 am. No. 78, 2007
S. 93	am. No. 16, 1998 rep. No. 101, 2006
S. 94	am. No. 46, 1938 rs. No. 110, 1964 am. No. 51, 1973; No. 123, 1978; No. 12, 1979; No. 19, 1980; No. 108, 1981; No. 103, 1983; No. 107, 1989; No. 46, 1998

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 5A	
Div. 5A of Part III.....	ad. No. 227, 1992
Subdivision A	
S. 94A.....	ad. No. 227, 1992
S. 94B.....	ad. No. 227, 1992 am. No. 136, 2002; No. 101, 2004
S. 94C.....	ad. No. 227, 1992
Subdivision B	
S. 94D.....	ad. No. 227, 1992 am. No. 136, 2002; Nos. 101 and 105, 2004; No. 58, 2006; No. 78, 2007
Notes 1–3 to s. 94D(2).....	am. No. 78, 2007
S. 94E.....	ad. No. 227, 1992
S. 94F.....	ad. No. 227, 1992 am. No. 58, 2006
S. 94G.....	ad. No. 227, 1992
Subdivision C	
S. 94H.....	ad. No. 227, 1992
Ss. 94J, 94K.....	ad. No. 227, 1992
S. 94L.....	ad. No. 227, 1992 am. No. 138, 1994
Ss. 94M, 94N.....	ad. No. 227, 1992
Ss. 94P–94S.....	ad. No. 227, 1992
S. 94T.....	ad. No. 227, 1992 rs. No. 138, 1994
Ss. 94U, 94V.....	ad. No. 227, 1992
S. 94W.....	ad. No. 227, 1992 rep. No. 101, 2006
S. 94X.....	ad. No. 227, 1992 am. No. 39, 1997
S. 94Y.....	ad. No. 227, 1992 am. No. 18, 1993 rep. No. 101, 2006
Division 6	
Heading to Div. 6 of Part III.....	rs. No. 12, 1979
S. 95.....	am. No. 22, 1942; No. 48, 1950; No. 50, 1966; No. 51, 1973; No. 205, 1976 rs. No. 12, 1979 am. No. 111, 1981; No. 107, 1989; No. 57, 1990; No. 190, 1992; No. 39, 1997; Nos. 17 and 85, 1998; No. 66, 2003; No. 101, 2006
Note to s. 95(1).....	ad. No. 139, 2002
S. 95AA.....	ad. No. 45, 2008
S. 95A.....	ad. No. 12, 1979 am. No. 19, 1980
S. 95B.....	ad. No. 29, 1982

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 96A	ad. No. 190, 1992 am. No. 18, 1993; No. 138, 1994; No. 93, 1999; No. 73, 2004
S. 96B	ad. No. 190, 1992
S. 96C	ad. No. 190, 1992 am. No. 163, 2001; No. 32, 2006
S. 97	rs. No. 12, 1979 am. No. 19, 1980; No. 108, 1981; No. 29, 1982; No. 14, 1983; Nos. 121 and 150, 1997; No. 70, 1999; No. 57, 2001; No. 66, 2003; No. 101, 2006
Note to s. 97(1)	ad. No. 169, 1999
Heading to s. 97A	am. No. 85, 1998; No. 143, 2007
S. 97A	ad. No. 205, 1976 am. No. 19, 1980; No. 108, 1981 rs. No. 56, 1989 am. No. 85, 1998; No. 101, 2006
S. 98	am. No. 22, 1942; No. 48, 1950 rs. No. 12, 1979 am. No. 19, 1980; No. 108, 1981; No. 29, 1982; No. 14, 1983; No. 107, 1989; No. 79, 2007
Note to s. 98(3)	ad. No. 169, 1999
S. 98A	ad. No. 14, 1983 am. No. 79, 2007
Note to s. 98A(1)	ad. No. 169, 1999
Note to s. 98A(2)	ad. No. 91, 2000 am. No. 73, 2006
S. 98B	ad. No. 79, 2007
S. 99	am. No. 22, 1942 rs. No. 110, 1964 am. No. 51, 1973; No. 12, 1979; No. 108, 1981
S. 99A	ad. No. 110, 1964 am. No. 51, 1973; No. 126, 1977; No. 12, 1979; No. 19, 1980; No. 108, 1981; No. 41, 1998
Notes to s. 99A(4), (4A), (4B), (4C)	ad. No. 169, 1999
S. 99B	ad. No. 12, 1979 am. No. 5, 1991; No. 66, 2003; No. 79, 2007
S. 99C	ad. No. 12, 1979
S. 99D	ad. No. 12, 1979 am. No. 108, 1981
S. 99E	ad. No. 79, 2007
S. 99F	ad. No. 79, 2007 rep. No. 32, 2008
S. 99G	ad. No. 79, 2007 rs. No. 32, 2008
S. 99H	ad. No. 79, 2007 am. No. 32, 2008
S. 100	am. No. 12, 1979; No. 19, 1980; No. 108, 1981; No. 57, 2002; No. 79, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 100(1)	ad. No. 169, 1999
Renumbered Note 1	No. 79, 2007
Note 2 to s. 100(1)	ad. No. 79, 2007
S. 100A	ad. No. 12, 1979 am. No. 19, 1980; No. 108, 1981; No. 29, 1982; No. 121, 1997; No. 144, 2008
S. 101	am. No. 110, 1964
S. 101A	ad. No. 58, 1941 am. No. 123, 1978; No. 47, 1984; No. 85, 1998; No. 15, 2007
S. 102	am. No. 58, 1941; No. 11, 1947; No. 12, 1979; No. 108, 1981; Nos. 95 and 153, 1988; No. 135, 1990; No. 5, 1991
Division 6AAA	
Div. 6AAA of Part III	ad. No. 5, 1991
Subdivision A	
S. 102AAA	ad. No. 5, 1991
S. 102AAB	ad. No. 5, 1991 am. No. 135, 1990; No. 181, 1994; No. 155, 1997; No. 11, 1999; No. 77, 2001; No. 96, 2004; Nos. 58 and 101, 2006; Nos. 4, 15 and 143, 2007; No. 144, 2008
Heading to s. 102AAC	am. No. 155, 1997 rs. No. 96, 2004
S. 102AAC	ad. No. 5, 1991 am. No. 155, 1997 rs. No. 96, 2004
S. 102AAD	ad. No. 5, 1991
Heading to s. 102AAE	am. No. 155, 1997 rs. No. 96, 2004
S. 102AAE	ad. No. 5, 1991 am. Nos. 121 and 155, 1997; No. 70, 1999; No. 57, 2001; No. 96, 2004; No. 101, 2006; Nos. 15 and 143, 2007
Ss. 102AAF, 102AAG	ad. No. 5, 1991
S. 102AAH	ad. No. 5, 1991 am. No. 18, 1993; No. 121, 1997; No. 144, 2008
Note to s. 102AAH(3)	ad. No. 144, 2008
S. 102AAJ	ad. No. 5, 1991
S. 102AAK	ad. No. 5, 1991 am. No. 101, 2006
S. 102AAL	ad. No. 5, 1991
Subdivision B	
S. 102AAM	ad. No. 5, 1991 am. Nos. 100 and 216, 1991; Nos. 101 and 190, 1992; No. 181, 1994; No. 155, 1997; No. 41, 1998; Nos. 11, 70 and 179, 1999; No. 67, 2003; No. 96, 2004; No. 23, 2005; Nos. 58 and 101, 2006; Nos. 15 and 143, 2007
Note to s. 102AAM(13A)(c)	am. No. 179, 1999; No. 101, 2006
Subdiv. C of Div. 6AAA	rep. No. 101, 2006 of Part III

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 102AAN	ad. No. 5, 1991 rep. No. 101, 2006
Ss. 102AAP–102AAR	ad. No. 5, 1991 rep. No. 101, 2006
Subdivision D	
Ss. 102AAS, 102AAT.....	ad. No. 5, 1991
S. 102AAU	ad. No. 5, 1991 am. No. 138, 1994; No. 155, 1997; Nos. 70 and 93, 1999; No. 96, 2004; No. 23, 2005; No. 143, 2007
S. 102AAV	ad. No. 5, 1991 am. No. 22, 1995
S. 102AAW	ad. No. 5, 1991 am. No. 48, 1991; No. 163, 2001; No. 133, 2003; No. 96, 2004; No. 147, 2005; No. 101, 2006
S. 102AAX	ad. No. 5, 1991 am. No. 101, 1992 rep. No. 133, 2003
S. 102AAY	ad. No. 5, 1991 rs. No. 121, 1997
S. 102AAZ.....	ad. No. 5, 1991 am. No. 121, 1997; No. 79, 2000; No. 77, 2001; No. 101, 2006
S. 102AAZA	ad. No. 5, 1991 am. No. 15, 2007
S. 102AAZB	ad. No. 5, 1991 rs. No. 46, 1998 am. No. 66, 2003; No. 168, 2006
Heading to s. 102AAZBA.....	rs. No. 46, 1998
S. 102AAZBA.....	ad. No. 48, 1991 am. No. 170, 1995; No. 46, 1998; No. 101, 2006
S. 102AAZC	ad. No. 5, 1991 am. No. 39, 1997; No. 143, 2007
S. 102AAZD	ad. No. 5, 1991
S. 102AAZE	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004
S. 102AAZF	ad. No. 5, 1991 am. No. 96, 2004
S. 102AAZG.....	ad. No. 5, 1991 am. No. 91, 2000; No. 146, 2001
Note to s. 102AAZG(1)	ad. No. 91, 2000
Note to s. 102AAZG(2)	ad. No. 91, 2000
Note to s. 102AAZG(4)	ad. No. 146, 2001
Notes 1, 2 to s. 102AAZG(7).....	ad. No. 146, 2001
Division 6AA	
Div. 6AA of Part III	ad. No. 19, 1980
Ss. 102AA, 102AB	ad. No. 19, 1980

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 102AC.....	ad. No. 19, 1980 am. No. 108, 1981; No. 106, 1982; No. 78, 1988; No. 107, 1989; No. 135, 1990; Nos. 100 and 216, 1991; No. 13, 1999
S. 102AD.....	ad. No. 19, 1980
S. 102AE.....	ad. No. 19, 1980 am. No. 108, 1981; No. 181, 1994; No. 83, 2004
S. 102AF.....	ad. No. 19, 1980 am. No. 108, 1981; No. 29, 1982; No. 179, 1999; No. 101, 2006
S. 102AG.....	ad. No. 19, 1980 am. No. 108, 1981; No. 29, 1982; No. 181, 1994
S. 102AGA.....	ad. No. 181, 1994 am. No. 144, 2008
S. 102AH.....	ad. No. 19, 1980 am. No. 67, 2003 rep. No. 101, 2006
S. 102AJ.....	ad. No. 19, 1980 rep. No. 67, 2003
Division 6A	
Heading to Div. 6A of Part III	am. No. 46, 1986
Div. 6A of Part III.....	ad. No. 110, 1964
S. 102A.....	ad. No. 110, 1964 am. No. 108, 1981; No. 46, 1986; No. 101, 2006
S. 102B.....	ad. No. 110, 1964 am. No. 51, 1973; No. 108, 1981; No. 46, 1986; No. 121, 1997
S. 102C.....	ad. No. 110, 1964 am. No. 108, 1981
S. 102CA.....	ad. No. 46, 1986 am. No. 121, 1997
Division 6B	
Div. 6B of Part III.....	ad. No. 154, 1981
S. 102D.....	ad. No. 154, 1981 am. No. 17, 1998
S. 102E.....	ad. No. 154, 1981
S. 102F.....	ad. No. 154, 1981 am. No. 164, 2007
Ss. 102G, 102H.....	ad. No. 154, 1981
Ss. 102J, 102K.....	ad. No. 154, 1981
S. 102L.....	ad. No. 154, 1981 am. No. 173, 1985; Nos. 58, 61, 62 and 108, 1987; No. 35, 1992; No. 179, 1999; No. 163, 2001; No. 64, 2005; No. 101, 2006; No. 143, 2007; No. 32, 2008
Note to s. 102L(1).....	ad. No. 83, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 6C	
Div. 6C of Part III.....	ad. No. 173, 1985
S. 102M.....	ad. No. 173, 1985 am. No. 138, 1987; Nos. 78, 95 and 153, 1988; Nos. 97 and 105, 1989; No. 56, 1994; No. 169, 1995; Nos. 121 and 150, 1997; Nos. 17 and 41, 1998; No. 44, 1999; No. 101, 2004; No. 63, 2005; No. 15, 2007; Nos. 45 and 145, 2008
Ss. 102MA–102MC.....	ad. No. 145, 2008
S. 102N.....	ad. No. 173, 1985 am. No. 164, 2007
S. 102NA.....	ad. No. 164, 2007
S. 102P.....	ad. No. 173, 1985 am. No. 164, 2007
Ss. 102Q–102S.....	ad. No. 173, 1985
S. 102T.....	ad. No. 173, 1985 am. Nos. 58, 61, 62 and 108, 1987; No. 35, 1992; No. 179, 1999; No. 163, 2001; No. 64, 2005; No. 101, 2006; No. 143, 2007; No. 32, 2008
Note to s. 102T(1).....	ad. No. 83, 2004
Division 6D	
Div. 6D of Part III.....	ad. No. 70, 1999
Subdivision A	
S. 102UA.....	ad. No. 70, 1999 am. No. 143, 2007
Subdivision B	
S. 102UB.....	ad. No. 70, 1999 am. No. 143, 2007
S. 102UC.....	ad. No. 70, 1999 am. No. 143, 2007; No. 97, 2008
S. 102UD.....	ad. No. 70, 1999
S. 102UE.....	ad. No. 70, 1999 am. No. 43, 2000 rs. No. 143, 2007
S. 102UF.....	ad. No. 70, 1999 rep. No. 143, 2007
S. 102UG.....	ad. No. 70, 1999 rs. No. 143, 2007
S. 102UH.....	ad. No. 70, 1999 rs. No. 43, 2000; No. 143, 2007
S. 102UI.....	ad. No. 70, 1999
S. 102UJ.....	ad. No. 70, 1999 rs. No. 143, 2007
Subdivision C	
Heading to Subdiv. C..... of Div. 6D of Part III	rs. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 102UK.....	rs. No. 143, 2007
S. 102UK.....	ad. No. 70, 1999 am. No. 43, 2000; No. 143, 2007
S. 102UL.....	ad. No. 70, 1999 am. No. 143, 2007
Heading to s. 102UM.....	rs. No. 143, 2007
S. 102UM.....	ad. No. 70, 1999 am. No. 143, 2007
Subdivision D	
Heading to Subdiv. D..... of Div. 6D of Part III	rs. No. 143, 2007
Heading to s. 102UN.....	am. No. 143, 2007
S. 102UN.....	ad. No. 70, 1999 am. No. 143, 2007
Heading to s. 102UO.....	am. No. 143, 2007
S. 102UO.....	ad. No. 70, 1999 am. Nos. 178 and 179, 1999; No. 143, 2007
Heading to s. 102UP.....	am. No. 143, 2007
S. 102UP.....	ad. No. 70, 1999 rs. No. 178, 1999 am. No. 143, 2007
Note to s. 102UP.....	am. No. 101, 2006
S. 102UQ.....	ad. No. 70, 1999 rs. No. 178, 1999
S. 102UR.....	ad. No. 70, 1999 am. No. 143, 2007
S. 102URA.....	ad. No. 43, 1999 am. No. 143, 2007
S. 102US.....	ad. No. 70, 1999 am. No. 143, 2007
S. 102USA.....	ad. No. 43, 1999 rs. No. 143, 2007
Subdivision E	
Heading to Subdiv. E..... of Div. 6D of Part III	rs. No. 143, 2007
Heading to s. 102UT.....	rs. No. 143, 2007
S. 102UT.....	ad. No. 70, 1999 am. No. 143, 2007
Ss. 102UU, 102UV.....	ad. No. 70, 1999 rs. No. 143, 2007
Division 7	
Div. 7 of Part III.....	ad. No. 90, 1952
S. 102V.....	ad. No. 163, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 103.....	am. No. 46, 1938; Nos. 17 and 65, 1940; No. 58, 1941; Nos. 22 and 50, 1942; No. 10, 1943; No. 3, 1944; No. 37, 1945 rs. No. 44, 1948 am. No. 48, 1950 rs. No. 44, 1951; No. 90, 1952 am. No. 45, 1953; No. 101, 1956; No. 85, 1959; No. 18, 1960; No. 110, 1964; No. 103, 1965; No. 4, 1968; No. 47, 1972; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 126, 1977; No. 108, 1981; Nos. 49 and 51, 1986; No. 62, 1987; No. 224, 1992; No. 96, 2004; No. 101, 2006
S. 103A.....	ad. No. 110, 1964 am. No. 47, 1972; Nos. 51 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1977; Nos. 92, 108 and 154, 1981; No. 47, 1984; No. 121, 1997; No. 63, 1998; No. 57, 2002; No. 101, 2004; No. 101, 2006
S. 103AA.....	ad. No. 164, 1973 am. No. 165, 1973; No. 80, 1975; No. 108, 1981 rep. No. 101, 2006
S. 104.....	am. No. 17, 1940; No. 58, 1941; No. 10, 1943 rs. No. 44, 1948; No. 90, 1952 am. No. 50, 1966; No. 51, 1973; No. 62, 1987 rep. No. 101, 2006
S. 105.....	ad. No. 62, 1987 rep. No. 101, 2006
S. 105A.....	ad. No. 44, 1948 rs. No. 90, 1952 am. No. 47, 1972; Nos. 51 and 164, 1973; No. 57, 1978; Nos. 108 and 111, 1981; No. 76, 1982; No. 62, 1987; No. 57, 1990; No. 39, 1997; No. 23, 2005 rep. No. 101, 2006
Ss. 105AAA–105AAC.....	ad. No. 51, 1973 am. No. 108, 1981 rep. No. 101, 2006
S. 105AA.....	ad. No. 69, 1963 am. No. 51, 1973; No. 108, 1981; No. 51, 1986 rep. No. 101, 2006
S. 105AB.....	ad. No. 172, 1978 am. No. 108, 1981 rep. No. 101, 2006
S. 105B.....	ad. No. 44, 1948 am. No. 48, 1950 rs. No. 90, 1952 am. No. 45, 1953; No. 70, 1959; No. 69, 1963; No. 143, 1965 rs. No. 165, 1973 am. No. 205, 1976; No. 149, 1979; No. 108, 1981; No. 106, 1982; No. 62, 1987 rep. No. 101, 2006
S. 105C.....	ad. No. 90, 1952 am. No. 85, 1959; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 107.....	rs. No. 44, 1948; No. 90, 1952 am. No. 45, 1953; No. 101, 1956; No. 34, 1963; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 107A.....	ad. No. 90, 1952 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 108.....	rs. No. 90, 1952 am. No. 85, 1959; No. 108, 1981 rs. No. 108, 1987 am. No. 135, 1990; No. 5, 1991; No. 47, 1998; No. 23, 2005; No. 101, 2006 rep. No. 79, 2007
S. 109.....	rs. No. 90, 1952 am. No. 85, 1959 rs. No. 108, 1987 am. No. 135, 1990; No. 101, 2006
Division 7A	
Div. 7A of Part III.....	ad. No. 47, 1998
Subdivision A	
Subdiv. A of Div. 7A..... of Part III	ad. No. 47, 1998
S. 109B.....	ad. No. 47, 1998 am. No. 163, 2001; No. 90, 2002; No. 23, 2005; No. 79, 2007
Subdivision AA	
Subdiv. AA of Div. 7A..... of Part III	ad. No. 163, 2001
S. 109BA.....	ad. No. 163, 2001
Subdivision B	
Subdiv. B of Div. 7A..... of Part III	ad. No. 47, 1998
S. 109C.....	ad. No. 47, 1998
Note to s. 109C(3A).....	ad. No. 79, 2007
Ss. 109D, 109E.....	ad. No. 47, 1998 am. No. 41, 2005; No. 79, 2007
S. 109F.....	ad. No. 47, 1998
Subdivision C	
Subdiv. C of Div. 7A..... of Part III	ad. No. 47, 1998
Subhead. to s. 109G(3).....	am. No. 79, 2007
S. 109G.....	ad. No. 47, 1998 am. No. 79, 2007
Subdivision D	
Subdiv. D of Div. 7A..... of Part III	ad. No. 47, 1998
S. 109H.....	ad. No. 47, 1998 am. No. 56, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 109J–109M	ad. No. 47, 1998
S. 109N	ad. No. 47, 1998 am. No. 140, 2003; No. 41, 2005; No. 79, 2007
S. 109NA.....	ad. No. 47, 1998
S. 109NB.....	ad. No. 47, 1998 am. No. 56, 2007
S. 109P	ad. No. 47, 1998
Note to s. 109P	rs. No. 79, 2007
S. 109Q.....	ad. No. 47, 1998
S. 109R	ad. No. 47, 1998 am. No. 179, 1999; No. 79, 2007
Subdivision DA	
Subdiv. DA of Div. 7A	ad. No. 90, 2002 of Part III
S. 109RA.....	ad. No. 90, 2002
Subdivision DB	
Subdiv. DB of Div. 7A	ad. No. 79, 2007 of Part III
Ss. 109RB–109RD.....	ad. No. 79, 2007
Subdivision E	
Subdiv. E of Div. 7A	ad. No. 47, 1998 of Part III
S. 109S	ad. No. 47, 1998 am. No. 95, 2004
Ss. 109T, 109U	ad. No. 47, 1998
S. 109UA.....	ad. No. 47, 1998 am. No. 79, 2007
S. 109UB.....	ad. No. 47, 1998 rep. No. 95, 2004
Ss. 109V, 109W	ad. No. 47, 1998
Heading to s. 109X	rs. No. 79, 2007
S. 109X	ad. No. 47, 1998 am. No. 79, 2007
Subdivision EA	
Subdiv. EA of Div. 7A.....	ad. No. 95, 2004 of Part III
S. 109XA.....	ad. No. 95, 2004 am. No. 95, 2004
S. 109XB.....	ad. No. 95, 2004
S. 109XC.....	ad. No. 95, 2004 am. No. 41, 2005
Subdivision F	
Subdiv. F of Div. 7A	ad. No. 47, 1998 of Part III
S. 109Y	ad. No. 47, 1998 am. No. 63, 1998; No. 23, 2005; No. 79, 2007; No. 97, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 109Z	ad. No. 47, 1998
S. 109ZA	ad. No. 47, 1998 am. No. 179, 1999; No. 101, 2006
S. 109ZB	ad. No. 47, 1998
S. 109ZC	ad. No. 47, 1998 am. No. 93, 1999; No. 66, 2003; No. 23, 2005; No. 79, 2007
Subdivision G	
Subdiv. G of Div. 7A..... of Part III	ad. No. 47, 1998
S. 109ZD	ad. No. 47, 1998 am. No. 179, 1999; No. 41, 2005; No. 101, 2006; No. 79, 2007; No. 144, 2008
S. 109ZE	ad. No. 47, 1998
Division 9	
S. 117.....	am. No. 126, 1974; No. 154, 1981; No. 57, 1993
S. 118.....	am. No. 108, 1981
S. 119.....	am. No. 57, 1993
S. 120.....	am. No. 51, 1973; No. 108, 1981; No. 78, 1996; No. 63, 1998; No. 176, 1999; No. 101, 2003
S. 121.....	rs. No. 89, 2000
Division 9AA	
Div. 9AA of Part III	ad. No. 171, 1995
Subdivision A	
Subdiv. A of Div. 9AA..... of Part III	ad. No. 171, 1995
S. 121AA.....	ad. No. 171, 1995
Subdivision B	
Subdiv. B of Div. 9AA..... of Part III	ad. No. 171, 1995
S. 121AB.....	ad. No. 171, 1995 am. No. 20, 2004
Ss. 121AC, 121AE	ad. No. 171, 1995
S. 121AEA	ad. No. 171, 1995
Ss. 121AF–121AN	ad. No. 171, 1995
S. 121AO	ad. No. 171, 1995 am. No. 44, 1999; No. 154, 2007
S. 121AP.....	ad. No. 171, 1995
S. 121AQ	ad. No. 171, 1995 am. No. 15, 2007; No. 97, 2008
S. 121AR.....	ad. No. 171, 1995 am. No. 15, 2007
Subdivision C	
Subdiv. C of Div. 9AA	ad. No. 171, 1995 of Part III

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 121AS	am. No. 101, 2006
S. 121AS	ad. No. 171, 1995 am. No. 46, 1998; No. 169, 1999; No. 57, 2002; No. 101, 2006
Note 6 to s. 121AS	am. No. 58, 2006
S. 121AT	ad. No. 171, 1995 am. Nos. 41 and 46, 1998; No. 23, 2005; No. 15, 2007
Division 9A	
Div. 9A of Part III	ad. No. 191, 1992
Subdivision A	
S. 121A	ad. No. 191, 1992
S. 121B	ad. No. 191, 1992 am. No. 93, 1999; No. 143, 2007
Subdivision B	
S. 121C	ad. No. 191, 1992 am. No. 76, 1996; No. 93, 1999; No. 16, 2003; No. 21, 2005
S. 121D	ad. No. 191, 1992 am. No. 82, 1994; No. 76, 1996; No. 93, 1999
S. 121DA	ad. No. 76, 1996 am. No. 93, 1999
S. 121E	ad. No. 191, 1992
Ss. 121EA, 121EB	ad. No. 191, 1992
S. 121EC	ad. No. 191, 1992 am. No. 63, 1998
S. 121ED	ad. No. 191, 1992
S. 121EE	ad. No. 191, 1992 am. No. 76, 1996; No. 46, 1998; No. 93, 1999
S. 121EF	ad. No. 191, 1992 am. No. 39, 1997
Subdivision C	
Heading to s. 121EG	rs. No. 143, 2007
S. 121EG	ad. No. 191, 1992 am. No. 23, 2005; No. 143, 2007
S. 121EH	ad. No. 191, 1992 am. No. 143, 2007
Subhead. to s. 121EI(1)	ad. No. 76, 1996 rep. No. 143, 2007
S. 121EI	ad. No. 191, 1992 am. No. 76, 1996 rep. No. 143, 2007
S. 121EJ	ad. No. 191, 1992 am. No. 93, 1999; No. 143, 2007
S. 121EK	ad. No. 191, 1992
S. 121EL	ad. No. 191, 1992 am. No. 76, 1996; No. 46, 1998; No. 93, 1999
Ss. 121ELA, 121ELB	ad. No. 93, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 9B of Part III.....	ad. No. 120, 1995 rep. No. 101, 2006
S. 121EM.....	ad. No. 120, 1995 am. No. 46, 1998 rep. No. 101, 2006
Ss. 121EN–121EQ.....	ad. No. 120, 1995 rep. No. 101, 2006
Division 9C	
Div. 9C of Part III.....	ad. No. 108, 1981
S. 121F.....	ad. No. 108, 1981 am. No. 154, 1981; No. 47, 1984; No. 52, 1986; No. 138, 1987; Nos. 78 and 153, 1988; No. 97, 1989; No. 56, 1994; No. 169, 1995; Nos. 121 and 150, 1997; No. 46, 1998; No. 101, 2004; No. 63, 2005; No. 101, 2006
S. 121G.....	ad. No. 108, 1981 am. No. 29, 1982; Nos. 49 and 123, 1985; No. 97, 1989; No. 121, 1997; No. 147, 2005; No. 101, 2006
S. 121H.....	ad. No. 108, 1981 am. No. 97, 1989
S. 121J.....	ad. No. 108, 1981
S. 121K.....	ad. No. 108, 1981 am. No. 22, 1995; No. 143, 2007
S. 121L.....	ad. No. 108, 1981
Heading to Div. 10 of Part III.....	rs. No. 57, 1990 rep. No. 101, 2006
Div. 10 of Part III.....	ad. No. 60, 1968 rep. No. 101, 2006
Heading to Subdiv. A..... of Div. 10 of Part III	ad. No. 57, 1990 rep. No. 101, 2006
S. 122.....	rs. No. 65, 1940; No. 11, 1947; No. 44, 1951 am. No. 70, 1959; No. 18, 1960 rs. No. 60, 1968 am. Nos. 51 and 164, 1973; No. 126, 1974; No. 80, 1975; No. 108, 1981; No. 57, 1990; No. 48, 1991 rep. No. 101, 2006
S. 122AA.....	ad. No. 153, 1988 rep. No. 101, 2006
S. 122AB.....	ad. No. 76, 1996 rep. No. 101, 2006
S. 122A.....	ad. No. 44, 1951 rs. No. 60, 1968 am. No. 93, 1969; No. 51, 1973; No. 126, 1974; No. 108, 1981; No. 95, 1988; No. 107, 1989; No. 57, 1990; No. 181, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 122B	ad. No. 44, 1951 am. No. 18, 1960 rs. No. 60, 1968 am. No. 93, 1969; No. 51, 1973; No. 205, 1976; No. 108, 1981; No. 14, 1983; No. 107, 1989; No. 57, 1990; No. 101, 1992; No. 181, 1994 rep. No. 101, 2006
S. 122BA.....	ad. No. 181, 1994 rep. No. 101, 2006
S. 122C	ad. No. 60, 1968 am. Nos. 51 and 165, 1973; No. 126, 1974; No. 205, 1976; No. 127, 1977; No. 108, 1981; No. 107, 1989; No. 57, 1990 rep. No. 101, 2006
S. 122D	ad. No. 60, 1968 am. No. 51, 1973; No. 126, 1974; No. 205, 1976; Nos. 108, 109 and 154, 1981; No. 14, 1983; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
S. 122DA.....	ad. No. 205, 1976 am. No. 108, 1981 rs. No. 109, 1981 am. No. 57, 1990 rep. No. 101, 2006
S. 122DB.....	ad. No. 205, 1976 am. Nos. 109 and 154, 1981; No. 14, 1983; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
S. 122DC	ad. No. 109, 1981 am. No. 154, 1981; No. 14, 1983; No. 57, 1990 rep. No. 101, 2006
S. 122DD	ad. No. 109, 1981 am. No. 154, 1981; No. 14, 1983; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
S. 122DE.....	ad. No. 154, 1981 am. No. 14, 1983; No. 57, 1990 rep. No. 101, 2006
S. 122DF	ad. No. 154, 1981 am. No. 14, 1983; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
S. 122DG	ad. No. 14, 1983 am. No. 168, 1985; No. 57, 1990; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
Note to s. 122DG(7).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 122H.....	ad. No. 60, 1968 am. No. 108, 1981; No. 57, 1990; No. 101, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 122J.....	ad. No. 60, 1968 am. Nos. 51 and 165, 1973; No. 126, 1974; No. 127, 1977; No. 108, 1981; No. 124, 1984; No. 168, 1985; No. 107, 1989; No. 57, 1990; Nos. 48 and 216, 1991; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
Note to s. 122J(3)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 122J(4)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 122J(4C).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 122JA	ad. No. 60, 1968 am. No. 51, 1973; No. 108, 1981; No. 107, 1989 rep. No. 101, 2006
S. 122JAA	ad. No. 35, 1992 am. No. 224, 1992; No. 181, 1994; No. 120, 1995; No. 39, 1997 rep. No. 101, 2006
Note to s. 122JAA(1).....	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 122JAA(2).....	ad. No. 39, 1997 rep. No. 101, 2006
Subdiv. B of Div. 10	ad. No. 57, 1990 rep. No. 101, 2006
S. 122JB	ad. No. 57, 1990 am. No. 48, 1991 rep. No. 101, 2006
S. 122JBA	ad. No. 76, 1996 rep. No. 101, 2006
Ss. 122JC, 122JD	ad. No. 57, 1990 rep. No. 101, 2006
S. 122JE	ad. No. 57, 1990 am. No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
S. 122JF.....	ad. No. 57, 1990 am. Nos. 4 and 48, 1991; No. 101, 1992; No. 39, 1997 rep. No. 101, 2006
Note to s. 122JF(6)	ad. No. 39, 1997 rep. No. 101, 2006
S. 122JG	ad. No. 35, 1992 am. No. 224, 1992; No. 120, 1995; No. 39, 1997 rep. No. 101, 2006
Note to s. 122JG(1).....	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 122JG(2).....	ad. No. 39, 1997 rep. No. 101, 2006
Heading to Subdiv. C	ad. No. 57, 1990 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 122KAA	ad. No. 76, 1996 rep. No. 101, 2006
S. 122K	ad. No. 60, 1968 am. No. 51, 1973; No. 108, 1981; No. 57, 1990; No. 100, 1991; No. 39, 1997 rep. No. 101, 2006
S. 122KA.....	ad. No. 100, 1991 rep. No. 101, 2006
S. 122L.....	ad. No. 60, 1968 am. No. 57, 1990 rep. No. 101, 2006
S. 122M.....	ad. No. 60, 1968 am. No. 51, 1973; No. 205, 1976; Nos. 109 and 154, 1981; No. 168, 1985; No. 107, 1989; No. 101, 1992 rep. No. 101, 2006
S. 122N.....	ad. No. 60, 1968 am. No. 51, 1973; No. 205, 1976; Nos. 108, 109 and 154, 1981; No. 14, 1983; No. 124, 1984; No. 107, 1989; No. 57, 1990 rep. No. 101, 2006
S. 122NB.....	ad. No. 57, 1990 rep. No. 101, 2006
S. 122P Renumbered s. 122JA	No. 57, 1990
S. 122R	ad. No. 60, 1968 am. No. 149, 1979; No. 108, 1981; No. 57, 1990; No. 35, 1992 rep. No. 101, 2006
S. 122S	ad. No. 60, 1968 rep. No. 101, 2006
S. 122T	ad. No. 126, 1974 am. No. 50, 1976; No. 54, 1999 rep. No. 101, 2006
S. 122U	ad. No. 17, 1993 rep. No. 101, 2006
Heading to Div. 10AAA	rs. No. 57, 1990 rep. No. 101, 2006
of Part III	
Div. 10AAA of Part III.....	ad. No. 60, 1968 rep. No. 101, 2006
Heading to Subdiv. A	ad. No. 57, 1990 rep. No. 101, 2006
of Div. 10AAA of Part III	
S. 123.....	rs. No. 60, 1968 am. No. 148, 1968; No. 51, 1973; No. 205, 1976; No. 47, 1984; No. 57, 1990 rep. No. 101, 2006
S. 123AAA	ad. No. 76, 1996 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 123A	ad. No. 60, 1968 am. No. 148, 1968; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 80, 1975; Nos. 50 and 205, 1976; No. 108, 1981; No. 47, 1984; No. 57, 1990; No. 48, 1991; No. 39, 1997; No. 54, 1999 rep. No. 101, 2006
Note to s. 123A(1)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 123A(1A)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 123A(1C)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 123A(1E)	ad. No. 39, 1997 rep. No. 101, 2006
S. 123AA	ad. No. 153, 1988 rep. No. 101, 2006
S. 123B	ad. No. 60, 1968 am. No. 51, 1973; No. 126, 1974; No. 205, 1976; No. 108, 1981; No. 57, 1990; No. 39, 1997 rep. No. 101, 2006
S. 123BA	ad. No. 126, 1974 am. No. 205, 1976; No. 108, 1981 rep. No. 101, 2006
S. 123BB	ad. No. 205, 1976 am. No. 108, 1981; No. 14, 1983; No. 57, 1990; No. 101, 1992 rep. No. 101, 2006
S. 123BBA	ad. No. 35, 1992 am. No. 224, 1992; No. 39, 1997 rep. No. 101, 2006
Note to s. 123BBA(1)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 123BBA(2)	ad. No. 39, 1997 rep. No. 101, 2006
Subdiv. B of Div. 10AAA of Part III	ad. No. 57, 1990 rep. No. 101, 2006
S. 123BC	ad. No. 57, 1990 rep. No. 101, 2006
S. 123BCA	ad. No. 76, 1996 rep. No. 101, 2006
S. 123BD	ad. No. 57, 1990 am. No. 48, 1991; No. 39, 1997; No. 54, 1999 rep. No. 101, 2006
Note to s. 123BD(1)	ad. No. 39, 1997 rep. No. 101, 2006
S. 123BE	ad. No. 57, 1990 am. No. 39, 1997 rep. No. 101, 2006
S. 123BF	ad. No. 35, 1992 am. No. 224, 1992; No. 39, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 123BF(1).....	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 123BF(2).....	ad. No. 39, 1997 rep. No. 101, 2006
Heading to Subdiv. C of Div. 10AAA of Part III	ad. No. 57, 1990 rep. No. 101, 2006
S. 123CA.....	ad. No. 76, 1996 rep. No. 101, 2006
S. 123C.....	ad. No. 60, 1968 am. No. 51, 1973; No. 108, 1981; No. 57, 1990; No. 39, 1997 rep. No. 101, 2006
S. 123D.....	ad. No. 60, 1968 am. No. 57, 1990 rep. No. 101, 2006
S. 123E.....	ad. No. 60, 1968 am. No. 51, 1973; No. 108, 1981; No. 107, 1989; No. 57, 1990 rep. No. 101, 2006
S. 123EA.....	ad. No. 57, 1990 rep. No. 101, 2006
S. 123F.....	ad. No. 60, 1968 am. No. 50, 1976; No. 149, 1979; No. 108, 1981; No. 35, 1992 rep. No. 101, 2006
S. 123G.....	ad. No. 17, 1993 rep. No. 101, 2006
Div. 10AA of Part III.....	ad. No. 126, 1974 rep. No. 101, 2006
S. 124.....	ad. No. 126, 1974 am. No. 80, 1975; No. 108, 1981; No. 48, 1991; No. 118, 1993 rep. No. 101, 2006
S. 124AAA.....	ad. No. 76, 1996 rep. No. 101, 2006
S. 124AA.....	ad. No. 126, 1974 am. No. 126, 1977; No. 108, 1981; No. 112, 1986; Nos. 78 and 95, 1988; No. 39, 1997 rep. No. 101, 2006
Note to s. 124AA(1).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 124AB.....	ad. No. 126, 1974 am. No. 205, 1976; No. 57, 1978; No. 24, 1980; No. 108, 1981; No. 14, 1983; No. 112, 1986; No. 107, 1989; No. 101, 1992 rep. No. 101, 2006
S. 124ABA.....	ad. No. 112, 1986 am. No. 78, 1988; No. 48, 1991; No. 101, 1992 (as am. by No. 43, 1996); No. 118, 1993; No. 181, 1994 rep. No. 101, 2006
S. 124AC.....	ad. No. 126, 1974 am. No. 205, 1976 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124AD.....	ad. No. 126, 1974 am. No. 205, 1976; Nos. 108, 109 and 154, 1981; No. 14, 1983; No. 39, 1997 rep. No. 101, 2006
S. 124ADA	ad. No. 205, 1976 am. No. 109, 1981 rep. No. 101, 2006
S. 124ADB	ad. No. 205, 1976 am. Nos. 109 and 154, 1981; No. 14, 1983; No. 39, 1997 rep. No. 101, 2006
S. 124ADC	ad. No. 109, 1981 am. No. 154, 1981 rep. No. 101, 2006
S. 124ADD	ad. No. 109, 1981 am. No. 154, 1981; No. 14, 1983; No. 39, 1997 rep. No. 101, 2006
S. 124ADE	ad. No. 154, 1981 am. No. 14, 1983 rep. No. 101, 2006
S. 124ADF	ad. No. 154, 1981 am. No. 14, 1983; No. 39, 1997 rep. No. 101, 2006
S. 124ADG.....	ad. No. 14, 1983 am. No. 39, 1997 rep. No. 101, 2006
Note to s. 124ADG(1)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 124ADG(7)	ad. No. 39, 1997 rep. No. 101, 2006
S. 124ADH.....	ad. No. 168, 1985 am. No. 101, 1992 rep. No. 101, 2006
S. 124AE.....	ad. No. 126, 1974 am. No. 111, 1981; No. 107, 1989; No. 57, 1990; No. 39, 1997 (as rep. by No. 121, 1997) rep. No. 101, 2006
S. 124AF	ad. No. 126, 1974 am. No. 205, 1976; Nos. 109 and 154, 1981; No. 14, 1983; No. 16, 1998 rep. No. 101, 2006
S. 124AG	ad. No. 126, 1974 am. No. 101, 1992 rep. No. 101, 2006
S. 124AH.....	ad. No. 126, 1974 am. No. 205, 1976; Nos. 109 and 154, 1981; No. 14, 1983; No. 168, 1985; No. 48, 1991; No. 101, 1992; No. 118, 1993; No. 39, 1997 rep. No. 101, 2006
Note to s. 124AH(4)	ad. No. 39, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 124AH(4B).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 124AJ	ad. No. 126, 1974 am. No. 48, 1991 rep. No. 101, 2006
Ss. 124AK, 124AL.....	ad. No. 126, 1974 rep. No. 101, 2006
Note to s. 124AL(1A)	am. No. 77, 2001 rep. No. 101, 2006
S. 124AM	ad. No. 126, 1974 am. No. 205, 1976; No. 100, 1991; No. 39, 1997 rep. No. 101, 2006
S. 124AMAA	ad. No. 35, 1992 am. No. 224, 1992; No. 17, 1993; No. 120, 1995; No. 39, 1997 rep. No. 101, 2006
Note to s. 124AMAA(1)	ad. No. 39, 1997 rep. No. 101, 2006
Note to s. 124AMAA(2).....	ad. No. 39, 1997 rep. No. 101, 2006
S. 124AMA.....	ad. No. 100, 1991 rep. No. 101, 2006
S. 124AN.....	ad. No. 126, 1974 am. No. 205, 1976; Nos. 108, 109 and 154, 1981; No. 14, 1983; No. 107, 1989; No. 48, 1991 rep. No. 101, 2006
S. 124AO	ad. No. 126, 1974 am. No. 149, 1979; No. 108, 1981; No. 35, 1992 rep. No. 101, 2006
S. 124AP.....	ad. No. 126, 1974 rep. No. 101, 2006
S. 124AQ	ad. No. 126, 1974 am. No. 50, 1976; No. 54, 1999 rep. No. 101, 2006
S. 124AR.....	ad. No. 17, 1993 rep. No. 101, 2006
Div. 10AB of Part III	ad. No. 100, 1991 rep. No. 101, 2006
S. 124B	ad. No. 100, 1991 am. No. 35, 1992 rep. No. 101, 2006
S. 124BA.....	ad. No. 100, 1991 am. No. 216, 1991; No. 39, 1997 rep. No. 101, 2006
Note to s. 124BA(1)	ad. No. 39, 1997 rep. No. 101, 2006
Ss. 124BB, 124BC	ad. No. 100, 1991 am. No. 35, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 124BD–124BF	ad. No. 100, 1991 rep. No. 101, 2006
Heading to Div. 10A	rs. No. 69, 1963
of Part III	rep. No. 101, 2006
Div. 10A of Part III	ad. No. 101, 1956 rep. No. 101, 2006
Subdiv. AA of Div. 10A	ad. No. 121, 1997
of Part III	rep. No. 101, 2006
S. 124EAA	ad. No. 121, 1997 rep. No. 101, 2006
Heading to Subdiv. A	ad. No. 69, 1963
of Div. 10A of Part III	rep. No. 101, 2006
S. 124E	ad. No. 101, 1956 am. No. 69, 1963 rep. No. 101, 2006
S. 124EA	ad. No. 76, 1996 rep. No. 101, 2006
S. 124F	ad. No. 101, 1956 am. No. 69, 1963; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 124G	ad. No. 101, 1956 am. No. 110, 1964; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 124GA	ad. No. 35, 1992 am. No. 224, 1992 rep. No. 101, 2006
S. 124H	ad. No. 101, 1956 am. No. 69, 1963; No. 108, 1981 rep. No. 101, 2006
S. 124J	ad. No. 101, 1956 am. No. 171, 1995 rep. No. 101, 2006
Subdiv. B of Div. 10A	ad. No. 69, 1963
of Part III	rep. No. 101, 2006
S. 124JAA	ad. No. 76, 1996 rep. No. 101, 2006
S. 124JA	ad. No. 69, 1963 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 124JB	ad. No. 69, 1963 am. No. 110, 1964; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 124JC	ad. No. 69, 1963 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 124JD	ad. No. 35, 1992 am. No. 224, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to Subdiv. C of Div. 10A of Part III	am. No. 17, 1993 rep. No. 101, 2006
Subdiv. C of Div. 10A of Part III	ad. No. 35, 1992 rep. No. 101, 2006
S. 124JE	ad. No. 35, 1992 rep. No. 101, 2006
S. 124JF	ad. No. 17, 1993 rep. No. 101, 2006
Division 10B	
Div. 10B of Part III	ad. No. 101, 1956
S. 124K	ad. No. 101, 1956 am. No. 172, 1978; No. 111, 1981; No. 14, 1983; No. 123, 1984; No. 49, 1985; No. 153, 1988; No. 48, 1991; No. 39, 1999; No. 146, 1999; No. 72, 2001; No. 101, 2006; No. 4, 2007
S. 124KAA	ad. No. 76, 1996
Heading to s. 124KA	am. No. 101, 2006
S. 124KA	ad. No. 111, 1981 am. No. 14, 1983; No. 101, 2006
S. 124L	ad. No. 101, 1956 am. No. 172, 1978; No. 46, 1998; No. 27, 2002; No. 101, 2006; No. 164, 2007
Note to s. 124L(1A)(b)	rep. No. 164, 2007
S. 124M	ad. No. 101, 1956 am. No. 143, 1965; No. 172, 1978; No. 108, 1981
S. 124N	ad. No. 101, 1956 am. No. 172, 1978; No. 101, 2006
S. 124P	ad. No. 101, 1956 am. No. 51, 1973; No. 172, 1978
Heading to s. 124PA	rs. No. 46, 1998
S. 124PA	ad. No. 35, 1992 am. No. 224, 1992; No. 46, 1998; No. 169, 1999; No. 147, 2005; No. 144, 2008
S. 124Q	ad. No. 101, 1956
S. 124R	ad. No. 101, 1956 am. No. 51, 1973 rs. No. 172, 1978 am. No. 108, 1981; No. 101, 2006
S. 124S	ad. No. 101, 1956 am. No. 51, 1973; No. 172, 1978; No. 108, 1981; No. 101, 2006
S. 124T	ad. No. 101, 1956 rs. No. 172, 1978
S. 124U	ad. No. 101, 1956 am. No. 51, 1973; No. 172, 1978; No. 108, 1981 rep. No. 147, 2005
S. 124UA	ad. No. 172, 1978 am. No. 101, 1992; No. 147, 2005
S. 124V	ad. No. 101, 1956 am. No. 172, 1978; No. 108, 1981; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124W	ad. No. 101, 1956 rs. No. 172, 1978 am. No. 108, 1981; No. 35, 1992
Heading to s. 124WA	am. No. 101, 2006
S. 124WA	ad. No. 111, 1981 am. No. 14, 1983; No. 101, 2006
S. 124X	ad. No. 101, 1956 am. No. 172, 1978 rep. No. 101, 2006
S. 124Y	ad. No. 101, 1956 am. No. 172, 1978; No. 101, 2006
S. 124Z	ad. No. 101, 1956 am. No. 172, 1978
Division 10BA	
Div. 10BA of Part III	ad. No. 111, 1981
Subdivision A	
S. 124ZAA	ad. No. 111, 1981 am. No. 14, 1983; No. 49, 1985; No. 62, 1987; No. 153, 1988; No. 101, 2006
S. 124ZAB	ad. No. 111, 1981 am. No. 62, 1987; No. 153, 1988; No. 41, 2005; No. 164, 2007
Note to s. 124ZAB(6A)	am. No. 164, 2007
S. 124ZAC	ad. No. 111, 1981 am. No. 153, 1988; No. 27, 2002; No. 164, 2007
S. 124ZAD	ad. No. 111, 1981 am. No. 62, 1987
Ss. 124ZADAA	ad. No. 153, 1988 am. No. 146, 1999
S. 124ZADAB	ad. No. 153, 1988
S. 124ZADA	ad. No. 14, 1983 am. No. 57, 1990; No. 216, 1991; No. 146, 2001; No. 143, 2007
S. 124ZADB	ad. No. 14, 1983 am. No. 146, 2001; No. 143, 2007
S. 124ZAE	ad. No. 111, 1981 am. No. 14, 1983; No. 101, 1992; No. 101, 2003; No. 101, 2006
S. 124ZAEA	ad. No. 72, 2001
Subdivision B	
S. 124ZAFAA	ad. No. 76, 1996
S. 124ZAF	ad. No. 111, 1981 am. No. 14, 1983; No. 14, 1984; No. 168, 1985 rep. No. 101, 2006
S. 124ZAF A	ad. No. 14, 1983 am. No. 14, 1984; No. 168, 1985; No. 153, 1988; No. 57, 1990; No. 164, 2007
S. 124ZAG	ad. No. 111, 1981 am. No. 14, 1983

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124ZAGA.....	ad. No. 14, 1983 am. No. 216, 1991
S. 124ZAH.....	ad. No. 111, 1981 am. No. 14, 1983
Ss. 124ZAJ–124ZAM.....	ad. No. 111, 1981
S. 124ZAN.....	ad. No. 111, 1981 am. No. 14, 1983 rep. No. 101, 2006
Subdivision C	
S. 124ZAO.....	ad. No. 111, 1981 am. No. 14, 1983; No. 101, 2006
S. 124ZAP.....	ad. No. 111, 1981
Div. 10C of Part III.....	ad. No. 57, 1980 rep. No. 101, 2006
S. 124ZAPA.....	ad. No. 39, 1997 rep. No. 101, 2006
S. 124ZA.....	ad. No. 57, 1980 am. No. 133, 1980; No. 108, 1981; No. 47, 1984; No. 138, 1987; No. 153, 1988; Nos. 97 and 167, 1989; No. 98, 1992; No. 56, 1994; No. 169, 1995 rep. No. 101, 2006
S. 124ZAAA.....	ad. No. 76, 1996 rep. No. 101, 2006
S. 124ZB.....	ad. No. 57, 1980 am. No. 108, 1981; No. 123, 1984; No. 46, 1986; No. 98, 1992; No. 56, 1994 rep. No. 101, 2006
S. 124ZC.....	ad. No. 57, 1980 am. No. 108, 1981; No. 124, 1984; No. 98, 1992 rep. No. 101, 2006
S. 124ZD.....	ad. No. 57, 1980 am. No. 108, 1981; No. 98, 1992 rep. No. 101, 2006
S. 124ZE.....	ad. No. 57, 1980 am. No. 98, 1992 rep. No. 101, 2006
S. 124ZEA.....	ad. No. 17, 1993 rep. No. 101, 2006
Heading to Div. 10D..... of Part III	am. No. 167, 1989; No. 98, 1992 rep. No. 101, 2006
Div. 10D of Part III.....	ad. No. 14, 1983 rep. No. 101, 2006
S. 124ZEB.....	ad. No. 39, 1997 rep. No. 101, 2006
S. 124ZF.....	ad. No. 14, 1983 am. No. 46, 1986; No. 167, 1989; No. 135, 1990; No. 48, 1991; Nos. 98 and 224, 1992; Nos. 138 and 181, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124ZFAA	ad. No. 76, 1996 rep. No. 101, 2006
Ss. 124ZFA, 124ZFB	ad. No. 98, 1992 rep. No. 101, 2006
S. 124ZFC.....	ad. No. 224, 1992 rep. No. 101, 2006
S. 124ZG.....	ad. No. 14, 1983 am. No. 46, 1986; No. 95, 1988; No. 167, 1989; No. 48, 1991; No. 98, 1992; No. 56, 1994 rep. No. 101, 2006
S. 124ZH.....	ad. No. 14, 1983 am. No. 124, 1984; No. 138, 1987; No. 167, 1989; No. 98, 1992 rep. No. 101, 2006
S. 124ZJ.....	ad. No. 14, 1983 am. No. 167, 1989; No. 98, 1992; No. 171, 1995 rep. No. 101, 2006
S. 124ZK	ad. No. 14, 1983 am. No. 167, 1989 rep. No. 101, 2006
S. 124ZL	ad. No. 167, 1989 rep. No. 101, 2006
S. 124ZLA.....	ad. No. 17, 1993 rep. No. 101, 2006
Division 10E	
Heading to Div. 10E	am. No. 181, 1994 of Part III
Div. 10E of Part III.....	ad. No. 98, 1992
Subdivision A	
Heading to Subdiv. A	ad. No. 181, 1994 of Div. 10E of Part III
S. 124ZM	ad. No. 98, 1992 am. No. 79, 2000 rs. No. 101, 2006 am. No. 15, 2007; No. 45, 2008
S. 124ZN.....	ad. No. 98, 1992
Note to s. 124ZN.....	ad. No. 46, 1998
S. 124ZO.....	ad. No. 98, 1992
S. 124ZQ.....	ad. No. 98, 1992
S. 124ZR.....	ad. No. 98, 1992 am. No. 46, 1998
Subdivision B	
Heading to Subdiv. B	rs. No. 39, 1997 of Div. 10E of Part III
Subdiv. B of Div. 10E	ad. No. 181, 1994 of Part III
S. 124ZS.....	ad. No. 181, 1994 am. No. 46, 1998
S. 124ZTA.....	ad. No. 39, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 124ZT–124ZV.....	ad. No. 181, 1994
Subdivision C	
Subdiv. C of Div. 10E..... of Part III	ad. No. 181, 1994
S. 124ZW.....	ad. No. 181, 1994 am. No. 46, 1998
Ss. 124ZX, 124ZY.....	ad. No. 181, 1994
Heading to s. 124ZZ	rs. No. 46, 1998
S. 124ZZ	ad. No. 181, 1994 am. No. 46, 1998
S. 124ZZA.....	ad. No. 181, 1994 am. No. 46, 1998
Heading to s. 124ZZB.....	rs. No. 46, 1998
S. 124ZZB.....	ad. No. 181, 1994 am. No. 46, 1998
S. 124ZZD.....	ad. No. 181, 1994 rs. No. 46, 1998
Div. 10F of Part III.....	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. AA of Div. 10F..... of Part III	ad. No. 46, 1998 rep. No. 101, 2006
S. 124ZZEA	ad. No. 46, 1998 rep. No. 101, 2006
Subdiv. A of Div. 10F	ad. No. 171, 1995 rep. No. 101, 2006
S. 124ZZE.....	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. B of Div. 10F	ad. No. 171, 1995 rep. No. 101, 2006
S. 124ZZF	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. C of Div. 10F..... of Part III	ad. No. 171, 1995 rep. No. 101, 2006
Ss. 124ZZG–124ZZI	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. D of Div. 10F..... of Part III	ad. No. 171, 1995 rep. No. 101, 2006
S. 124ZZJ	ad. No. 171, 1995 am. No. 121, 1997 rep. No. 101, 2006
Subdiv. E of Div. 10F	ad. No. 171, 1995 rep. No. 101, 2006
Ss. 124ZZK, 124ZZL.....	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. F of Div. 10F	ad. No. 171, 1995 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124ZZM	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. G of Div. 10F of Part III	ad. No. 171, 1995 rep. No. 101, 2006
S. 124ZZN.....	ad. No. 171, 1995 am. No. 121, 1997 rep. No. 101, 2006
Subdiv. H of Div. 10F of Part III	ad. No. 171, 1995 rep. No. 101, 2006
S. 124ZZO	ad. No. 171, 1995 am. No. 46, 1998 rep. No. 101, 2006
Note to s. 124ZZO	ad. No. 46, 1998 rep. No. 101, 2006
S. 124ZZP	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. I of Div. 10F of Part III	ad. No. 171, 1995 rep. No. 101, 2006
Ss. 124ZZQ, 124ZZR.....	ad. No. 171, 1995 rep. No. 101, 2006
Division 11	
Heading to Div. 11 of Part III.....	rs. No. 85, 1967
S. 126.....	am. No. 6, 1946; No. 45, 1953; No. 143, 1965; No. 85, 1967; No. 54, 1971; No. 51, 1973; No. 108, 1981; No. 95, 1997; No. 93, 1999; No. 101, 2006
Heading to s. 127.....	am. No. 95, 1997
S. 127.....	am. No. 85, 1967; No. 51, 1973; No. 108, 1981; No. 95, 1997
S. 128.....	rs. No. 54, 1971
Division 11A	
Heading to Div. 11A of Part III	am. No. 26, 1974; No. 224, 1992
Div. 11A of Part III.....	ad. No. 85, 1967
Subdivision A	
Heading to Subdiv. A of Div. 11A of Part III	ad. No. 138, 1994
S. 128AAA	ad. No. 163, 2001 am. No. 73, 2004; No. 101, 2006
S. 128A	ad. No. 85, 1959 am. No. 18, 1960; No. 38, 1967 rs. No. 85, 1967 am. No. 4, 1968; No. 54, 1971; Nos. 51 and 165, 1973; No. 80, 1975; No. 108, 1981; No. 123, 1984; No. 49, 1986; No. 224, 1992; No. 181, 1994; No. 95, 1997; No. 163, 2001; Nos. 12 and 67, 2003; No. 21, 2005; No. 101, 2006; No. 15, 2007
S. 128AA.....	ad. No. 49, 1986
S. 128AB.....	ad. No. 49, 1986 am. No. 95, 1997
Ss. 128AC, 128AD.....	ad. No. 49, 1986

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 128AE.....	ad. No. 11, 1988 am. No. 129, 1989; No. 191, 1992; No. 82, 1994; No. 76, 1996; No. 48, 1998; No. 93, 1999; Nos. 55, 121, 123 and 146, 2001; No. 21, 2005; No. 58, 2006
S. 128AF.....	ad. No. 95, 1997
S. 128B.....	ad. No. 85, 1959 am. No. 17, 1961; No. 110, 1964; No. 103, 1965 rs. No. 85, 1967 am. No. 54, 1971; No. 51, 1973; No. 26, 1974; No. 80, 1975; No. 50, 1976; No. 108, 1981; No. 25, 1983; Nos. 58 and 62, 1987; Nos. 11 and 78, 1988; No. 105, 1989; Nos. 98 and 224, 1992; Nos. 56, 138 and 181, 1994; Nos. 95 and 121, 1997; Nos. 17 and 47, 1998; Nos. 70, 93 and 179, 1999; No. 163, 2001; No. 90, 2002; Nos. 12, 16 and 65, 2003; Nos. 73, 101 and 105, 2004; Nos. 23, 64 and 147, 2005; Nos. 32 and 101, 2006; Nos. 15, 78 and 143, 2007; No. 97, 2008
Note to s. 128B(1).....	ad. No. 147, 2005 am. No. 79, 2007
S. 128C.....	ad. No. 85, 1959 rs. No. 85, 1967 am. No. 108, 1981; No. 123, 1982; No. 123, 1984; No. 49, 1986; No. 191, 1992; Nos. 11 and 179, 1999; No. 44, 2000; No. 101, 2006
Note to s. 128C(3).....	am. No. 101, 2006
Heading to s. 128D.....	rs. No. 66, 2003
S. 128D.....	ad. No. 85, 1959 rs. Nos. 38 and 85, 1967 am. No. 54, 1971; No. 51, 1973; No. 26, 1974; No. 80, 1975; No. 108, 1981; No. 25, 1983; No. 58, 1987; No. 11, 1988; No. 138, 1994; No. 95, 1997; No. 66, 2003; No. 73, 2004; No. 147, 2005; Nos. 32 and 101, 2006
S. 128E.....	ad. No. 85, 1967 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 128EA.....	ad. No. 80, 1975 am. No. 25, 1983; No. 112, 1986 rep. No. 101, 2006
Heading to s. 128F.....	am. No. 93, 1999; No. 73, 2004; No. 21, 2005
Subhead. to s. 128F(5).....	am. No. 79, 2007
Subhead. to s. 128F(5A).....	am. No. 145, 2008
Subhead. to s. 128F(8).....	am. No. 21, 2005
S. 128F.....	ad. No. 54, 1971 am. No. 51, 1973; No. 108, 1981; No. 14, 1984; No. 112, 1986 rs. No. 95, 1997 am. No. 93, 1999; No. 162, 2001; No. 12, 2003; No. 21, 2005; No. 79, 2007; No. 145, 2008
Heading to s. 128FA.....	am. No. 21, 2005
Subhead. to s. 128FA(5).....	am. No. 21, 2005
Subhead. to s. 128FA(6).....	am. No. 21, 2005 rs. No. 79, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 128FA	ad. No. 73, 2004 am. No. 21, 2005; Nos. 15 and 79, 2007
Note to s. 128FA(2).....	am. No. 21, 2005
S. 128G	ad. No. 54, 1971 am. No. 108, 1981; No. 25, 1983; No. 112, 1986 rep. No. 101, 2006
S. 128GA	ad. No. 25, 1983 am. No. 112, 1986 rep. No. 101, 2006
S. 128GB	ad. No. 11, 1988 am. No. 82, 1994; No. 76, 1996; No. 93, 1999
S. 128H	ad. No. 54, 1971 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
Ss. 128J, 128K.....	ad. No. 54, 1971 am. No. 108, 1981; No. 63, 1998 rep. No. 101, 2006
S. 128L.....	ad. No. 54, 1971 am. No. 108, 1981 rep. No. 101, 2006
S. 128N	ad. No. 54, 1971 am. No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 128NA.....	ad. No. 49, 1986
S. 128NB.....	ad. No. 11, 1988 am. No. 191, 1992; No. 76, 1996; No. 44, 2000
S. 128NBA	ad. No. 101, 2006
S. 128P	ad. No. 54, 1971 am. Nos. 48 and 49, 1986 rs. No. 216, 1991
S. 128Q	ad. No. 54, 1971 am. No. 108, 1981
S. 128R	ad. No. 54, 1971 am. No. 164, 1973
Subdiv. B of Div. 11A	ad. No. 138, 1994 rep. No. 147, 2005
of Part III	
S. 128S	ad. No. 138, 1994 rep. No. 147, 2005
S. 128SA.....	ad. No. 138, 1994 rs. No. 96, 2004 rep. No. 147, 2005
S. 128T	ad. No. 138, 1994 rep. No. 147, 2005
S. 128TA	ad. No. 138, 1994 am. Nos. 16 and 66, 2003; No. 96, 2004 rep. No. 147, 2005
S. 128TB	ad. No. 138, 1994 am. Nos. 16 and 142, 2003; No. 96, 2004; No. 168, 2006 rep. No. 147, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 128TC.....	ad. No. 138, 1994 am. No. 63, 1998; No. 16, 2003 rep. No. 147, 2005
S. 128TD.....	ad. No. 138, 1994 am. No. 179, 1999; No. 23, 2005 rep. No. 147, 2005
S. 128TE.....	ad. No. 138, 1994; No. 11, 1999 am. No. 93, 1999; No. 23, 2005 rep. No. 147, 2005
S. 128TF.....	ad. No. 138, 1994 rep. No. 147, 2005
Division 11B	
Div. 11B of Part III.....	ad. No. 78, 1996
S. 128TG.....	ad. No. 78, 1996 am. Nos. 16, 46 and 63, 1998
S. 128TH.....	ad. No. 78, 1996 am. No. 122, 1997; No. 16, 1998
S. 128TI.....	ad. No. 78, 1996 am. No. 16, 1998
Note to s. 128TI.....	am. Nos. 16 and 46, 1998
S. 128TJ.....	ad. No. 78, 1996 am. No. 122, 1997; No. 63, 1998
S. 128TK.....	ad. No. 78, 1996 am. No. 55, 2001
S. 128TL.....	ad. No. 122, 1997
Division 11C	
Div. 11C of Part III.....	ad. No. 27, 1979
S. 128U.....	ad. No. 27, 1979 am. No. 108, 1981; No. 123, 1984; No. 152, 1997; No. 179, 1999; No. 67, 2003; No. 8, 2005; Nos. 101 and 125, 2006
S. 128V.....	ad. No. 27, 1979
S. 128W.....	ad. No. 27, 1979 am. No. 179, 1999
S. 128X.....	ad. No. 27, 1979 am. No. 108, 1981
Division 12	
S. 129.....	am. No. 108, 1981
S. 135.....	am. No. 216, 1973 (as am. by No. 20, 1974)
S. 135A.....	ad. No. 46, 1938 am. No. 51, 1973
Division 13	
Div. 13 of Part III.....	ad. No. 29, 1982
S. 136AA.....	ad. No. 29, 1982 am. No. 10, 2003; No. 58, 2006
S. 136AB.....	ad. No. 29, 1982 am. No. 121, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 136AC.....	ad. No. 29, 1982 am. No. 10, 2003
S. 136AD.....	ad. No. 29, 1982
S. 136AE.....	ad. No. 29, 1982 am. No. 10, 2003; No. 101, 2006
S. 136AF.....	ad. No. 29, 1982 am. No. 48, 1986; Nos. 5 and 216, 1991
S. 136AG.....	ad. No. 29, 1982 rep. No. 101, 2006
Division 13A	
Div. 13A of Part III.....	ad. No. 169, 1995
Subdivision A	
Subdiv. A of Div. 13A..... of Part III	ad. No. 169, 1995
S. 139.....	ad. No. 169, 1995
S. 139A.....	ad. No. 169, 1995 am. No. 41, 2005; No. 56, 2007
Subdivision B	
Subdiv. B of Div. 13A..... of Part III	ad. No. 169, 1995
S. 139B.....	ad. No. 169, 1995 am. No. 64, 2005
S. 139BA.....	ad. No. 169, 1995 am. No. 122, 1997
Subdivision C	
Subdiv. C of Div. 13A..... of Part III	ad. No. 169, 1995
S. 139C.....	ad. No. 169, 1995 am. No. 122, 1997; No. 41, 2005
Ss. 139CA, 139CB.....	ad. No. 169, 1995 am. No. 41, 2005
Note to s. 139CB(2).....	ad. No. 41, 2005
Subhead. to s. 139CC(2).....	am. No. 64, 2005
S. 139CC.....	ad. No. 169, 1995 am. No. 64, 2005
Note to s. 139CC.....	ad. No. 41, 2005
S. 139CD.....	ad. No. 169, 1995 am. No. 122, 1997 (as am. by No. 57, 2002); No. 147, 1997; No. 64, 2005
Note to s. 139CD(1) Renumbered Note 1.....	No. 64, 2005
Note 2 to s. 139CD(1).....	ad. No. 64, 2005
S. 139CDA.....	ad. No. 64, 2005
S. 139CE.....	ad. No. 169, 1995 am. No. 122, 1997; No. 147, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision D	
Subdiv. D of Div. 13A of Part III	ad. No. 169, 1995
S. 139D	ad. No. 169, 1995 am. No. 64, 2005
Ss. 139DA, 139DB	ad. No. 169, 1995
S. 139DC	ad. No. 169, 1995 am. No. 122, 1997
S. 139DD	ad. No. 169, 1995 am. Nos. 41 and 147, 2005
Heading to s. 139DE	am. No. 101, 2006
S. 139DE	ad. No. 169, 1995 am. No. 101, 2006
S. 139DF	ad. No. 169, 1995
S. 139DG	ad. No. 64, 2005
Subdivision DA	
Subdiv. DA of Div. 13A of Part III	ad. No. 41, 2005
S. 139DP	ad. No. 41, 2005
S. 139DQ	ad. No. 41, 2005 am. No. 32, 2006
S. 139DR	ad. No. 41, 2005 am. No. 147, 2005
S. 139DS	ad. No. 41, 2005
Subdivision DB	
Subdiv. DB of Div. 13A of Part III	ad. No. 56, 2007
S. 139DSA	ad. No. 56, 2007 am. No. 97, 2008
Ss. 139DSB–139DSG	ad. No. 56, 2007
S. 139DSH	ad. No. 56, 2007 am. No. 97, 2008
S. 139DSI	ad. No. 56, 2007
Subdivision E	
Subdiv. E of Div. 13A of Part III	ad. No. 169, 1995
S. 139E	ad. No. 169, 1995 am. No. 64, 2005; No. 143, 2007; No. 59, 2008
Subdivision F	
Subdiv. F of Div. 13A of Part III	ad. No. 169, 1995
S. 139F	ad. No. 169, 1995
S. 139FA	ad. No. 169, 1995 am. No. 122, 1997; No. 43, 2000; No. 41, 2005
S. 139FAA	ad. No. 43, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 139FB.....	ad. No. 169, 1995 am. No. 63, 1998
S. 139FC.....	ad. No. 169, 1995 am. No. 43, 2000
S. 139FD.....	ad. No. 169, 1995
S. 139FE.....	ad. No. 169, 1995 am. No. 43, 2000
S. 139FF.....	ad. No. 169, 1995
S. 139FG.....	ad. No. 169, 1995
S. 139FI.....	ad. No. 169, 1995 am. No. 122, 1997
S. 139FJ.....	ad. No. 169, 1995
Ss. 139FK.....	ad. No. 169, 1995 am. No. 43, 2000
Ss. 139FL, 139FM.....	ad. No. 169, 1995
S. 139FN.....	ad. No. 169, 1995 am. No. 122, 1997
Subdivision G	
Subdiv. G of Div. 13A..... of Part III	ad. No. 169, 1995
S. 139G.....	ad. No. 169, 1995
S. 139GA.....	ad. No. 169, 1995 rs. No. 64, 2005 am. No. 101, 2006; No. 143, 2007
S. 139GB.....	ad. No. 169, 1995 am. No. 32, 2006; No. 56, 2007
Note to s. 139GB(1).....	ad. No. 64, 2005
S. 139GBA.....	ad. No. 64, 2005
S. 139GC.....	ad. No. 169, 1995 am. No. 41, 2005
Ss. 139GCA–139GCC.....	ad. No. 41, 2005
S. 139GCD.....	ad. No. 56, 2007 am. No. 97, 2008
S. 139GD.....	ad. No. 169, 1995
S. 139GE.....	ad. No. 169, 1995 rs. No. 101, 2006
S. 139GF.....	ad. No. 169, 1995 am. Nos. 122 and 147, 1997
S. 139GG.....	ad. No. 169, 1995
S. 139GH.....	ad. No. 169, 1995 am. No. 122, 1997; Nos. 41 and 64, 2005; No. 56, 2007
Div. 14 of Part III.....	ad. No. 208, 1992 rep. No. 15, 2007
S. 140.....	ad. No. 208, 1992 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 140A, 140B	ad. No. 208, 1992 rep. No. 15, 2007
S. 140C	ad. No. 208, 1992 am. No. 82, 1993; Nos. 62 and 147, 1997; Nos. 94 and 165, 1999; No. 114, 2001; No. 101, 2004; No. 101, 2006 rep. No. 15, 2007
S. 140CA.....	ad. No. 7, 1993 rep. No. 15, 2007
Ss. 140D–140F	ad. No. 208, 1992 rep. No. 15, 2007
S. 140G.....	ad. No. 208, 1992 am. No. 53, 1995 rep. No. 15, 2007
S. 140H.....	ad. No. 208, 1992 am. No. 147, 1997 rep. No. 15, 2007
Ss. 140J–140L.....	ad. No. 208, 1992 rep. No. 15, 2007
Subhead. to s. 140M(6)	am. No. 94, 1999 rep. No. 15, 2007
S. 140M.....	ad. No. 208, 1992 am. No. 138, 1994; No. 53, 1995; No. 147, 1997; Nos. 94, 128 and 165, 1999; No. 114, 2001; No. 78, 2005; No. 101, 2006 rep. No. 15, 2007
Notes 1, 2 to s. 140M(1A)	am. No. 78, 2005 rep. No. 15, 2007
Ss. 140N, 140P	ad. No. 208, 1992 am. No. 147, 1997; Nos. 94 and 165, 1999; No. 101, 2006 rep. No. 15, 2007
S. 140Q.....	ad. No. 208, 1992 am. No. 114, 2001 rep. No. 15, 2007
S. 140RA.....	ad. No. 76, 1996 rep. No. 15, 2007
S. 140R.....	ad. No. 208, 1992 am. No. 138, 1994; No. 76, 1996; No. 114, 2001 rep. No. 15, 2007
S. 140S	ad. No. 208, 1992 am. No. 7, 1993 rep. No. 15, 2007
S. 140T	ad. No. 208, 1992 am. No. 138, 1994; No. 76, 1996; No. 114, 2001 rep. No. 15, 2007
S. 140U.....	ad. No. 208, 1992 rep. No. 15, 2007
Heading to s. 140UA.....	am. No. 78, 2005 rep. No. 15, 2007
S. 140UA.....	ad. No. 114, 2001 am. No. 78, 2005 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 140V–140Z	ad. No. 208, 1992 rep. No. 15, 2007
Ss. 140ZA, 140ZB.....	ad. No. 208, 1992 rep. No. 15, 2007
S. 140ZC.....	ad. No. 208, 1992 am. No. 7, 1993; No. 138, 1994 rep. No. 15, 2007
Ss. 140ZD, 140ZE	ad. No. 208, 1992 rep. No. 15, 2007
S. 140ZF	ad. No. 208, 1992; No. 138, 1994 am. No. 7, 1993 rep. No. 15, 2007
S. 140ZFA.....	ad. No. 114, 2001 am. No. 78, 2005 rep. No. 15, 2007
S. 140ZG.....	ad. No. 208, 1992 rep. No. 15, 2007
S. 140ZH.....	ad. No. 208, 1992 am. No. 147, 1997 rep. No. 15, 2007
Heading to s. 140ZI.....	am. No. 101, 2004 rep. No. 15, 2007
S. 140ZI	ad. No. 208, 1992 am. No. 138, 1994; No. 101, 2004 rep. No. 15, 2007
S. 140ZJ.....	ad. No. 208, 1992 am. No. 147, 1997 rep. No. 15, 2007
S. 140ZJA	ad. No. 147, 1997 am. Nos. 94 and 165, 1999; No. 101, 2006 rep. No. 15, 2007
Ss. 140ZK, 140ZL.....	ad. No. 208, 1992 rep. No. 15, 2007
S. 140ZM	ad. No. 208, 1992 am. No. 147, 1997 rep. No. 15, 2007
Heading to s. 140ZN.....	am. No. 78, 2005 rep. No. 15, 2007
S. 140ZN.....	ad. No. 208, 1992 am. No. 78, 2005 rep. No. 15, 2007
S. 140ZO.....	ad. No. 208, 1992 am. No. 147, 1997 rep. No. 15, 2007
Heading to s. 140ZP	am. No. 114, 2001 rep. No. 15, 2007
S. 140ZP	ad. No. 208, 1992 am. No. 114, 2001; No. 78, 2005 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 140ZQ.....	ad. No. 208, 1992 am. No. 101, 2003 rep. No. 15, 2007
Division 15	
S. 142.....	am. No. 18, 1960; No. 164, 1973; No. 80, 1975
S. 143.....	am. No. 108, 1981
S. 148.....	rs. No. 46, 1938; No. 11, 1947 am. No. 51, 1973; Nos. 108 and 110, 1981; No. 101, 1992; No. 83, 2004
Division 16	
S. 149.....	rs. No. 57, 1977 am. No. 126, 1977
Heading to s. 149A	am. No. 15, 2007
S. 149A	ad. No. 52, 1986 am. No. 138, 1987; No. 7, 1993; No. 46, 1998; No. 101, 2006; No. 15, 2007
S. 151.....	am. No. 123, 1978
S. 155.....	am. Nos. 57 and 126, 1977
S. 156.....	rs. No. 123, 1978 am. No. 149, 1979; No. 19, 1980; Nos. 14 and 103, 1983; No. 63, 1996; No. 46, 1998; No. 83, 1999; No. 101, 2006
S. 157.....	am. No. 50, 1942; No. 18, 1960; Nos. 51 and 164, 1973; No. 80, 1975; No. 57, 1978; No. 108, 1981; No. 101, 2006
S. 158.....	am. No. 110, 1964; No. 51, 1973; No. 108, 1981
S. 158A	ad. No. 44, 1951 am. No. 50, 1966; No. 51, 1973; No. 126, 1977; No. 108, 1981 rs. No. 103, 1983
Div. 16A of Part III.....	ad. No. 138, 1987 rep. No. 101, 2006
S. 158BA.....	ad. No. 46, 1998 rep. No. 101, 2006
S. 158B	ad. No. 45, 1953 am. No. 51, 1973; No. 108, 1981 rs. No. 138, 1987 am. No. 135, 1990 rep. No. 101, 2006
S. 158C	ad. No. 45, 1953 am. No. 143, 1965; No. 108, 1981 rs. No. 138, 1987 rep. No. 101, 2006
S. 158D	ad. No. 45, 1953 am. No. 51, 1973; No. 108, 1981 rs. No. 138, 1987 rep. No. 101, 2006
S. 158E	ad. No. 45, 1953 am. No. 108, 1981 rs. No. 138, 1987 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 158F, 158G.....	ad. No. 138, 1987 rep. No. 101, 2006
S. 158H.....	ad. No. 138, 1987 am. No. 46, 1998 rep. No. 101, 2006
Ss. 158J–158L.....	ad. No. 138, 1987 rep. No. 101, 2006
Div. 16C of Part III.....	ad. No. 205, 1976 rep. No. 101, 2006
S. 159GA.....	ad. No. 205, 1976 am. No. 174, 1984; Nos. 56 and 107, 1989; No. 238, 1992; No. 46, 1998 rep. No. 101, 2006
S. 159GC.....	ad. No. 205, 1976 am. No. 147, 1979; No. 174, 1984; No. 107, 1989 rs. No. 56, 1989 am. No. 238, 1992; No. 85, 1998 rep. No. 101, 2006
S. 159GD.....	ad. No. 205, 1976 am. No. 174, 1984; Nos. 56 and 107, 1989; No. 238, 1992 rep. No. 101, 2006
S. 159GDA.....	ad. No. 56, 1989 am. No. 11, 1999 rep. No. 101, 2006
Division 16D	
Div. 16D of Part III.....	ad. No. 123, 1985
S. 159GE.....	ad. No. 123, 1985 am. No. 169, 1995; Nos. 39, 121 and 174, 1997; No. 54, 1999; Nos. 72 and 77, 2001; No. 101, 2006
Note to s. 159GE(1).....	ad. No. 77, 2001
S. 159GEA.....	ad. No. 169, 1995
S. 159GF.....	ad. No. 123, 1985 am. No. 80, 1992; Nos. 39 and 121, 1997; No. 54, 1999; No. 77, 2001; No. 101, 2006
S. 159GG.....	ad. No. 123, 1985
S. 159GH.....	ad. No. 123, 1985 am. No. 164, 2007
S. 159GJ.....	ad. No. 123, 1985 am. No. 18, 1993; No. 31, 1995; Nos. 39 and 121, 1997; No. 54, 1999; No. 77, 2001; No. 101, 2006
S. 159GK.....	ad. No. 123, 1985
S. 159GL.....	ad. No. 123, 1985 am. No. 39, 1997; No. 101, 2006
S. 159GM.....	ad. No. 123, 1985 am. No. 121, 1997; No. 77, 2001; No. 101, 2006
Ss. 159GN, 159GO.....	ad. No. 123, 1985
Division 16E	
Div. 16E of Part III.....	ad. No. 49, 1986

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159GP	ad. No. 49, 1986 am. No. 138, 1987; Nos. 7 and 82, 1993; No. 82, 1994; No. 44, 1999; No. 101, 2004
S. 159GQ	ad. No. 49, 1986 rs. No. 82, 1994
Ss. 159GQA–159GQD	ad. No. 82, 1994
Ss. 159GR, 159GS	ad. No. 49, 1986 am. No. 82, 1994
S. 159GT	ad. No. 49, 1986 am. No. 138, 1987; No. 82, 1994; Nos. 39 and 95, 1997
Ss. 159GU, 159GV	ad. No. 49, 1986
Ss. 159GW–159GY	ad. No. 49, 1986 am. No. 82, 1994
S. 159GZ	ad. No. 49, 1986 am. No. 11, 1988
Div. 16F of Part III	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZA	ad. No. 138, 1987 am. No. 58, 1990; No. 4, 1991; Nos. 95 and 174, 1997; Nos. 48 and 63, 1998 rep. No. 162, 2001
S. 159ZAA	ad. No. 121, 2001
S. 159GZB	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZC	ad. No. 138, 1987 am. No. 78, 1988; No. 135, 1990 rep. No. 162, 2001
S. 159GZE	ad. No. 138, 1987 am. No. 58, 1990; No. 95, 1997 rep. No. 162, 2001
S. 159GZF	ad. No. 138, 1987 am. No. 78, 1988; Nos. 4 and 100, 1991; No. 174, 1997 rep. No. 162, 2001
S. 159GZG	ad. No. 138, 1987 am. No. 78, 1988; Nos. 4 and 100, 1991; No. 174, 1997; No. 63, 1998; No. 93, 1999; No. 58, 2000 rep. No. 162, 2001
Ss. 159GZH–159GZJ	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZJA	ad. No. 4, 1991 am. No. 100, 1991 rep. No. 162, 2001
S. 159GZJB	ad. No. 4, 1991 rep. No. 162, 2001
S. 159GZK	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZL	ad. No. 138, 1987 am. No. 95, 1997 rep. No. 162, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159GZLA	ad. No. 4, 1991 am. No. 100, 1991; No. 48, 1998 rep. No. 162, 2001
S. 159GZLB	ad. No. 100, 1991 rep. No. 162, 2001
S. 159GZM.....	ad. No. 138, 1987 am. No. 174, 1997 rep. No. 162, 2001
S. 159GZN.....	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZQ.....	ad. No. 138, 1987 rep. No. 162, 2001
S. 159GZR.....	ad. No. 138, 1987 am. No. 78, 1988 rep. No. 162, 2001
Ss. 159GZS–159GZW.....	ad. No. 138, 1987 am. No. 4, 1991; No. 101, 1992 rep. No. 162, 2001
S. 159GZX	ad. No. 138, 1987 rep. No. 162, 2001
Div. 16G of Part III	ad. No. 95, 1988 rep. No. 162, 2001
S. 159GZY	ad. No. 95, 1988 am. No. 95, 1997 rep. No. 162, 2001
S. 159GZZ	ad. No. 95, 1988 rep. No. 162, 2001
S. 159GZZA.....	ad. No. 95, 1988 am. No. 95, 1997 rep. No. 162, 2001
Ss. 159GZZB, 159GZZC	ad. No. 95, 1988 rep. No. 162, 2001
S. 159GZZD.....	ad. No. 95, 1988 rep. No. 162, 2001
S. 159GZZE.....	ad. No. 95, 1988 rep. No. 162, 2001
S. 159GZZF.....	ad. No. 95, 1988 am. No. 153, 1988 rep. No. 162, 2001
Div. 16H of Part III.....	ad. No. 153, 1988 rep. No. 101, 2006
Ss. 159GZZG–159GZZI.....	ad. No. 153, 1988 rep. No. 101, 2006
S. 159GZZJ.....	ad. No. 153, 1988 am. No. 57, 1990; No. 48, 1991 rep. No. 101, 2006
S. 159GZZK.....	ad. No. 153, 1988 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159GZZKA.....	ad. No. 4, 1991 rep. No. 101, 2006
Ss. 159GZZL–159GZZO.....	ad. No. 153, 1988 rep. No. 101, 2006
Ss. 159GZZQ–159GZZS	ad. No. 153, 1988 rep. No. 101, 2006
S. 159GZZT	ad. No. 153, 1988 am. No. 57, 1990; No. 39, 1997; No. 41, 2005 rep. No. 101, 2006
Ss. 159GZZU, 159GZZV	ad. No. 153, 1988 rep. No. 101, 2006
Heading to Subdiv. C..... of Div. 16H of Part III	am. No. 4, 1991 rep. No. 101, 2006
Ss. 159GZZW–159GZZZ.....	ad. No. 153, 1988 rep. No. 101, 2006
S. 159GZZZB.....	ad. No. 153, 1988 rep. No. 101, 2006
Subdiv. D of Div. 16H..... of Part III	ad. No. 4, 1991 rep. No. 101, 2006
S. 159GZZZBA	ad. No. 4, 1991 rep. No. 101, 2006
S. 159GZZZBB	ad. No. 4, 1991 am. No. 46, 1998 rep. No. 101, 2006
Ss. 159GZZZBC,	ad. No. 4, 1991
159GZZZBD	rs. No. 46, 1998 rep. No. 101, 2006
S. 159GZZZBE	ad. No. 4, 1991 am. No. 46, 1998 (as am. by No. 57, 2002) rep. No. 101, 2006
Subdiv. E of Div. 16H..... of Part III	ad. No. 4, 1991 rep. No. 101, 2006
Ss. 159GZZZBF–..... 159GZZZBI	ad. No. 4, 1991 rep. No. 101, 2006
Division 16J	
Div. 16J of Part III	ad. No. 97, 1989
S. 159GZZZC.....	ad. No. 97, 1989 am. No. 135, 1990; No. 55, 2001; No. 101, 2006
Ss. 159GZZZD, 159GZZZE	ad. No. 97, 1989
Ss. 159GZZZF, 159GZZZG	ad. No. 97, 1989 am. No. 46, 1998
S. 159GZZZH.....	ad. No. 97, 1989 am. No. 46, 1998; No. 94, 1999
S. 159GZZZI	ad. No. 97, 1989
Division 16K	
Div. 16K of Part III.....	ad. No. 58, 1990

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision AA	
Subdiv. AA of Div. 16K..... of Part III	ad. No. 163, 2001
S. 159GZZZIA	ad. No. 163, 2001
Subdivision A	
Ss. 159GZZZJ–159GZZZM	ad. No. 58, 1990
Subdivision B	
S. 159GZZZN.....	ad. No. 58, 1990 rs. No. 46, 1998
Subdivision C	
S. 159GZZZP	ad. No. 58, 1990 am. No. 82, 1994; No. 170, 1995; No. 31, 1996; Nos. 46 and 63, 1998; No. 163, 2001
Subhead. to s. 159GZZZQ(8) ...	rs. No. 23, 2005
S. 159GZZZQ	ad. No. 58, 1990 am. No. 82, 1994; No. 170, 1995; No. 31, 1996; Nos. 46 and 63, 1998; Nos. 23 and 147, 2005
Subdivision D	
S. 159GZZZR.....	ad. No. 58, 1990
S. 159GZZZS.....	ad. No. 58, 1990 am. No. 46, 1998
Division 16L	
Div. 16L of Part III	ad. No. 98, 1992
Note to Div. 16L of Part III.....	ad. No. 104, 1997
Subdivision A	
S. 159GZZZD	ad. No. 163, 1994
Subdivision B	
S. 159GZZZE.....	ad. No. 98, 1992 am. Nos. 82 and 163, 1994
S. 159GZZZF.....	ad. No. 98, 1992
S. 159GZZZG	ad. No. 163, 1994 am. No. 170, 1995; No. 79, 2000; No. 15, 2007
S. 159GZZZH	ad. No. 163, 1994 am. No. 11, 1999; No. 67, 2003; No. 161, 2005; No. 101, 2006
Division 17	
Heading to Div. 17 of Part III.....	am. No. 58, 1941
Subdivision A	
Subdiv. A of Div. 17	ad. No. 117, 1975
S. 159H.....	ad. No. 117, 1975 am. No. 124, 1984; No. 135, 1990; No. 97, 2008
S. 159HA.....	ad. No. 70, 1989 am. No. 138, 1994; Nos. 82 and 102, 1999; No. 101, 2006; No. 75, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159J.....	ad. No. 117, 1975 am. Nos. 50 and 56, 1976; Nos. 57 and 123, 1978; No. 57, 1980; Nos. 108 and 109, 1981; No. 106, 1982; No. 103, 1983; Nos. 123, 124 and 165, 1984; No. 49, 1985; No. 52, 1986; No. 108, 1987; No. 78, 1988; No. 70, 1989; No. 135, 1990; Nos. 100 and 216, 1991; No. 101, 1992; Nos. 138 and 174, 1994; No. 106, 1995; No. 63, 1996; Nos. 121, 196, 1997; No. 197, 1997 (as am. by No. 11, 1999); No. 202, 1997; Nos. 41, 46 and 128, 1998; Nos. 13 and 82, 1999; No. 83, 1999 (as am. by No. 58, 2006); No. 45, 2000; No. 167, 2001; No. 101, 2003; Nos. 59 and 60, 2004; Nos. 55 and 63, 2005; Nos. 41 and 101, 2006; Nos. 32, 66, 75, 82, 113 and 182, 2007; Nos. 19, 63, 92, 97, 131 and 144, 2008
S. 159K.....	ad. No. 117, 1975 am. No. 56, 1976; No. 57, 1980; Nos. 108 and 109, 1981; No. 106, 1982; No. 124, 1984; No. 70, 1989; No. 135, 1990; No. 82, 1999; No. 75, 2007
S. 159L.....	ad. No. 117, 1975 am. No. 56, 1976; No. 57, 1980; Nos. 108 and 109, 1981; No. 106, 1982; No. 70, 1989; No. 135, 1990; Nos. 100 and 216, 1991; No. 82, 1999; No. 45, 2000; No. 63, 2005; Nos. 75 and 82, 2007; No. 63, 2008
S. 159M.....	ad. No. 117, 1975
S. 159N.....	ad. No. 58, 1993 am. No. 45, 2003; No. 55, 2006; No. 76, 2007; No. 29, 2008
S. 159P.....	ad. No. 117, 1975 am. No. 56, 1976; No. 108, 1981; No. 29, 1982; No. 123, 1984; No. 123, 1985; No. 109, 1986; No. 87, 1990; No. 48, 1991; No. 56, 1997; No. 13, 1999; No. 65, 2003; No. 95, 2004; No. 13, 2006; No. 63, 2008
Subdiv. AAA of Div. 17..... of Part III	ad. No. 105, 1989 rep. No. 15, 2007
S. 159S.....	ad. No. 105, 1989 am. Nos. 7 and 57, 1993; No. 46, 1998; No. 41, 2005 rep. No. 15, 2007
S. 159SA.....	ad. No. 105, 1989 rs. No. 7, 1993 rep. No. 15, 2007
S. 159SF.....	ad. No. 105, 1989 rep. No. 15, 2007
S. 159SG.....	ad. No. 105, 1989 am. No. 7, 1993 rep. No. 15, 2007
Subdiv. AAB of Div. 17..... of Part III	ad. No. 105, 1989 rep. No. 15, 2007
S. 159SJ.....	ad. No. 105, 1989 am. No. 208, 1992; No. 169, 1995; No. 62, 1997; No. 101, 2004 rep. No. 15, 2007
S. 159SL Renumbered s. 275C.....	No. 208, 1992

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159SM	ad. No. 105, 1989 am. No. 208, 1992; No. 168, 2001 rep. No. 15, 2007
Ss. 159SS, 159ST	ad. No. 105, 1989 rep. No. 15, 2007
S. 159SU.....	ad. No. 105, 1989 am. No. 208, 1992 rep. No. 15, 2007
Subdiv. AAC of Div. 17 of Part III	ad. No. 208, 1992 rep. No. 111, 2003
S. 159SZ.....	ad. No. 208, 1992 am. No. 82, 1993; No. 62, 1997; No. 17, 1999 rep. No. 111, 2003
Subdiv. AACA of Div. 17 of Part III	ad. No. 147, 1997 rep. No. 15, 2007
S. 159T	ad. No. 147, 1997 am. No. 17, 1999; No. 78, 2005 rep. No. 15, 2007
Ss. 159TA, 159TB.....	ad. No. 147, 1997 rep. No. 15, 2007
S. 159TC.....	ad. No. 147, 1997 am. No. 147, 1997 rep. No. 15, 2007
Subdiv. AAD of Div. 17 of Part III	ad. No. 56, 1994 rep. No. 101, 2006
S. 159U	ad. No. 56, 1994 rep. No. 101, 2006
S. 159UA.....	ad. No. 56, 1994 rep. No. 101, 2006
S. 159UB.....	ad. No. 56, 1994 am. No. 58, 2006 rep. No. 101, 2006
S. 159UC	ad. No. 56, 1994 am. No. 121, 1997; No. 77, 2001 rep. No. 101, 2006
S. 159UD	ad. No. 56, 1994 am. No. 58, 2006 rep. No. 101, 2006
S. 159UE.....	ad. No. 56, 1994 rep. No. 101, 2006
S. 159UF.....	ad. No. 56, 1994 am. No. 58, 2006 rep. No. 101, 2006
Ss. 159UG–159UW	ad. No. 56, 1994 rep. No. 101, 2006
S. 159UX.....	ad. No. 56, 1994 am. No. 146, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159UY.....	ad. No. 56, 1994 rep. No. 58, 2006
Subdivision AB	
Subdiv. AB of Div. 17 of Part III	ad. No. 153, 1988
S. 159ZR.....	ad. No. 153, 1988 am. No. 135, 1990; Nos. 100 and 216, 1991; Nos. 121, 122 and 152, 1997; Nos. 41 and 46, 1998; Nos. 54, 94 and 179, 1999; No. 101, 2006; Nos. 4 and 15, 2007
Ss. 159ZRA–159ZRD	ad. No. 153, 1988
Subdivision B	
Heading to Subdiv. B of Div. 17 of Part III	ad. No. 117, 1975
Ss. 160AAAA, 160AAAB.....	ad. No. 78, 1996 am. No. 44, 2001; No. 57, 2002
S. 160AAA	ad. No. 106, 1982 am. No. 124, 1984; No. 123, 1985; No. 173, 1985 (as am. by No. 49, 1986); Nos. 109 and 154, 1986; No. 108, 1987; Nos. 78 and 95, 1988; No. 107, 1989; No. 44, 2001 rs. No. 57, 1990 am. Nos. 100 and 216, 1991; No. 191, 1992; Nos. 125, 138, 174 and 184, 1994; No. 169, 1995; No. 1, 1996; Nos. 122 and 197, 1997; Nos. 45 and 102, 1998; No. 94, 1999; Nos. 76 and 144, 2000; No. 80, 2006; No. 130, 2007; Nos. 38 and 97, 2008
S. 160AAB	ad. No. 14, 1984 am. No. 47, 1984; No. 173, 1985; Nos. 109 and 154, 1986; No. 11, 1988; Nos. 97 and 105, 1989; No. 55, 1993; No. 89, 2000; No. 101, 2004; No. 15, 2007
S. 160AB.....	ad. No. 22, 1942 am. No. 143, 1965; No. 70, 1968; No. 51, 1973; No. 108, 1981 rep. No. 101, 2006
S. 160ABB	ad. No. 76, 1984 rep. No. 101, 2006
S. 160ACE	ad. No. 100, 1991 rep. No. 101, 2006
S. 160AD.....	ad. No. 22, 1942 am. No. 37, 1945; No. 48, 1950 rs. No. 143, 1965
S. 160ADA	ad. No. 47, 1998
Note to s. 160ADA	am. No. 143, 2007
Heading to Div. 18 of Part III.....	am. No. 164, 1973 rep. No. 143, 2007
Div. 18 of Part III	ad. No. 51, 1986 rep. No. 143, 2007
S. 160ADB	ad. No. 163, 2001 rep. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AE.....	ad. No. 18, 1960 am. No. 94, 1961; No. 110, 1964; No. 143, 1965; No. 50, 1966; Nos. 76 and 85, 1967; Nos. 51 and 164, 1973; No. 126, 1974 rs. No. 80, 1975 am. No. 117, 1975; No. 87, 1978; No. 108, 1981 rs. No. 51, 1986 am. No. 11, 1988; No. 5, 1991; No. 190, 1992; Nos. 162 and 163, 2001; No. 96, 2004; No. 101, 2006 rep. No. 143, 2007
S. 160AEA	ad. No. 5, 1991 am. No. 48, 1991; No. 190, 1992; No. 47, 1998; No. 96, 2004; No. 64, 2005; No. 79, 2007 rep. No. 143, 2007
S. 160AF	ad. No. 18, 1960 am. No. 94, 1961; No. 110, 1964; No. 50, 1966; No. 47, 1972; Nos. 51 and 164, 1973; No. 126, 1974 rs. No. 80, 1975 am. No. 117, 1975; No. 108, 1981 rs. No. 51, 1986 am. Nos. 11 and 78, 1988; No. 57, 1990; Nos. 5 and 100, 1991; No. 224, 1992; No. 181, 1994; No. 39, 1997; No. 162, 2001; No. 51, 2002; No. 10, 2003; Nos. 58 and 101, 2006; No. 15, 2007 rep. No. 143, 2007
S. 160AFA.....	ad. No. 51, 1986 am. No. 78, 1988; No. 5, 1991 rep. No. 143, 2007
S. 160FAA	ad. No. 11, 1988 rep. No. 143, 2007
S. 160AFB.....	ad. No. 51, 1986 am. No. 76, 1996; No. 174, 1997 rep. No. 143, 2007
S. 160AFC	ad. No. 51, 1986 am. No. 78, 1988; No. 5, 1991 rep. No. 96, 2004
S. 160AFCA	ad. No. 5, 1991 am. No. 155, 1997 rep. No. 143, 2007
S. 160AFCB.....	ad. No. 5, 1991 rs. No. 96, 2004 rep. No. 143, 2007
S. 160AFCC.....	ad. No. 5, 1991 rep. No. 96, 2004
S. 160AFCD.....	ad. No. 5, 1991 rs. No. 66, 2003 am. Nos. 96 and 105, 2004 rep. No. 143, 2007
Ss. 160AFCE–160AFCH	ad. No. 190, 1992 am. No. 41, 1998 rep. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AFCJ.....	ad. No. 190, 1992 rs. No. 66, 2003 am. Nos. 96 and 105, 2004 rep. No. 143, 2007
S. 160AFCK.....	ad. No. 190, 1992 am. No. 18, 1993 rep. No. 143, 2007
S. 160AFD	ad. No. 51, 1986 am. Nos. 11 and 78, 1988; No. 57, 1990 rs. No. 5, 1991 am. No. 138, 1994; No. 76, 1996; Nos. 17 and 46, 1998; No. 162, 2001; No. 83, 2004; No. 101, 2006 rep. No. 143, 2007
S. 160AFE.....	ad. No. 51, 1986 am. No. 138, 1987; Nos. 11 and 78, 1988; No. 5, 1991; No. 101, 1992 rs. No. 90, 2002 am. No. 83, 2004 rep. No. 143, 2007
S. 160AFF	ad. No. 51, 1986 am. No. 107, 1989 rep. No. 143, 2007
Div. 18A of Part III.....	ad. No. 111, 1981 rep. No. 143, 2007
S. 160AGA	ad. No. 111, 1981 am. No. 51, 1986; No. 101, 2006 rep. No. 143, 2007
Heading to Div. 18B..... of Part III	rep. No. 143, 2007
Div. 18B of Part III.....	ad. No. 14, 1984 rep. No. 143, 2007
S. 160AGB	ad. No. 14, 1984 am. No. 51, 1986 rep. No. 101, 2006
Div. 19 of Part III	ad. No. 18, 1960 rep. No. 143, 2007
S. 160AH.....	ad. No. 18, 1960 am. No. 4, 1968; Nos. 51 and 164, 1973; No. 80, 1975; No. 111, 1981; No. 14, 1984; No. 51, 1986; No. 11, 1999 rep. No. 143, 2007
S. 160AHA	ad. No. 47, 1998 rep. No. 143, 2007
S. 160AI	ad. No. 18, 1960 am. No. 94, 1961; Nos. 51 and 164, 1973; No. 80, 1975; No. 87, 1978; No. 108, 1981; No. 73, 1989 rep. No. 143, 2007
Ss. 160AIA, 160AIB	ad. No. 20, 1990 rep. No. 143, 2007
S. 160AJ	ad. No. 18, 1960 am. No. 216, 1991 rep. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AJA	ad. No. 20, 1990 rep. No. 143, 2007
S. 160AK.....	ad. No. 18, 1960 am. No. 94, 1961; No. 87, 1978; No. 108, 1981; No. 51, 1986; No. 78, 1988; No. 73, 1989; No. 20, 1990 rep. No. 143, 2007
S. 160AL	ad. No. 18, 1960 am. No. 51, 1973; No. 108, 1981; No. 48, 1986 rs. No. 216, 1991 rep. No. 143, 2007
S. 160AM	ad. No. 18, 1960 am. No. 94, 1961; No. 4, 1968; No. 108, 1981; No. 51, 1986; No. 20, 1990; No. 101, 1992 rep. No. 143, 2007
S. 160AN.....	ad. No. 18, 1960 am. No. 94, 1961; Nos. 51 and 164, 1973; No. 80, 1975; No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 73, 1989; No. 216, 1991; Nos. 11 and 178, 1999; No. 23, 2005; No. 101, 2006 rep. No. 143, 2007
S. 160AO	ad. No. 18, 1960 am. No. 51, 1973; No. 87, 1978; No. 51, 1986; No. 73, 1989; No. 174, 1997; No. 107, 2003; No. 96, 2004; No. 4, 2007 rep. No. 143, 2007
Part IIIAA.....	ad. No. 58, 1987 rep. No. 101, 2006
Div. 1AAAA of Part IIIAA.....	ad. No. 48, 2002 rep. No. 101, 2006
S. 160AOAA.....	ad. No. 48, 2002 rep. No. 101, 2006
Div. 1AAA of Part IIIAA	ad. No. 163, 2001 rep. No. 101, 2006
S. 160AOA	ad. No. 163, 2001 am. No. 162, 2005 rep. No. 101, 2006
S. 160APA	ad. No. 58, 1987 am. Nos. 62 and 108, 1987; Nos. 105 and 167, 1989; Nos. 20, 57 and 58, 1990; Nos. 48, 100 and 216, 1991; Nos. 35 and 98, 1992; Nos. 17 and 118, 1993; No. 181, 1994; Nos. 170 and 171, 1995 (as am. by No. 41, 1998); No. 31, 1996; No. 62, 1997; Nos. 47 and 63, 1998; Nos. 16 and 93, 1999; Nos. 58, 66, 79, 89 and 156, 2000; Nos. 73 and 163, 2001; No. 57, 2002 rep. No. 101, 2006
S. 160APAAAA	ad. No. 163, 2001 rep. No. 101, 2006
S. 160APAAAB	ad. No. 163, 2001 am. No. 107, 2003; No. 162, 2005 rep. No. 101, 2006
S. 160APAAA.....	ad. No. 171, 1995 am. No. 62, 1997; No. 11, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160APAA	ad. No. 57, 1990 rep. No. 101, 2006
S. 160APB	ad. No. 58, 1987 rep. No. 101, 2006
S. 160APBA	ad. No. 171, 1995 rep. No. 101, 2006
S. 160APBB	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160APBC	ad. No. 89, 2000 rs. No. 73, 2001 rep. No. 101, 2006
S. 160APBD	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160APBE	ad. No. 89, 2000 rep. No. 101, 2006
Ss. 160APC, 160APD	ad. No. 58, 1987 rep. No. 101, 2006
S. 160APE	ad. No. 58, 1987 rs. No. 47, 1998 rep. No. 101, 2006
Ss. 160APF, 160APG	ad. No. 58, 1987 rep. No. 101, 2006
S. 160APH	ad. No. 58, 1987 am. No. 136, 2002 rep. No. 101, 2006
S. 160APHA	ad. No. 108, 1987 rep. No. 101, 2006
S. 160APHB	ad. No. 48, 1991 am. No. 62, 1997 rs. No. 89, 2000 rep. No. 101, 2006
Note to s. 160APHB(2)(b)	ad. No. 16, 1999 rep. No. 101, 2006
Div. 1AA of Part IIIA	ad. No. 93, 1999 rep. No. 101, 2006
Ss. 160APHBA, 160APHBB	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHBC	ad. No. 93, 1999 am. No. 163, 2001 rep. No. 101, 2006
Ss. 160APHBD, 160APHBE	ad. No. 93, 1999 rep. No. 101, 2006
Ss. 160APHBF, 160APHBG	ad. No. 93, 1999 am. No. 83, 2004 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160APBH	ad. No. 93, 1999 am. Nos. 55 and 163, 2001 rep. No. 101, 2006
S. 160APHI	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APBJ	ad. No. 93, 1999 am. No. 55, 2001 rep. No. 101, 2006
Div. 1A of Part IIIA	ad. No. 93, 1999 rep. No. 101, 2006
Ss. 160APHC–160APHG	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHH	ad. No. 93, 1999 am. No. 58, 2000 rep. No. 101, 2006
S. 160API	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHJ	ad. No. 93, 1999 am. No. 77, 2001 rep. No. 101, 2006
Ss. 160APHK–160APHN	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHNA	ad. No. 93, 1999 rep. No. 101, 2006
Ss. 160APHO–160APHQ	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHR	ad. No. 93, 1999 am. No. 58, 2000 rep. No. 101, 2006
S. 160APHS	ad. No. 93, 1999 rep. No. 101, 2006
S. 160APHT	ad. No. 93, 1999 rs. No. 89, 2000 rep. No. 101, 2006
S. 160APHU	ad. No. 93, 1999 am. No. 58, 2000 rep. No. 101, 2006
S. 160APJ	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
Heading to Subdiv. B of Div. 2 of Part IIIA	rs. No. 89, 2000 rep. No. 101, 2006
S. 160APK	ad. No. 58, 1987 am. No. 20, 1990 rep. No. 101, 2006
S. 160APKA	ad. No. 48, 1991 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160APL.....	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160APM.....	ad. No. 181, 1994 rs. No. 171, 1995 rep. No. 101, 2006
Note to s. 160APM.....	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APMAA.....	ad. No. 181, 1994 rs. No. 171, 1995 rep. No. 101, 2006
S. 160APMAB.....	ad. No. 181, 1994 am. No. 171, 1995; No. 89, 2000; No. 73, 2001 rep. No. 101, 2006
S. 160APMA.....	ad. No. 20, 1990 rs. No. 4, 1991 am. No. 118, 1993 rep. No. 101, 2006
S. 160APMB.....	ad. No. 20, 1990 am. No. 216, 1991; No. 118, 1993 rep. No. 101, 2006
S. 160APMC.....	ad. No. 216, 1991 am. No. 118, 1993 rep. No. 101, 2006
S. 160APMD.....	ad. No. 216, 1991 am. No. 118, 1993; No. 181, 1994; No. 171, 1995; No. 89, 2000 rep. No. 101, 2006
S. 160APME.....	ad. No. 89, 2000 rep. No. 101, 2006
Heading to s. 160APMF.....	am. No. 73, 2001 rep. No. 101, 2006
S. 160APMF.....	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160APMG.....	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APP.....	ad. No. 58, 1987 am. Nos. 62 and 108, 1987; No. 105, 1989; Nos. 48 and 216, 1991; No. 98, 1992; No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999; No. 89, 2000 rep. No. 101, 2006
S. 160APPA.....	ad. No. 93, 1999 am. No. 89, 2000 rep. No. 101, 2006
S. 160APQ.....	ad. No. 58, 1987 am. No. 62, 1987; No. 105, 1989; Nos. 48 and 216, 1991; No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999; No. 89, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160APQA, 160APQB.....	ad. No. 216, 1991 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
Ss. 160APU, 160APV.....	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160APVA.....	ad. No. 181, 1994 am. No. 171, 1995; No. 62, 1997; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006
Heading to s. 160APVB.....	am. No. 171, 1995 rep. No. 101, 2006
S. 160APVB.....	ad. No. 181, 1994 am. No. 171, 1995 rep. No. 101, 2006
S. 160APVBA.....	ad. No. 216, 1991 am. No. 118, 1993; No. 171, 1995; No. 62, 1997; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006
S. 160APVBB.....	ad. No. 216, 1991 am. No. 118, 1993; No. 171, 1995; No. 62, 1997; No. 16, 1999 rep. No. 101, 2006
S. 160APVC.....	ad. No. 48, 1991 am. No. 216, 1991; No. 118, 1993; No. 62, 1997; No. 16, 1999 rep. No. 101, 2006
S. 160APVD.....	ad. No. 48, 1991 am. No. 118, 1993; No. 171, 1995; No. 62, 1997; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006
Ss. 160APVF, 160APVG.....	ad. No. 216, 1991 am. No. 118, 1993 rep. No. 101, 2006
S. 160APVH.....	ad. No. 118, 1993 am. No. 181, 1994; No. 171, 1995; No. 16, 1999 rep. No. 101, 2006
Subdiv. BB of Div. 2..... of Part IIIAA	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APVI.....	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
Heading to s. 160APVJ.....	am. No. 73, 2001 rep. No. 101, 2006
S. 160APVJ.....	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
Ss. 160APVK–160APVM.....	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APVN.....	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160APVO.....	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APVI (second occurring) Renumbered s. 160APVP.....	ad. No. 79, 2000 No. 156, 2000
S. 160APVP.....	rep. No. 101, 2006
Subdiv. BA of Div. 2 of..... Part IIIAA	ad. No. 89, 2000 rep. No. 101, 2006
S. 160APVAA.....	ad. No. 89, 2000 rep. No. 101, 2006
Heading to Subdiv. C..... of Div. 2 of Part IIIAA	rs. No. 89, 2000 rep. No. 101, 2006
S. 160APW	ad. No. 58, 1987 am. No. 20, 1990 rep. No. 101, 2006
S. 160APWA.....	ad. No. 48, 1991 rep. No. 101, 2006
S. 160APWB.....	ad. No. 216, 1991 rep. No. 101, 2006
S. 160APX	ad. No. 58, 1987 am. No. 62, 1987; No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160APXA.....	ad. No. 62, 1987 am. No. 118, 1993 rep. No. 101, 2006
S. 160APY	ad. No. 181, 1994 rs. No. 171, 1995 rep. No. 101, 2006
S. 160APYA.....	ad. No. 181, 1994 rs. No. 171, 1995 am. No. 11, 1999 rep. No. 101, 2006
S. 160APYB.....	ad. No. 20, 1990 am. No. 118, 1993 rep. No. 101, 2006
S. 160APYBA.....	ad. No. 216, 1991 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160APYBAA.....	ad. No. 89, 2000 rep. No. 101, 2006
Heading to s. 160APYBAB	am. No. 73, 2001 rep. No. 101, 2006
S. 160APYBAB	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160APYBB.....	ad. No. 216, 1991 am. No. 118, 1993; No. 181, 1994; No. 171, 1995; Nos. 11 and 178, 1999; No. 89, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160APYC.....	ad. No. 4, 1991 am. No. 48, 1991; No. 118, 1993 rep. No. 101, 2006
S. 160APZ.....	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
Ss. 160AQB, 160AQC	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160AQCA	ad. No. 62, 1987 am. No. 118, 1993; No. 171, 1995; No. 89, 2000 rep. No. 101, 2006
S. 160AQCB	ad. No. 57, 1990 am. Nos. 17 and 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160AQCBA	ad. No. 47, 1998 am. No. 63, 1998; No. 93, 1999; No. 79, 2000; No. 163, 2001 rep. No. 101, 2006
S. 160AQCC	ad. No. 58, 1990 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
Heading to Subdiv. CA..... of Div. 2 of Part IIIAA	ad. No. 89, 2000 rep. No. 101, 2006
S. 160AQCCAA	ad. No. 89, 2000 rep. No. 101, 2006
S. 160AQCCA.....	ad. No. 181, 1994 am. No. 171, 1995; No. 62, 1997; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006
Heading to s. 160AQCCB	am. No. 171, 1995 rep. No. 101, 2006
S. 160AQCCB.....	ad. No. 181, 1994 am. No. 171, 1995 rep. No. 101, 2006
Ss. 160AQCD, 160AQCE	ad. No. 48, 1991 am. No. 216, 1991; No. 118, 1993; No. 62, 1997; No. 16, 1999 rep. No. 101, 2006
S. 160AQ CJ.....	ad. No. 216, 1991 am. No. 118, 1993; No. 62, 1997; No. 16, 1999 rep. No. 101, 2006
Ss. 160AQCK, 160AQCL.....	ad. No. 216, 1991 am. No. 118, 1993; No. 171, 1995; No. 62, 1997; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006
S. 160AQCM.....	ad. No. 216, 1991 am. No. 118, 1993 rep. No. 101, 2006
S. 160AQCN	ad. No. 118, 1993 am. No. 181, 1994; No. 171, 1995; No. 16, 1999; No. 89, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160AQCNA, 160AQCNCB	ad. No. 47, 1998 am. No. 93, 1999 rep. No. 101, 2006
S. 160AQCNC	ad. No. 47, 1998 rep. No. 101, 2006
Subdiv. CA of Div. 2..... of Part IIIAA Renumbered Subdiv. CB of Div. 2 of Part IIIA.....	ad. No. 89, 2000 No. 101, 2003
Subdiv. CB of Div. 2 of..... Part IIIAA	rep. No. 101, 2006
S. 160AQCNCNA	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160AQCNCB	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
S. 160AQCNC	ad. No. 89, 2000 rep. No. 101, 2006
S. 160AQCNC	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
Heading to s. 160AQCNC	am. No. 73, 2001 rep. No. 101, 2006
S. 160AQCNC	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
Subdiv. CB of Div. 2 of..... Part IIIAA Renumbered Subdiv. CC of Div. 2 of Part IIIA.....	ad. No. 89, 2000 No. 101, 2003
Subdiv. CC of Div. 2 of	rep. No. 101, 2006
Ss. 160AQCNC	ad. No. 89, 2000 rep. No. 101, 2006
S. 160AQCNC	ad. No. 89, 2000 am. No. 73, 2001 rep. No. 101, 2006
Subdiv. D of Div. 2	ad. No. 147, 1997 rep. No. 101, 2006
S. 160AQCNC	ad. No. 147, 1997
Renumbered s. 160AQCNC	No. 101, 2003
s. 160AQCNC	rep. No. 101, 2006
Div. 2A of Part IIIA	ad. No. 93, 1999 rep. No. 101, 2006
S. 160AQCNC	ad. No. 93, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AQCND A	ad. No. 101, 2004 rep. No. 101, 2006
S. 160AQCNE	ad. No. 93, 1999 rep. No. 101, 2006
S. 160AQCNF	ad. No. 93, 1999 am. No. 89, 2000 rep. No. 101, 2006
Ss. 160AQCNG–160AQCNP	ad. No. 93, 1999 rep. No. 101, 2006
Ss. 160AQCNQ, 160AQCNR....	ad. No. 63, 1998 rep. No. 101, 2006
S. 160AQD	ad. No. 58, 1987 am. No. 20, 1990; No. 216, 1991; No. 118, 1993; No. 181, 1994 rep. No. 101, 2006
S. 160AQDA	ad. No. 118, 1993 am. No. 181, 1994 rep. No. 101, 2006
S. 160AQDAA	ad. No. 171, 1995 am. No. 89, 2000; No. 73, 2001 rep. No. 101, 2006
S. 160AQDB	ad. No. 118, 1993 am. No. 171, 1995 rep. No. 101, 2006
S. 160AQE	ad. No. 58, 1987 am. No. 58, 1990; No. 227, 1992; No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
Heading to s. 160AQF	rs. No. 93, 1999 rep. No. 101, 2006
S. 160AQF	ad. No. 58, 1987 am. No. 62, 1987; No. 118, 1993; Nos. 170 and 171, 1995; No. 93, 1999 rep. No. 101, 2006
S. 160AQFA	ad. No. 93, 1999 rep. No. 101, 2006
S. 160AQG	ad. No. 58, 1987 am. No. 57, 1990; No. 170, 1995; No. 93, 1999; No. 79, 2000; No. 57, 2002 rep. No. 101, 2006
S. 160AQH	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995; No. 93, 1999; No. 179, 1999 (as am. by No. 57, 2002); No. 79, 2000; No. 57, 2002 rep. No. 101, 2006
S. 160AQJ	ad. No. 58, 1987 am. No. 20, 1990; No. 48, 1991; No. 118, 1993; No. 171, 1995; No. 79, 2000 rep. No. 101, 2006
Subdiv. BA of Div. 5	ad. No. 181, 1994 rep. No. 101, 2006
S. 160AQJA	ad. No. 181, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AQB	ad. No. 181, 1994 am. No. 171, 1995 rep. No. 101, 2006
S. 160AQC	ad. No. 171, 1995 am. Nos. 79 and 89, 2000; No. 73, 2001; No. 57, 2002 rep. No. 101, 2006
Heading to Subdiv. C of of Div. 5 of Part IIIA	am. No. 181, 1994 rep. No. 101, 2006
S. 160AQK	ad. No. 58, 1987 am. No. 118, 1993; No. 181, 1994; No. 171, 1995; No. 167, 2001 rep. No. 101, 2006
S. 160AQKA	ad. No. 20, 1990 am. No. 167, 2001 rep. No. 101, 2006
Ss. 160AQKAA–160AQKAE	ad. No. 167, 2001 rep. No. 101, 2006
S. 160AQKB	ad. No. 20, 1990 rep. No. 101, 2006
Ss. 160AQL–160AQN	ad. No. 58, 1987 rep. No. 101, 2006
S. 160AQP	ad. No. 58, 1987 am. No. 216, 1991 rep. No. 101, 2006
S. 160AQQ	ad. No. 58, 1987 rs. No. 216, 1991 rep. No. 101, 2006
Ss. 160AQR, 160AQS	ad. No. 58, 1987 rep. No. 101, 2006
S. 160AQT	ad. No. 58, 1987 am. No. 108, 1987; Nos. 97 and 105, 1989; No. 98, 1992; No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999; Nos. 79 and 89, 2000; No. 167, 2001; No. 66, 2003 rep. No. 101, 2006
S. 160AQT	ad. No. 93, 1999 rep. No. 101, 2006
S. 160AQT	ad. No. 93, 1999 am. No. 58, 2000 rep. No. 101, 2006
S. 160AQT	ad. No. 93, 1999 am. No. 55, 2001 rep. No. 101, 2006
S. 160AQU	ad. No. 58, 1987 am. Nos. 97 and 105, 1989; Nos. 79 and 89, 2000; No. 167, 2001; No. 66, 2003 rep. No. 101, 2006
Div. 6A of Part IIIA	ad. No. 100, 1991 rep. No. 101, 2006
S. 160AQUA	ad. No. 100, 1991 am. No. 98, 1992; No. 93, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160AQUB–160AQUD	ad. No. 100, 1991 rep. No. 101, 2006
S. 160AQV	ad. No. 58, 1987 rep. No. 101, 2006
S. 160AQW	ad. No. 58, 1987 am. No. 79, 2000 rep. No. 101, 2006
S. 160QWA.....	ad. No. 41, 1998 am. No. 79, 2000 rs. No. 89, 2000; No. 167, 2001 am. No. 66, 2003 rep. No. 101, 2006
S. 160AQX	ad. No. 58, 1987 am. No. 105, 1989; No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999; No. 79, 2000; No. 57, 2002 rep. No. 101, 2006
S. 160AQY	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999 rep. No. 101, 2006
S. 160AQYA.....	ad. No. 97, 1989 am. No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999 rep. No. 101, 2006
S. 160AQZ	ad. No. 58, 1987 am. No. 105, 1989; No. 118, 1993; No. 171, 1995; No. 47, 1998; No. 93, 1999 rep. No. 101, 2006
S. 160AQZA.....	ad. No. 105, 1989 am. No. 118, 1993 rs. No. 171, 1995 am. No. 47, 1998; No. 93, 1999 rep. No. 101, 2006
Ss. 160AQZB, 160AQZC	ad. No. 93, 1999 am. No. 89, 2000; No. 66, 2003 rep. No. 101, 2006
Subdiv. BA of Div. 7	ad. No. 93, 1999 rep. No. 101, 2006
of Part IIIAA	
Ss. 160AQZD, 160AQZE	ad. No. 93, 1999 rep. No. 101, 2006
S. 160AQZF	ad. No. 93, 1999 am. No. 58, 2000; No. 101, 2003 rep. No. 101, 2006
Ss. 160AQZG, 160AQZH.....	ad. No. 93, 1999 rep. No. 101, 2006
Heading to Subdiv. C	rs. No. 47, 1998
of Div. 7 of Part IIIAA	rep. No. 101, 2006
S. 160AR.....	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995; No. 47, 1998 rep. No. 101, 2006
S. 160ARAA.....	ad. No. 47, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160ARAB, 160ARAC	ad. No. 93, 1999 rep. No. 101, 2006
S. 160ARA	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160ARB	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 (as am. by No. 147, 1997) rep. No. 101, 2006
S. 160ARC	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160ARD	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 (as am. by No. 147, 1997) rep. No. 101, 2006
Div. 7AA of Part IIIA	ad. No. 79, 2000 rep. No. 101, 2006
Ss. 160ARDAA–160ARDAF	ad. No. 79, 2000 rep. No. 101, 2006
Div. 7A of Part IIIA	ad. No. 62, 1987 rep. No. 101, 2006
S. 160ARDA	ad. No. 62, 1987 am. No. 100, 1991 rep. No. 101, 2006
Ss. 160ARDB, 160ARDC	ad. No. 62, 1987 rep. No. 101, 2006
S. 160ARDCA	ad. No. 108, 1987 rep. No. 101, 2006
S. 160ARDD	ad. No. 62, 1987 am. No. 20, 1990 rep. No. 101, 2006
Ss. 160ARDE–160ARDH	ad. No. 62, 1987 rep. No. 101, 2006
Subdiv. CA of Div. 7A of Part IIIA	ad. No. 163, 2001 rep. No. 101, 2006
Ss. 160ARDHA–160ARDHC	ad. No. 163, 2001 rep. No. 101, 2006
Ss. 160ARDJ–160ARDL	ad. No. 62, 1987 rep. No. 101, 2006
Div. 7B of Part IIIA	ad. No. 63, 1998 rep. No. 101, 2006
S. 160ARDM	ad. No. 63, 1998 am. Nos. 103 and 117, 1999; No. 167, 2001; No. 101, 2003; No. 80, 2006 rep. No. 101, 2006
Ss. 160ARDN–160ARDP	ad. No. 63, 1998 rep. No. 101, 2006
S. 160ARDQ	ad. No. 63, 1998 am. No. 103, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160ARDR–160ARDV.....	ad. No. 63, 1998 rep. No. 101, 2006
S. 160ARDW.....	ad. No. 63, 1998 am. No. 58, 2000 rep. No. 101, 2006
Ss. 160ARDX, 160ARDY.....	ad. No. 63, 1998 rep. No. 101, 2006
Subdiv. D of Div. 7B..... of Part IIIAA	ad. No. 58, 2000 rep. No. 101, 2006
S. 160ARDZ.....	ad. No. 58, 2000 am. No. 44, 2000 rep. No. 101, 2006
S. 160ARDZA	ad. No. 58, 2000 rs. No. 58, 2000 rep. No. 101, 2006
S. 160ARDZB	ad. No. 58, 2000 rs. No. 58, 2000 am. No. 44, 2000 rep. No. 101, 2006
Ss. 160ARDZC, 160ARDZD	ad. No. 58, 2000 rep. No. 101, 2006
S. 160ARE	ad. No. 58, 1987 rep. No. 101, 2006
S. 160AREA.....	ad. No. 181, 1994 am. No. 171, 1995; No. 89, 2000; No. 73, 2001 rep. No. 101, 2006
S. 160ARF	ad. No. 58, 1987 rep. No. 101, 2006
S. 160ARG.....	ad. No. 58, 1987 rs. No. 91, 2000 rep. No. 101, 2006
S. 160ARH.....	ad. No. 58, 1987 am. No. 118, 1993; No. 181, 1994; No. 171, 1995 rep. No. 101, 2006
S. 160ARHA.....	ad. No. 181, 1994 rep. No. 101, 2006
S. 160ARJ.....	ad. No. 58, 1987 am. No. 118, 1993; No. 171, 1995 rep. No. 101, 2006
S. 160ARK	ad. No. 58, 1987 am. No. 118, 1993; No. 181, 1994; No. 171, 1995 rep. No. 101, 2006
Ss. 160ARL, 160ARM.....	ad. No. 58, 1987 rep. No. 101, 2006
S. 160ARN	ad. No. 58, 1987 am. No. 118, 1993; No. 181, 1994; No. 171, 1995 rep. No. 101, 2006
S. 160ARQ.....	ad. No. 58, 1987 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ARR	ad. No. 58, 1987 am. No. 181, 1994 rep. No. 101, 2006
S. 160ARS	ad. No. 58, 1987 rep. No. 101, 2006
Div. 9 of Part IIIAA	ad. No. 58, 1987 rs. No. 216, 1991 rep. No. 101, 2006
S. 160ART	ad. No. 58, 1987 rs. No. 216, 1991 rep. No. 101, 2006
S. 160ARU	ad. No. 58, 1987 am. No. 11, 1999 rep. No. 101, 2006
S. 160ARUA.....	ad. No. 181, 1994 am. No. 11, 1999 rep. No. 101, 2006
S. 160ARV	ad. No. 58, 1987 am. No. 11, 1999 rep. No. 101, 2006
S. 160ARW	ad. No. 58, 1987 am. No. 101, 1992; No. 181, 1994; No. 11, 1999 rep. No. 101, 2006
S. 160ARWA.....	ad. No. 91, 2000 rep. No. 101, 2006
S. 160ARXA.....	ad. No. 101, 1992 am. No. 118, 1993; No. 181, 1994; Nos. 169 and 171, 1995; No. 174, 1997; No. 79, 2000 rep. No. 101, 2006
S. 160ARXB.....	ad. No. 101, 1992 am. No. 41, 1998 rep. No. 101, 2006
S. 160ARXC.....	ad. No. 101, 1992 am. No. 181, 1994; No. 41, 1998 rep. No. 101, 2006
S. 160ARX	ad. No. 58, 1987 am. No. 118, 1993; No. 56, 1994; No. 171, 1995; No. 89, 2000 rep. No. 101, 2006
Ss. 160ARYA, 160ARYB	ad. No. 181, 1994 rep. No. 101, 2006
S. 160ARYC.....	ad. No. 171, 1995 am. No. 89, 2000; No. 73, 2001 rep. No. 101, 2006
S. 160ARY	ad. No. 58, 1987 am. No. 100, 1991; No. 79, 2000 rep. No. 101, 2006
S. 160ARZ	ad. No. 58, 1987 am. No. 118, 1993; No. 181, 1994; No. 171, 1995; No. 79, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160ARZA–160ARZC	ad. No. 101, 1992 am. No. 181, 1994 rep. No. 101, 2006
S. 160ARZD.....	ad. No. 101, 1992 am. No. 118, 1993; No. 181, 1994; No. 171, 1995; No. 79, 2000 rep. No. 101, 2006
Ss. 160ARZE–160ARZG	ad. No. 101, 1992 am. No. 181, 1994 rep. No. 101, 2006
S. 160ARZH.....	ad. No. 101, 1992 rep. No. 101, 2006
Ss. 160ARZI–160ARZL	ad. No. 101, 1992 am. No. 181, 1994 rep. No. 101, 2006
Ss. 160ASA, 160ASB	ad. No. 58, 1987 rep. No. 101, 2006
S. 160ASC	ad. No. 58, 1987 am. No. 20, 1990; No. 118, 1993; No. 171, 1995; No. 93, 1999; No. 79, 2000 rep. No. 101, 2006
Ss. 160ASD, 160ASE	ad. No. 58, 1987 rep. No. 101, 2006
Div. 12A of Part IIIAA.....	ad. No. 79, 2000 rep. No. 101, 2006
Ss. 160ASEB–160ASEO	ad. No. 79, 2000 rep. No. 101, 2006
S. 160ASEP	ad. No. 79, 2000 am. No. 89, 2000 rep. No. 101, 2006
Div. 13 of Part IIIAA	ad. No. 171, 1995 rep. No. 101, 2006
S. 160ASEA.....	ad. No. 79, 2000 rep. No. 101, 2006
Ss. 160ASF–160ASJ	ad. No. 171, 1995 rep. No. 101, 2006
Ss. 160ASK, 160ASL.....	ad. No. 171, 1995 am. No. 79, 2000 rep. No. 101, 2006
Ss. 160ASM, 160ASN.....	ad. No. 171, 1995 rep. No. 101, 2006
Div. 14 of Part IIIAA	ad. No. 79, 2000 rep. No. 101, 2006
S. 160ATA.....	ad. No. 79, 2000 am. No. 89, 2000; No. 57, 2002 rep. No. 101, 2006
S. 160ATB.....	ad. No. 79, 2000 rep. No. 101, 2006
S. 160ATC	ad. No. 89, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ATD	ad. No. 79, 2000 am. No. 89, 2000; Nos. 48 and 57, 2002 rep. No. 101, 2006
S. 160ATDA	ad. No. 89, 2000 am. No. 57, 2002 rep. No. 101, 2006
Ss. 160ATF–160ATH.....	ad. No. 79, 2000 am. No. 89, 2000 rep. No. 101, 2006
Div. 15 of Part IIIA	ad. No. 57, 2002 rep. No. 101, 2006
Ss. 160AUA–160AUG.....	ad. No. 57, 2002 rep. No. 101, 2006
Heading to Part IIIA.....	am. No. 48, 1950 rep. No. 101, 2006
Part IIIA	ad. No. 52, 1986 rep. No. 101, 2006
Heading to Div. 1 of Part IIIA	am. No. 224, 1992 rep. No. 101, 2006
Subdiv. A of Div. 1	ad. No. 224, 1992 rep. No. 101, 2006
of Part IIIA	
S. 160AX.....	ad. No. 224, 1992 rep. No. 101, 2006
S. 160AY.....	ad. No. 224, 1992 am. No. 16, 1999 rep. No. 101, 2006
S. 160AZ.....	ad. No. 224, 1992 rep. No. 101, 2006
S. 160AZA.....	ad. No. 224, 1992 am. Nos. 169 and 171, 1995; No. 147, 1997; No. 16, 1999 rep. No. 101, 2006
Heading to Subdiv. B	ad. No. 224, 1992 rep. No. 101, 2006
of Div. 1 of Part IIIA	
S. 160A	ad. No. 52, 1986 am. No. 48, 1991; Nos. 80 and 191, 1992; No. 18, 1993 rep. No. 101, 2006
S. 160B	ad. No. 52, 1986 am. No. 171, 1995 rep. No. 101, 2006
S. 160C	ad. No. 52, 1986 am. No. 48, 1991 rep. No. 101, 2006
S. 160D	ad. No. 52, 1986 am. No. 39, 1997 rep. No. 101, 2006
S. 160E	ad. No. 52, 1986 am. No. 48, 1991 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160F, 160G.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160H.....	ad. No. 52, 1986 am. No. 48, 1991 rep. No. 101, 2006
S. 160J.....	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006
S. 160JA.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160K.....	ad. No. 52, 1986 am. No. 138, 1987; Nos. 78 and 153, 1988; Nos. 11 and 105, 1989; No. 135, 1990; No. 56, 1994; No. 169, 1995; Nos. 121 and 150, 1997 rep. No. 101, 2006
S. 160L.....	ad. No. 52, 1986 am. No. 35, 1990; No. 48, 1991; Nos. 80 and 191, 1992; Nos. 82 and 138, 1994; Nos. 39 and 121, 1997 rep. No. 101, 2006
S. 160M.....	ad. No. 52, 1986 am. No. 154, 1986; No. 108, 1987; No. 35, 1990; Nos. 5 and 48, 1991; Nos. 101 and 191, 1992; No. 82, 1994; Nos. 120 and 170, 1995 rep. No. 101, 2006
S. 160MA.....	ad. No. 191, 1992 am. No. 120, 1995 rep. No. 101, 2006
S. 160N.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160P.....	ad. No. 52, 1986 am. No. 11, 1989 rep. No. 101, 2006
S. 160Q.....	ad. No. 52, 1986 am. No. 11, 1989; No. 35, 1992 rep. No. 101, 2006
Ss. 160R, 160S.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160T.....	ad. No. 52, 1986 am. No. 11, 1989; No. 48, 1991; No. 191, 1992; No. 120, 1995; No. 63, 1998 rep. No. 101, 2006
S. 160U.....	ad. No. 52, 1986 am. No. 191, 1992; No. 82, 1994; No. 120, 1995 rep. No. 101, 2006
S. 160V.....	ad. No. 52, 1986 am. No. 35, 1990; No. 82, 1994 rep. No. 101, 2006
S. 160W.....	ad. No. 52, 1986 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160WA.....	ad. No. 216, 1991 rep. No. 101, 2006
S. 160X.....	ad. No. 52, 1986 am. No. 147, 1997 rep. No. 101, 2006
Note to s. 160X(5).....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160Y.....	ad. No. 52, 1986 am. No. 105, 1989; No. 80, 1992 rep. No. 101, 2006
S. 160Z.....	ad. No. 52, 1986 am. No. 154, 1986; No. 108, 1987; Nos. 5 and 48, 1991; No. 80, 1992; Nos. 17 and 18, 1993; No. 171, 1995; No. 76, 1996; No. 39, 1997 (as rep. by No. 147, 1997); No. 122, 1997 rep. No. 101, 2006
Note to s. 160Z(1).....	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZA.....	ad. No. 52, 1986 am. No. 35, 1990; No. 48, 1991; No. 17, 1993; Nos. 82 and 181, 1994; Nos. 170 and 171, 1995; No. 63, 1998; No. 93, 1999 rep. No. 101, 2006
S. 160ZAA.....	ad. No. 82, 1994 rep. No. 101, 2006
S. 160ZB.....	ad. No. 52, 1986 am. No. 61, 1987; No. 107, 1989; No. 35, 1990; Nos. 191 and 224, 1992; No. 121, 1997 rep. No. 101, 2006
S. 160ZC.....	ad. No. 52, 1986 am. No. 57, 1990; No. 98, 1992; No. 170, 1995; No. 76, 1996; No. 39, 1997 (as am. by No. 95, 1997); Nos. 95 and 147, 1997; No. 46, 1998; No. 93, 1999 rep. No. 101, 2006
Note to s. 160ZC(4).....	ad. No. 122, 1997 (as rep. by No. 95, 1997) rep. No. 101, 2006
Ss. 160ZCA–160ZCF.....	ad. No. 58, 2000 rep. No. 101, 2006
S. 160ZD.....	ad. No. 52, 1986 am. No. 97, 1989; No. 35, 1990; No. 48, 1991; No. 80, 1992; No. 17, 1993 rep. No. 101, 2006
S. 160ZE.....	ad. No. 52, 1986 am. No. 171, 1995 rep. No. 101, 2006
S. 160ZF.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZFA.....	ad. No. 5, 1991 rep. No. 101, 2006
S. 160ZFB.....	ad. No. 48, 1991 am. No. 155, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZG.....	ad. No. 52, 1986 am. No. 171, 1995 rep. No. 101, 2006
S. 160ZH.....	ad. No. 52, 1986 am. Nos. 20 and 35, 1990; No. 216, 1991; No. 191, 1992; No. 120, 1995; No. 76, 1996; No. 121, 1997 rep. No. 101, 2006
Notes to s. 160ZH(1)–(3)	ad. No. 16, 1999 rep. No. 101, 2006
S. 160ZI	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZJ.....	ad. No. 52, 1986 am. No. 35, 1990 rep. No. 101, 2006
Ss. 160ZJA, 160ZJB.....	ad. No. 16, 1999 am. No. 72, 2001 rep. No. 101, 2006
S. 160ZK.....	ad. No. 52, 1986 am. No. 48, 1991; Nos. 56 and 82, 1994; Nos. 39 and 121, 1997; Nos. 16 and 91, 1998; Nos. 54 and 93, 1999 rep. No. 101, 2006
S. 160ZL	ad. No. 52, 1986 am. No. 154, 1986; No. 35, 1990; No. 82, 1994; No. 170, 1995 rep. No. 101, 2006
S. 160ZM	ad. No. 52, 1986 am. No. 154, 1986; No. 108, 1987; No. 35, 1990; No. 5, 1991; Nos. 98 and 190, 1992; No. 39, 1997 rep. No. 101, 2006
S. 160ZN.....	ad. No. 52, 1986 am. No. 154, 1986 rep. No. 101, 2006
Div. 3A of Part IIIA	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZNA	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZNBA.....	ad. No. 46, 1998 rep. No. 101, 2006
Ss. 160ZNB–160ZNG	ad. No. 147, 1997 rep. No. 101, 2006
Div. 3B of Part IIIA	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZNH–160ZNR.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160Z NRA.....	ad. No. 147, 2005 rep. No. 101, 2006
Div. 3C of Part IIIA	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZNS	ad. No. 147, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 3CA of Part IIIA.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZNSA–160ZNSE.....	ad. No. 147, 1997 rep. No. 101, 2006
Div. 3CB of Part IIIA.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZNSF–160ZNSJ	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZNSK	ad. No. 147, 1997 am. No. 147, 2005 rep. No. 101, 2006
Div. 3CC of Part IIIA.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZNSL–160ZNSS.....	ad. No. 147, 1997 rep. No. 101, 2006
Div. 3CD of Part IIIA.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZNST–160ZNSV.....	ad. No. 147, 1997 rep. No. 101, 2006
Div. 3D of Part IIIA	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZNTA	ad. No. 46, 1998 rep. No. 101, 2006
Ss. 160ZNT–160ZNX.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZO.....	ad. No. 52, 1986 am. No. 46, 1998 rep. No. 101, 2006
S. 160ZP	ad. No. 52, 1986 am. No. 138, 1987; No. 11, 1988; No. 35, 1990; Nos. 80, 98 and 101, 1992; No. 17, 1993; No. 82, 1994; No. 39, 1997 (as rep. by No. 147, 1997); No. 95, 1997 (as am. by No. 147, 1997; No. 41, 1998); No. 147, 1997; No. 46, 1998; No. 169, 1999 rep. No. 101, 2006
S. 160ZPAA	ad. No. 94, 1999 rep. No. 101, 2006
S. 160ZPA.....	ad. No. 16, 1999 rep. No. 101, 2006
S. 160ZQ.....	ad. No. 52, 1986 am. No. 76, 1996 rep. No. 101, 2006
Ss. 160ZR, 160ZS	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZSA.....	ad. No. 167, 1989 am. Nos. 80 and 101, 1992; No. 121, 1997 rep. No. 101, 2006
S. 160ZT	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZU.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZV.....	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006
S. 160ZW.....	ad. No. 52, 1986 am. No. 11, 1989 rep. No. 101, 2006
Div. 5A of Part IIIA.....	ad. No. 11, 1989 rep. No. 101, 2006
S. 160ZWA.....	ad. No. 11, 1989 rep. No. 101, 2006
Div. 5B of Part IIIA.....	ad. No. 17, 1993 rep. No. 101, 2006
Ss. 160ZWB–160ZWD.....	ad. No. 17, 1993 am. No. 121, 1997 rep. No. 101, 2006
Ss. 160ZX, 160ZY.....	ad. No. 52, 1986 rep. No. 101, 2006
Ss. 160ZYA, 160ZYP.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZYC.....	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZYD.....	ad. No. 52, 1986 rs. No. 108, 1987 rep. No. 101, 2006
S. 160ZYE.....	ad. No. 52, 1986 am. No. 108, 1987 rep. No. 101, 2006
S. 160ZYEA.....	ad. No. 108, 1987 rep. No. 101, 2006
Div. 7A of Part IIIA.....	ad. No. 105, 1989 rep. No. 101, 2006
S. 160ZYEB.....	ad. No. 105, 1989 rep. No. 101, 2006
S. 160ZYF.....	ad. No. 52, 1986 am. No. 108, 1987 rep. No. 101, 2006
S. 160ZYG.....	ad. No. 52, 1986 rs. No. 108, 1987 rep. No. 101, 2006
S. 160ZYH.....	ad. No. 52, 1986 am. No. 108, 1987 rep. No. 101, 2006
S. 160ZYHA.....	ad. No. 108, 1987 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 8A of Part IIIA	ad. No. 108, 1987 rep. No. 101, 2006
Ss. 160ZYHB, 160ZYHC	ad. No. 108, 1987 rep. No. 101, 2006
Heading to Div. 9 of Part IIIA	am. No. 169, 1995 rep. No. 101, 2006
S. 160ZYHD	ad. No. 153, 1988 rep. No. 101, 2006
Ss. 160ZYI, 160ZYJ	ad. No. 52, 1986 am. No. 153, 1988 rep. No. 101, 2006
S. 160ZYJA	ad. No. 80, 1992 rep. No. 101, 2006
Div. 9A of Part IIIA	ad. No. 169, 1995 rep. No. 101, 2006
Ss. 160ZYJB–160ZYJE	ad. No. 169, 1995 rep. No. 101, 2006
S. 160ZYK	ad. No. 52, 1986 am. No. 35, 1990; No. 82, 1994 rep. No. 101, 2006
Ss. 160ZYL–160ZYN	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZYO	ad. No. 52, 1986 am. No. 109, 1986 rep. No. 101, 2006
Ss. 160ZYP, 160ZYQ	ad. No. 52, 1986 rep. No. 101, 2006
Div. 10A of Part IIIA	ad. No. 11, 1989 rep. No. 101, 2006
Ss. 160ZYQA–160ZYQF	ad. No. 11, 1989 rep. No. 101, 2006
S. 160ZYR	ad. No. 52, 1986 am. No. 35, 1990; No. 82, 1994 rep. No. 101, 2006
Ss. 160ZYS–160ZYX	ad. No. 52, 1986 rep. No. 101, 2006
Div. 11A of Part IIIA	ad. No. 11, 1989 rep. No. 101, 2006
Ss. 160ZYXA–160ZYXF	ad. No. 11, 1989 rep. No. 101, 2006
Heading to Div. 12	am. No. 11, 1989 rep. No. 101, 2006
of Part IIIA	
S. 160ZYY	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZYA	ad. No. 35, 1990 rep. No. 101, 2006
S. 160ZYZ	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZZ	ad. No. 52, 1986 rep. No. 101, 2006
Ss. 160ZZA, 160ZZB	ad. No. 52, 1986 rep. No. 101, 2006
Div. 12A of Part IIIA	ad. No. 11, 1989 rep. No. 101, 2006
S. 160ZZBA	ad. No. 11, 1989 rep. No. 101, 2006
S. 160ZZBAA	ad. No. 35, 1990 rep. No. 101, 2006
S. 160ZZBB	ad. No. 11, 1989 am. No. 80, 1992 rep. No. 101, 2006
Ss. 160ZZBC, 160ZZBD	ad. No. 11, 1989 rep. No. 101, 2006
Div. 12B of Part IIIA	ad. No. 35, 1990 rep. No. 101, 2006
Ss. 160ZZBE, 160ZZBF	ad. No. 35, 1990 rep. No. 101, 2006
S. 160ZZC	ad. No. 52, 1986 am. No. 154, 1986; No. 11, 1989; No. 35, 1990; No. 122, 1997 rep. No. 101, 2006
S. 160ZZD	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZZE	ad. No. 52, 1986 am. No. 39, 1997 rep. No. 101, 2006
S. 160ZZF	ad. No. 52, 1986 am. No. 11, 1989 rep. No. 101, 2006
Ss. 160ZZG, 160ZZH	ad. No. 52, 1986 rep. No. 101, 2006
S. 160ZZI	ad. No. 52, 1986 am. No. 118, 1993 rep. No. 101, 2006
S. 160ZZJ	ad. No. 52, 1986 am. No. 105, 1989 rep. No. 101, 2006
S. 160ZZJA	ad. No. 62, 1997 rep. No. 101, 2006
S. 160ZZK	ad. No. 52, 1986 am. No. 154, 1986; No. 11, 1989; No. 135, 1990; No. 80, 1992 rep. No. 101, 2006
S. 160ZZL	ad. No. 52, 1986 am. No. 11, 1989; No. 80, 1992 rep. No. 101, 2006
S. 160ZZM	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZZMA.....	ad. No. 11, 1989 am. Nos. 5 and 48, 1991; No. 80, 1992 rep. No. 101, 2006
S. 160ZZN.....	ad. No. 52, 1986 am. No. 11, 1988; No. 11, 1989; No. 35, 1990; No. 48, 1991; No. 80, 1992 rep. No. 101, 2006
S. 160ZZNA.....	ad. No. 48, 1991 am. Nos. 35 and 80, 1992 rep. No. 101, 2006
S. 160ZZO.....	ad. No. 52, 1986 am. No. 138, 1987; No. 11, 1988; No. 11, 1989; No. 35, 1990; Nos. 5 and 48, 1991; No. 80, 1992; No. 17, 1993; No. 82, 1994; No. 171, 1995; No. 76, 1996; No. 95, 1997 rep. No. 101, 2006
S. 160ZZOA.....	ad. No. 17, 1993 am. No. 82, 1994 rep. No. 101, 2006
Ss. 160ZZOB, 160ZZOC.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZZP.....	ad. No. 52, 1986 am. No. 80, 1992 rep. No. 101, 2006
Ss. 160ZZPAA–160ZZPAC.....	ad. No. 11, 1989 rep. No. 101, 2006
Ss. 160ZZPA, 160ZZPB.....	ad. No. 11, 1988 am. No. 63, 1998 rep. No. 101, 2006
Ss. 160ZZPC–160ZZPF.....	ad. No. 11, 1989 rep. No. 101, 2006
S. 160ZZPG.....	ad. No. 35, 1990 rep. No. 101, 2006
S. 160ZZPH.....	ad. No. 35, 1990 am. No. 103, 1999 rep. No. 101, 2006
S. 160ZZPI.....	ad. No. 169, 1995 rep. No. 101, 2006
S. 160ZZPIA.....	ad. No. 169, 1995 am. No. 121, 1999 rep. No. 101, 2006
S. 160ZZPJ.....	ad. No. 171, 1995 rep. No. 101, 2006
Heading to Div. 17A..... of Part IIIA	rs. No. 16, 1998 rep. No. 101, 2006
Div. 17A of Part IIIA.....	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZPK.....	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 160ZZPL(5).....	rs. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPL.....	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPM.....	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZPN	ad. No. 122, 1997 am. Nos. 16 and 41, 1998 rep. No. 101, 2006
S. 160ZZPNA.....	ad. No. 16, 1998 rep. No. 101, 2006
Heading to Subdiv. B of Div. 17A of Part IIIA	rs. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPO	ad. No. 122, 1997 rs. No. 16, 1998 am. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPP	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006
Note to s. 160ZZPP	am. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPQ	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPQA.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZZPR–160ZZPX	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006
S. 160ZZPXA.....	ad. No. 16, 1998 am. No. 16, 1998 rep. No. 101, 2006
Ss. 160ZZPY, 160ZZPZ.....	ad. No. 122, 1997 am. No. 16, 1998 rep. No. 101, 2006
Div. 17B of Part IIIA	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZZPZA–160ZZPZC.....	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZZPZD	ad. No. 147, 1997 am. No. 16, 1998 rep. No. 101, 2006
Ss. 160ZZPZE–160ZZPZG.....	ad. No. 147, 1997 rep. No. 101, 2006
Ss. 160ZZPZH, 160ZZPZI	ad. No. 147, 1997 am. No. 16, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 160ZZPJ–160ZZPZQ	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZZQ	ad. No. 52, 1986 am. No. 154, 1986; Nos. 11 and 107, 1989; Nos. 35 and 135, 1990; Nos. 80 and 101, 1992; No. 17, 1993; No. 147, 1997 rep. No. 101, 2006
Note to s. 160ZZQ(17)	ad. No. 147, 1997 rep. No. 101, 2006
Note to s. 160ZZQ(17A)	ad. No. 147, 1997 rep. No. 101, 2006
Note to s. 160ZZQ(19)	ad. No. 147, 1997 rep. No. 101, 2006
S. 160ZZR	ad. No. 52, 1986 am. No. 80, 1992; No. 122, 1997 rep. No. 101, 2006
S. 160ZZRAA	ad. No. 80, 1992 rep. No. 101, 2006
Div. 19A of Part IIIA	ad. No. 48, 1991 rep. No. 101, 2006
Subdiv. A of Div. 19A	ad. No. 171, 1995 rep. No. 101, 2006
of Part IIIA	
S. 160ZZRAAA	ad. No. 171, 1995 rep. No. 101, 2006
S. 160ZZRA	ad. No. 48, 1991 am. No. 80, 1992; No. 82, 1994; No. 171, 1995; No. 121, 1997 rep. No. 101, 2006
S. 160ZZRB	ad. No. 48, 1991 am. No. 82, 1994 rep. No. 101, 2006
Ss. 160ZZRBA, 160ZZRBB	ad. No. 171, 1995 rep. No. 101, 2006
S. 160ZZRC	ad. No. 48, 1991 rep. No. 101, 2006
Heading to Subdiv. B	ad. No. 171, 1995 rep. No. 101, 2006
of Div. 19A of Part IIIA	
S. 160ZZRD	ad. No. 48, 1991 am. No. 48, 1991; No. 82, 1994; No. 171, 1995 rep. No. 101, 2006
Ss. 160ZZRDA–160ZZRDD	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. C of Div. 19A	ad. No. 171, 1995 rep. No. 101, 2006
of Part IIIA	
Ss. 160ZZRDE–160ZZRDI	ad. No. 171, 1995 rep. No. 101, 2006
Subdiv. D of Div. 19A of	ad. No. 171, 1995 rep. No. 101, 2006
of Part IIIA	
Ss. 160ZZRDJ–160ZZRDN	ad. No. 171, 1995 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to Subdiv. E of Div. 19A of Part IIIA	ad. No. 171, 1995 rep. No. 101, 2006
S. 160ZZRE	ad. No. 48, 1991 am. No. 48, 1991; No. 80, 1992; No. 171, 1995 rep. No. 101, 2006
S. 160ZZRF	ad. No. 48, 1991 am. No. 48, 1991; No. 171, 1995 rep. No. 101, 2006
S. 160ZZRFA	ad. No. 48, 1991 rep. No. 101, 2006
Heading to Subdiv. F of Div. 19A of Part IIIA	ad. No. 171, 1995 rep. No. 101, 2006
S. 160ZZRG	ad. No. 48, 1991 rep. No. 101, 2006
S. 160ZZRH	ad. No. 48, 1991 am. No. 48, 1991; No. 80, 1992; No. 171, 1995 rep. No. 101, 2006
Div. 19B of Part IIIA	ad. No. 82, 1994 rep. No. 101, 2006
Ss. 160ZZRI–160ZZRL	ad. No. 82, 1994 rep. No. 101, 2006
S. 160ZZRM	ad. No. 82, 1994 am. No. 31, 1996 rep. No. 101, 2006
Ss. 160ZZRN–160ZZRQ	ad. No. 82, 1994 rep. No. 101, 2006
Heading to Div. 20 of Part IIIA	rs. No. 122, 1997 rep. No. 101, 2006
Subdiv. A of Div. 20 of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZRR	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZRRA, 160ZZRRB	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZRS–160ZZRU	ad. No. 122, 1997 rep. No. 101, 2006
Heading to Subdiv. B of Div. 20 of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
Heading to s. 160ZZS	rs. No. 122, 1997 rep. No. 101, 2006
S. 160ZZS	ad. No. 52, 1986 am. No. 80, 1992; No. 122, 1997 rep. No. 101, 2006
Subdiv. C of Div. 20 of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZSA–160ZZSD	ad. No. 122, 1997 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdiv. D of Div. 20 of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZSE–160ZZSI.....	ad. No. 122, 1997 rep. No. 101, 2006
Subdiv. E of Div. 20 of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZSJ.....	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZSK–160ZZSP	ad. No. 122, 1997 rep. No. 101, 2006
Subdiv. F of Div. 20..... of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
Ss. 160ZZSR, 160ZZSS	ad. No. 122, 1997 rep. No. 101, 2006
Subdiv. G of Div. 20	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZST.....	ad. No. 122, 1997 rep. No. 101, 2006
Heading to Div. 20A..... of Part IIIA	ad. No. 122, 1997 rep. No. 101, 2006
S. 160ZZT	ad. No. 52, 1986 am. No. 154, 1986; No. 35, 1990; No. 48, 1991; Nos. 82 and 138, 1994 rep. No. 101, 2006
S. 160ZZU.....	ad. No. 52, 1986 am. No. 48, 1991; No. 80, 1992; No. 17, 1993; No. 82, 1994; No. 169, 1995; No. 47, 1998 rep. No. 101, 2006
Note to s. 160ZZU(6)	ad. No. 47, 1998 rep. No. 101, 2006
Note to s. 160ZZU(6C).....	ad. No. 47, 1998 rep. No. 101, 2006
Part IIIB	
Part IIIB.....	ad. No. 138, 1994
Division 1	
Div. 1 of Part IIIB.....	ad. No. 138, 1994
S. 160ZZVA	ad. No. 138, 1994
Note to s. 160ZZVA(1).....	ad. No. 64, 2005
S. 160ZZVB	ad. No. 138, 1994
S. 160ZZV	ad. No. 138, 1994 am. No. 95, 1997; No. 48, 1998
S. 160ZZW.....	ad. No. 138, 1994 am. No. 162, 2001
Division 2	
Div. 2 of Part IIIB.....	ad. No. 138, 1994
S. 160ZZX.....	ad. No. 138, 1994

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZZY	ad. No. 138, 1994 rep. No. 143, 2007
S. 160ZZZ	ad. No. 138, 1994
S. 160ZZZA	ad. No. 138, 1994 am. No. 95, 1997
S. 160ZZZB	ad. No. 138, 1994 am. No. 39, 1997 rep. No. 162, 2001
S. 160ZZZC	ad. No. 138, 1994
S. 160ZZZD	ad. No. 138, 1994 rep. No. 162, 2001
Ss. 160ZZZE, 160ZZZF	ad. No. 138, 1994
S. 160ZZZG	ad. No. 138, 1994 am. No. 39, 1997
S. 160ZZZH	ad. No. 138, 1994 rs. No. 46, 1998
S. 160ZZZI	ad. No. 138, 1994
Division 3	
Div. 3 of Part IIIB	ad. No. 138, 1994
S. 160ZZZJ	ad. No. 138, 1994 am. No. 179, 1999; No. 162, 2001; No. 101, 2006
Division 4	
Div. 4 of Part IIIB	ad. No. 64, 2005
S. 160ZZZK	ad. No. 64, 2005
Part IV	
S. 161	am. No. 85, 1959; No. 85, 1967; No. 87, 1978; No. 52, 1986; No. 73, 1989; No. 20, 1990; No. 174, 1997; No. 121, 1999; Nos. 24 and 91, 2000; No. 154, 2007
Note to s. 161(1)	ad. No. 91, 2000
S. 161A	ad. No. 174, 1997 am. No. 91, 2000
S. 161AA	ad. No. 179, 1999 am. No. 161, 2005; No. 9, 2007
S. 161G	ad. No. 174, 1997
S. 162	am. No. 52, 1986; No. 17, 1999 rs. No. 91, 2000
S. 163	am. No. 87, 1978; No. 73, 1989; No. 91, 2000
Heading to s. 163A	am. No. 179, 1999
S. 163A	ad. No. 169, 1995 am. Nos. 11 and 179, 1999; No. 91, 2000; No. 67, 2003; No. 101, 2006
Note to s. 163A(3)	ad. No. 11, 1999
S. 163AA	ad. No. 11, 1999
Note to s. 163AA	am. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 163B	am. Nos. 11 and 179, 1999
S. 163B	ad. No. 169, 1995 am. Nos. 45 and 85, 1998; Nos. 11, 178 and 179, 1999; Nos. 91 and 106, 2000; Nos. 67 and 150, 2003
Note to s. 163B(1)	ad. No. 11, 1999
S. 166.....	am. No. 161, 2005
S. 166A	ad. No. 20, 1990 am. No. 100, 1991; No. 18, 1993; No. 56, 1994; No. 120, 1995; No. 174, 1997; No. 179, 1999; No. 161, 2005; No. 101, 2006
S. 167	am. No. 108, 1981
Ss. 168, 169.....	am. No. 161, 2005
S. 169A	ad. No. 46, 1986 am. No. 101, 1992; No. 161, 2005
Subhead to s. 170(9)	ad. No. 161, 2005
Subhead to s. 170(14)	ad. No. 161, 2005
S. 170	am. No. 88, 1936; Nos. 22 and 50, 1942; No. 28, 1944; No. 11, 1947; No. 45, 1953; No. 101, 1956; No. 65, 1957; No. 55, 1958; Nos. 70 and 85, 1959; Nos. 27 and 94, 1961; No. 39, 1962; No. 69, 1963; Nos. 46, 68 and 110, 1964; Nos. 38 and 85, 1967; Nos. 60 and 87, 1968; No. 93, 1969; No. 87, 1970; Nos. 51 and 52, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 117, 1975; Nos. 50 and 205, 1976; No. 57, 1977; Nos. 57 and 172, 1978; Nos. 12 and 146, 1979; Nos. 19, 57, 58, 124, 133 and 159, 1980; Nos. 108 and 111, 1981; Nos. 29, 38, 106 and 123, 1982; No. 49, 1983; Nos. 14, 47, 76 and 123, 1984; Nos. 123 and 173, 1985; Nos. 41, 46 and 52, 1986; No. 90, 1986 (as am. by No. 141, 1987); No. 112, 1986; No. 61, 1987; Nos. 59 and 153, 1988; Nos. 97, 107 and 167, 1989; Nos. 20 and 57, 1990; Nos. 101 and 224, 1992; No. 18, 1993; Nos. 82, 138 and 181, 1994; Nos. 22 and 30, 1995; No. 31, 1995 (as am. by No. 170, 1995); No. 171, 1995; No. 78, 1996; No. 39, 1997 (as am. by No. 147, 1997); Nos. 121, 147 and 174, 1997; Nos. 17, 41, 46 and 85, 1998; Nos. 70, 94 and 179, 1999; Nos. 89 and 91, 2000; Nos. 77, 167 and 170, 2001; Nos. 32 and 57, 2002; Nos. 10, 65, 66, 123 and 133, 2003; No. 20, 2004; No. 161, 2005; Nos. 58 and 101, 2006; Nos. 15, 32, 80, 143 and 164, 2007
S. 170A	ad. No. 103, 1965 rep. No. 161, 2005
Heading to s. 170AA	am. No. 11, 1999 rep. No. 101, 2006
S. 170AA	ad. No. 46, 1986 am. Nos. 20 and 35, 1990; No. 216, 1991; No. 101, 1992; No. 18, 1993; No. 120, 1995; Nos. 11 and 179, 1999; No. 91, 2000; No. 67, 2003 rep. No. 101, 2006
Note to s. 170AA(4)	ad. No. 11, 1999 am. No. 101, 2006 rep. No. 101, 2006
S. 170BA	ad. No. 101, 1992 am. No. 179, 1999; No. 23, 2005 rep. No. 161, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 170BB	ad. No. 101, 1992 rep. No. 161, 2005
S. 170BCA	ad. No. 179, 1999 rep. No. 161, 2005
Heading to s. 170BC	rs. No. 179, 1999 rep. No. 161, 2005
S. 170BC	ad. No. 101, 1992 rep. No. 161, 2005
Ss. 170BDA–170BDC	ad. No. 179, 1999 rep. No. 161, 2005
Ss. 170BD–170BI	ad. No. 101, 1992 rep. No. 161, 2005
S. 170C	ad. No. 103, 1965 am. No. 51, 1973; No. 108, 1981
S. 171	am. No. 108, 1981; No. 52, 1986
S. 171A	ad. No. 161, 2005
S. 172	rs. No. 87, 1978; No. 123, 1984 am. No. 46, 1986; No. 101, 1992; No. 11, 1999; No. 91, 2000; No. 75, 2005
Note 1 to s. 172(2)	ad. No. 11, 1999 am. No. 101, 2006
Note 2 to s. 172(2)	ad. No. 11, 1999
S. 174	am. No. 87, 1978; No. 123, 1984; No. 73, 1989
S. 175A	ad. No. 216, 1991 am. No. 161, 2005
S. 176	am. No. 216, 1973 (as am. by No. 20, 1974)
S. 177	am. No. 216, 1973 (as am. by No. 20, 1974); No. 23, 1987; No. 216, 1991; No. 174, 1997
Part IVA	
Part IVA	ad. No. 110, 1981
S. 177A	ad. No. 110, 1981 am. No. 135, 1990; No. 208, 1992; Nos. 11 and 16, 1999; No. 173, 2000; No. 143, 2007
S. 177B	ad. No. 110, 1981 am. Nos. 37 and 135, 1990; No. 208, 1992; No. 22, 1995; No. 85, 1998; No. 25, 2000; No. 10, 2003; No. 101, 2006
S. 177C	ad. No. 110, 1981 am. No. 135, 1990; No. 208, 1992; Nos. 16, 41 and 46, 1998; Nos. 11, 16 and 169, 1999; No. 173, 2000; No. 133, 2003; No. 101, 2006; No. 143, 2007
S. 177CA.....	ad. No. 95, 1997
S. 177D.....	ad. No. 110, 1981
Note to s. 177D.....	ad. No. 144, 2008
S. 177E	ad. No. 110, 1981 am. No. 163, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 177EA	ad. No. 47, 1998 am. No. 93, 1999; No. 163, 2001 rs. No. 16, 2003 am. No. 66, 2003; No. 58, 2006; Nos. 15 and 79, 2007
S. 177EB	ad. No. 68, 2002 am. No. 16, 2003
S. 177F	ad. No. 110, 1981 am. No. 48, 1986; No. 135, 1990; No. 216, 1991; No. 208, 1992; No. 95, 1997; No. 16, 1999; No. 143, 2007
S. 177G	ad. No. 110, 1981 am. No. 161, 2005
S. 177H	ad. No. 11, 1999 rep. No. 143, 2007
Part VA	
Part VA	ad. No. 97, 1988
Division 1	
S. 202	ad. No. 97, 1988 am. No. 60, 1990; No. 6, 1991; Nos. 81, 92 and 138, 1992; Nos. 82 and 116, 1993; No. 53, 1995; Nos. 63 and 76, 1996; Nos. 62, 71 and 191, 1997; No. 45, 1998; No. 83, 1999 (as am. by 172, 1999); No. 128, 1999; Nos. 94, 106 and 132, 2000; No. 75, 2001; No. 73, 2006; Nos. 45 and 105, 2008
S. 202A	ad. No. 97, 1988 am. No. 57, 1990; No. 227, 1992; No. 62, 1997; No. 48, 1998; Nos. 44 and 179, 1999; No. 86, 2000; Nos. 55 and 169, 2001; No. 150, 2003; No. 101, 2006; No. 92, 2008
S. 202AA	ad. No. 179, 1999
Division 2	
S. 202B	ad. No. 97, 1988
Ss. 202BA–202BB	ad. No. 97, 1988
S. 202BC	ad. No. 97, 1988 am. No. 179, 1999
S. 202BD	ad. No. 97, 1988 am. No. 227, 1992; No. 179, 1999; No. 101, 2006
Ss. 202BE, 202BF	ad. No. 97, 1988
Division 3	
Heading to Div. 3 of Part VA	rs. No. 179, 1999
S. 202C	ad. No. 97, 1988 rs. No. 179, 1999
Heading to s. 202CA	am. No. 179, 1999
S. 202CA	ad. No. 97, 1988 am. No. 179, 1999
Heading to s. 202CB	am. No. 179, 1999
S. 202CB	ad. No. 97, 1988 am. No. 163, 1989; No. 119, 1990; Nos. 100 and 216, 1991; No. 184, 1994; No. 1, 1996; Nos. 29 and 197, 1997; No. 45, 1998; No. 179, 1999; No. 76, 2000; No. 52, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 202CC	ad. No. 97, 1988 rs. No. 179, 1999
Heading to s. 202CD	am. No. 179, 1999
S. 202CD	ad. No. 97, 1988 am. No. 167, 1989; No. 179, 1999; No. 143, 2007
S. 202CE	ad. No. 97, 1988 am. No. 163, 1989; No. 119, 1990; Nos. 100 and 216, 1991; No. 184, 1994; No. 1, 1996; Nos. 29 and 197, 1997; No. 45, 1998; No. 179, 1999; No. 76, 2000; No. 52, 2004
S. 202CF	ad. No. 179, 1999
Division 4	
S. 202D	ad. No. 97, 1988 am. No. 57, 1990; Nos. 100 and 216, 1991; No. 35, 1992; No. 179, 1999; No. 163, 2001; No. 101, 2006
S. 202DA	ad. No. 97, 1988
S. 202DB	ad. No. 97, 1988 am. No. 57, 1990
S. 202DC	ad. No. 97, 1988
S. 202DD	ad. No. 97, 1988 rs. No. 57, 1990
S. 202DDA	ad. No. 100, 1991 rep. No. 143, 2007
S. 202DDB	ad. No. 100, 1991 am. No. 179, 1999; No. 101, 2006
S. 202DE	ad. No. 97, 1988 am. No. 57, 1990
S. 202DF	ad. No. 97, 1988 am. No. 48, 1991
S. 202DG	ad. No. 97, 1988 am. No. 57, 1990; No. 100, 1991
Heading to s. 202DH.....	rs. No. 71, 1997
S. 202DH	ad. No. 76, 1996 am. Nos. 71 and 191, 1997; No. 128, 1999; No. 44, 2000; No. 9, 2007
S. 202DHA	ad. No. 9, 2007 am. No. 15, 2007
Heading to s. 202DI	am. No. 44, 2000; No. 15, 2007
S. 202DI	ad. No. 62, 1997 am. No. 44, 2000
Heading to s. 202DJ	am. No. 15, 2007
S. 202DJ	ad. No. 71, 1997 am. No. 191, 1997; No. 44, 2000; Nos. 8 and 15, 2007
Division 4A	
Div. 4A of Part VA	ad. No. 85, 1998
Ss. 202DK, 202DL	ad. No. 85, 1998
S. 202DM	ad. No. 85, 1998 am. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 5	
S. 202EA	ad. No. 97, 1988 am. Nos. 100 and 216, 1991; No. 197, 1997; Nos. 13 and 179, 1999; No. 100, 2004; No. 89, 2007
S. 202EB	ad. No. 97, 1988 am. No. 58, 1990; Nos. 100 and 216, 1991; No. 197, 1997; No. 13, 1999; No. 89, 2007
S. 202EC	ad. No. 97, 1988 am. No. 58, 1990; No. 55, 2001
S. 202EE	ad. No. 97, 1988 rs. No. 57, 1990 am. No. 100, 1991; No. 95, 1997; No. 179, 1999; No. 147, 2005; No. 101, 2006; Nos. 79 and 143, 2007; No. 97, 2008
S. 202EF	ad. No. 97, 1988 am. No. 179, 1999; No. 143, 2007
S. 202EG	ad. No. 97, 1988
S. 202EH	ad. No. 97, 1988 rs. No. 57, 1990
Division 6	
S. 202F	ad. No. 97, 1988 am. No. 85, 1998; No. 150, 2003; No. 114, 2004
S. 202FA	ad. No. 97, 1988
Division 7	
S. 202G	ad. No. 97, 1988
Part VI	
Division 1	
Heading to Div. 1 of Part VI	ad. No. 65, 1940
S. 204	am. No. 17, 1940 rs. No. 65, 1940 am. No. 43, 1954; No. 108, 1981; No. 123, 1984; Nos. 11 and 179, 1999; No. 91, 2000; No. 101, 2004; No. 75, 2005
Note 1 to s. 204(3)	am. No. 101, 2006
Note to s. 204	ad. No. 44, 2000 rep. No. 75, 2005
S. 205	am. No. 65, 1940; No. 123, 1984; No. 179, 1999; No. 44, 2000 rep. No. 101, 2006
S. 206	am. No. 123, 1984; No. 179, 1999; No. 44, 2000 rep. No. 101, 2006
S. 208	am. No. 108, 1981; No. 123, 1984; No. 101, 1992; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 208(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 209	am. No. 123, 1984; No. 101, 1992; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 209(2)	ad. No. 11, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 213	am. No. 143, 1965; No. 108, 1981; No. 123, 1984; No. 143, 2007
S. 214	am. No. 123, 1984; No. 101, 1992; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 214(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 214A	ad. No. 101, 1992 am. No. 181, 1994; No. 71 and 191, 1997; No. 11, 1999; Nos. 73 and 146, 2001; No. 41, 2005 rep. No. 101, 2006
S. 215	am. No. 58, 1941; No. 143, 1965; No. 134, 1980; No. 108, 1981; No. 123, 1984; No. 47, 1985; No. 41, 1986; No. 145, 1987; No. 60, 1990; Nos. 92, 101 and 118, 1992; No. 32, 1993; No. 138, 1994; No. 47, 1998; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Note 1 to s. 215(6)	ad. No. 11, 1999 am. No. 101, 2006 rep. No. 101, 2006
Note 2 to s. 215(6)	ad. No. 11, 1999 rep. No. 101, 2006
S. 216	am. No. 87, 1978; No. 123, 1984; No. 52, 1986; No. 73, 1989; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Note 1 to s. 216(3)	ad. No. 11, 1999 am. No. 101, 2006 rep. No. 101, 2006
Note 2 to s. 216(3)	ad. No. 11, 1999 rep. No. 101, 2006
S. 218	am. No. 88, 1936; No. 143, 1965; No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 46, 1986; No. 20, 1990; Nos. 5 and 216, 1991; No. 138, 1994; No. 101, 1992; Nos. 18 and 32, 1993; No. 47, 1998; Nos. 11, 44 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 218(6B)	ad. No. 11, 1999 rep. No. 101, 2006
S. 219	am. No. 52, 1986
S. 220	am. No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 108, 1981; No. 123, 1984; Nos. 48 and 52, 1986; Nos. 5 and 216, 1991; No. 101, 1992; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Note 1 to s. 220(5)	ad. No. 11, 1999 am. No. 101, 2006 rep. No. 101, 2006
Note 2 to s. 220(5)	ad. No. 11, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
Subdiv. A of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAA	ad. No. 47, 1998 rep. No. 101, 2006
Subdiv. B of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
Ss. 220AAB–220AAD	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAE	ad. No. 47, 1998 am. No. 11, 1999 rep. No. 101, 2006
S. 220AAF	ad. No. 47, 1998 am. Nos. 11 and 178, 1999 rep. No. 101, 2006
Note to s. 220AAF	ad. No. 11, 1999 rep. No. 178, 1999
S. 220AAG	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAGA	ad. No. 11, 1999 rep. No. 101, 2006
S. 220AAH	ad. No. 47, 1998 am. No. 179, 1999 rep. No. 101, 2006
S. 220AAI	ad. No. 47, 1998 rep. No. 101, 2006
Subdiv. C of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAJ	ad. No. 47, 1998 am. No. 178, 1999 rep. No. 101, 2006
Ss. 220AAK, 220AAL	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAM	ad. No. 47, 1998 am. No. 11, 1999 rep. No. 101, 2006
Ss. 220AAN, 220AAO.....	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAOA	ad. No. 11, 1999 rep. No. 101, 2006
S. 220AAP	ad. No. 47, 1998 am. No. 179, 1999 rep. No. 101, 2006
Subdiv. D of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAQ	ad. No. 47, 1998 am. No. 178, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 220AAR	ad. No. 47, 1998 am. No. 11, 1999 rep. No. 101, 2006
Note to s. 220AAR(1)	ad. No. 11, 1999 rep. No. 101, 2006
Ss. 220AAS, 220AAT	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AATA	ad. No. 11, 1999 rep. No. 101, 2006
S. 220AAU	ad. No. 47, 1998 am. No. 179, 1999 rep. No. 101, 2006
Subdiv. E of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAW	ad. No. 47, 1998 rs. No. 11 and 178, 1999 rep. No. 101, 2006
S. 220AAZ	ad. No. 47, 1998 rep. No. 101, 2006
Subdiv. F of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAZA	ad. No. 47, 1998 am. Nos. 11 and 179, 1999 rep. No. 101, 2006
Subdiv. G of Div. 1AAA of Part VI	ad. No. 47, 1998 rep. No. 101, 2006
Ss. 220AAZB-220AAZE	ad. No. 47, 1998 rep. No. 101, 2006
S. 220AAZF	ad. No. 47, 1998 am. No. 178, 1999 rep. No. 101, 2006
S. 220AAZG	ad. No. 47, 1998 rep. No. 101, 2006
Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
Subdiv. A of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AA	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AB	ad. No. 138, 1994 am. Nos. 41 and 47, 1998 rep. No. 101, 2006
Subdiv. B of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AC	ad. No. 138, 1994 am. No. 41, 1998 rep. No. 101, 2006
S. 220AD	ad. No. 138, 1994 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 220ADA	ad. No. 41, 1998 rep. No. 101, 2006
S. 220AE	ad. No. 138, 1994 rep. No. 101, 2006
Subdiv. C of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AF	ad. No. 138, 1994 am. No. 178, 1999 rep. No. 101, 2006
Subdiv. D of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AH	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AJ	ad. No. 138, 1994 am. Nos. 11 and 178, 1999 rep. No. 101, 2006
Heading to s. 220AK	am. No. 47, 1998 rep. No. 101, 2006
S. 220AK	ad. No. 138, 1994 am. No. 47, 1998 rep. No. 101, 2006
Subdiv. E of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
Ss. 220AL–220AO	ad. No. 138, 1994 rep. No. 101, 2006
Subdiv. F of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AP	ad. No. 138, 1994 am. No. 197, 1997 rep. No. 101, 2006
Subdiv. G of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AQ	ad. No. 138, 1994 am. No. 178, 1999 rep. No. 101, 2006
Subdiv. H of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AR	ad. No. 138, 1994 rep. No. 101, 2006
Subdiv. I of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AS	ad. No. 138, 1994 rs. No. 11, 1999 am. No. 11, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 220AU	am. No. 47, 1998 rep. No. 101, 2006
S. 220AU	ad. No. 138, 1994 am. No. 47, 1998 rs. No. 11, 1999 rep. No. 101, 2006
Subdiv. J of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AX	ad. No. 138, 1994 rep. No. 101, 2006
Subdiv. K of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AY	ad. No. 138, 1994 am. No. 47, 1998; Nos. 11 and 179, 1999 rep. No. 101, 2006
Subdiv. L of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AZ	ad. No. 138, 1994 rep. No. 101, 2006
Ss. 220AZA, 220AZB	ad. No. 138, 1994 rep. No. 101, 2006
S. 220AZC	ad. No. 138, 1994 am. Nos. 11 and 178, 1999 rep. No. 101, 2006
Subdiv. M of Div. 1AA of Part VI	ad. No. 138, 1994 rep. No. 101, 2006
Ss. 220AZD–220AZH	ad. No. 138, 1994 rep. No. 101, 2006
Heading to Div. 1A of Part VI	am. No. 20, 1990 rep. No. 101, 2006
Div. 1A of Part VI	ad. No. 165, 1973 rep. No. 101, 2006
S. 221AAA	ad. No. 20, 1990 rep. No. 101, 2006
S. 221AA	ad. No. 165, 1973 am. No. 26, 1974; No. 108, 1981; No. 123, 1984; No. 52, 1986 rep. No. 101, 2006
S. 221AB	ad. No. 154, 1986 rep. No. 101, 2006
S. 221AC	ad. No. 165, 1973 am. No. 26, 1974; No. 80, 1975; No. 50, 1976; No. 57, 1977; No. 109, 1986; No. 108, 1987 rep. No. 101, 2006
S. 221AD	ad. No. 165, 1973 am. No. 26, 1974; No. 108, 1981; No. 52, 1986 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221AE	ad. No. 165, 1973 am. No. 26, 1974; No. 108, 1981; No. 14, 1983; No. 123, 1984; No. 51, 1986; No. 58, 1987 rep. No. 101, 2006
S. 221AF	ad. No. 165, 1973 am. No. 26, 1974; No. 80, 1975; No. 57, 1977 rep. No. 101, 2006
S. 221AG	ad. No. 165, 1973 rs. No. 26, 1974 am. No. 108, 1981; No. 123, 1982; No. 14, 1983; No. 123, 1984; Nos. 51 and 52, 1986; Nos. 58 and 108, 1987; No. 22, 1995 rep. No. 101, 2006
S. 221AH	ad. No. 165, 1973 am. No. 26, 1974; No. 108, 1981; No. 123, 1984 rep. No. 101, 2006
S. 221AI	ad. No. 165, 1973 am. No. 26, 1974; No. 108, 1981 rep. No. 101, 2006
S. 221AJ	ad. No. 165, 1973 rep. No. 101, 2006
Div. 1B of Part VI	ad. No. 20, 1990 rep. No. 101, 2006
S. 221AK	ad. No. 20, 1990 am. No. 101, 1992; No. 62, 1997 rep. No. 101, 2006
S. 221AKA	ad. No. 18, 1993 am. No. 178, 1999 rep. No. 101, 2006
S. 221AL	ad. No. 20, 1990 am. No. 62, 1997; No. 44, 1999 rep. No. 101, 2006
S. 221AM	ad. No. 20, 1990 am. No. 100, 1991 rep. No. 101, 2006
S. 221AN	ad. No. 20, 1990 rep. No. 101, 2006
S. 221AO	ad. No. 20, 1990 am. No. 58, 1990 rep. No. 101, 2006
S. 221AP	ad. No. 20, 1990 am. No. 4, 1991 rep. No. 101, 2006
Ss. 221AQ–221AU	ad. No. 20, 1990 rep. No. 101, 2006
S. 221AV	ad. No. 20, 1990 am. No. 138, 1994; No. 22, 1995 rep. No. 101, 2006
Ss. 221AW, 221AX	ad. No. 20, 1990 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221AY	ad. No. 20, 1990 am. No. 191, 1992; No. 138, 1994; No. 22, 1995 rep. No. 101, 2006
S. 221AZ	ad. No. 20, 1990 am. No. 4, 1991 rep. No. 101, 2006
S. 221AZA	ad. No. 20, 1990 am. No. 216, 1991 rep. No. 101, 2006
S. 221AZB	ad. No. 20, 1990 am. No. 62, 1997 rep. No. 101, 2006
Ss. 221AZC, 221AZD	ad. No. 20, 1990 rep. No. 101, 2006
S. 221AZE	ad. No. 20, 1990 am. No. 191, 1992; No. 138, 1994; No. 22, 1995; No. 62, 1997; No. 44, 1999 rep. No. 101, 2006
S. 221AZF	ad. No. 20, 1990 rep. No. 101, 2006
Div. 1C of Part VI	ad. No. 18, 1993 rep. No. 101, 2006
S. 221AZH	ad. No. 18, 1993 am. No. 56, 1994; No. 16, 1999 rep. No. 101, 2006
S. 221AZI	ad. No. 18, 1993 am. No. 46, 1998 rep. No. 101, 2006
S. 221AZJA	ad. No. 178, 1999 am. No. 179, 1999 rep. No. 101, 2006
S. 221AZJ	ad. No. 18, 1993 rep. No. 101, 2006
S. 221AZK	ad. No. 18, 1993 am. No. 56, 1994; No. 120, 1995; No. 41, 1998; Nos. 11, 16 and 178, 1999; No. 44, 2000 rep. No. 101, 2006
Note to s. 221AZK(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221AZKA	ad. No. 120, 1995 am. No. 16, 1999 rep. No. 101, 2006
S. 221AZKB	ad. No. 178, 1999 rep. No. 101, 2006
S. 221AZKC	ad. No. 178, 1999 am. No. 44, 2000; No. 73, 2001 rep. No. 101, 2006
Note to s. 221AZKC(3).....	am. No. 73, 2001 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 221AZKC(5).....	rs. No. 73, 2001 rep. No. 101, 2006
S. 221AZKD	ad. No. 179, 1999 am. No. 91, 2000 rep. No. 101, 2006
S. 221AZKEA	ad. No. 44, 2000 rep. No. 101, 2006
S. 221AZKE	ad. No. 178, 1999 am. No. 44, 2000 rep. No. 101, 2006
S. 221AZL	ad. No. 18, 1993 rep. No. 101, 2006
S. 221AZM	ad. No. 18, 1993 rs. No. 11, 1999 am. No. 178, 1999 rep. No. 101, 2006
S. 221AZMAA	ad. No. 11, 1999 am. No. 178, 1999 rep. No. 101, 2006
Subdiv. BA of Div. 1C	ad. No. 56, 1994 rep. No. 101, 2006
of Part VI	
S. 221AZMA	ad. No. 56, 1994 am. No. 120, 1995 rep. No. 101, 2006
S. 221AZMB	ad. No. 56, 1994 rep. No. 101, 2006
S. 221AZMC	ad. No. 56, 1994 am. No. 16, 1999 rep. No. 101, 2006
S. 221AZN	ad. No. 18, 1993 am. No. 120, 1995; No. 41, 1998 rep. No. 101, 2006
S. 221AZO	ad. No. 18, 1993 rep. No. 101, 2006
Heading to s. 221AZP	am. No. 11, 1999 rep. No. 101, 2006
S. 221AZP	ad. No. 18, 1993 am. No. 56, 1994; No. 138, 1994; No. 22, 1995; No. 11, 1999 rep. No. 101, 2006
Note to s. 221AZP(1)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221AZQ	ad. No. 18, 1993 rep. No. 101, 2006
S. 221AZR	ad. No. 18, 1993 am. No. 120, 1995 rep. No. 101, 2006
S. 221AZS	ad. No. 18, 1993 am. No. 41, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221AZT	ad. No. 18, 1993 am. No. 56, 1994 rep. No. 101, 2006
S. 221AZU	ad. No. 18, 1993 rs. No. 120, 1995 am. No. 39, 1997 rep. No. 101, 2006
Heading to Div. 2 of Part VI	am. No. 103, 1965 rs. No. 165, 1973 rep. No. 101, 2006
Div. 2 of Part VI	ad. No. 63, 1947 rep. No. 101, 2006
S. 221A	ad. No. 65, 1940 am. No. 58, 1941; No. 10, 1943; No. 3, 1944; No. 6, 1946 rs. No. 63, 1947 am. Nos. 51 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 56, 1976; No. 57, 1977; Nos. 57, 87 and 123, 1978; Nos. 108 and 175, 1981; No. 14, 1983; Nos. 47 and 123, 1984; Nos. 129 and 168, 1985; Nos. 41, 49 and 154, 1986; No. 108, 1987; Nos. 78 and 97, 1988; No. 73, 1989; No. 45, 1990; Nos. 100 and 216, 1991; No. 208, 1992; Nos. 17 and 82, 1993; No. 170, 1995; No. 1, 1996; Nos. 62, 121 and 122, 1997; No. 45, 1998; No. 54, 1999; Nos. 118 and 179, 1999; Nos. 76 and 86, 2000; No. 52, 2004 rep. No. 101, 2006
S. 221B	ad. No. 17, 1993 am. No. 30, 1995; No. 39, 1997 rep. No. 101, 2006
S. 221C	ad. No. 65, 1940 am. No. 50, 1942; No. 10, 1943; No. 28, 1944; No. 4, 1945; No. 11, 1947 rs. No. 63, 1947 am. No. 44, 1948; No. 48, 1950; No. 44, 1951; No. 69, 1963; No. 143, 1965; No. 51, 1973; Nos. 87 and 123, 1978; Nos. 108 and 175, 1981; Nos. 47 and 123, 1984; No. 41, 1986; No. 153, 1988; No. 73, 1989; No. 170, 1995; No. 121, 1997; No. 178, 1999 rep. No. 101, 2006
S. 221D	ad. No. 65, 1940 am. No. 50, 1942; No. 10, 1943; No. 3, 1944 rs. No. 63, 1947 am. No. 143, 1965; No. 108, 1981; No. 123, 1984; No. 17, 1993; No. 170, 1995 rep. No. 101, 2006
S. 221DA	ad. No. 216, 1991 rep. No. 101, 2006
S. 221E	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 170, 1995 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221EAA	ad. No. 123, 1984 am. No. 191, 1992; No. 170, 1995 rs. No. 11, 1999 rep. No. 101, 2006
Heading to s. 221F	am. No. 170, 1995 rep. No. 101, 2006
S. 221F	ad. No. 65, 1940 am. No. 3, 1944 rs. No. 63, 1947 am. No. 143, 1965; No. 51, 1973; No. 87, 1978; No. 108, 1981; No. 123, 1982; Nos. 47 and 123, 1984; No. 97, 1988 (as am. by No. 43, 1996); Nos. 73 and 167, 1989; No. 45, 1990; No. 191, 1992; No. 17, 1993; No. 170, 1995; No. 174, 1997; No. 47, 1998; Nos. 11 and 17, 1999 rep. No. 101, 2006
Note to s. 221F(15)	ad. No. 11, 1999 rep. No. 101, 2006
Heading to s. 221H	am. No. 17, 1999 rep. No. 101, 2006
S. 221H	ad. No. 65, 1940 am. No. 10, 1943 rs. No. 3, 1944 am. No. 11, 1947 rs. No. 63, 1947 am. No. 143, 1965; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 47, 1984; No. 97, 1988; Nos. 2, 73 and 105, 1989; No. 170, 1995; No. 174, 1997; Nos. 11 and 17, 1999 rep. No. 101, 2006
S. 221K	ad. No. 65, 1940 am. No. 50, 1942; No. 10, 1943 rs. No. 3, 1944; No. 63, 1947 am. No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 73, 1989 rs. No. 170, 1995 am. No. 178, 1999 rep. No. 101, 2006
S. 221N	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 51, 1973; No. 87, 1978 rs. No. 123, 1984 am. No. 49, 1985; No. 216, 1991; No. 170, 1995; No. 47, 1998 rs. No. 11, 1999 am. No. 178, 1999 rep. No. 101, 2006
S. 221R	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 108, 1981; No. 73, 1989; No. 32, 1993; No. 47, 1998; Nos. 11 and 179, 1999; No. 44, 2000 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221S	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 143, 1965; No. 51, 1973; No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 73, 1989; No. 170, 1995; No. 178, 1999 rep. No. 101, 2006
S. 221V	ad. No. 65, 1940 am. No. 3, 1944 rs. No. 63, 1947 am. No. 28, 1952; No. 143, 1965; No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 73, 1989; No. 170, 1995 rep. No. 101, 2006
S. 221W	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 170, 1995 rep. No. 101, 2006
S. 221X	ad. No. 65, 1940 rs. No. 63, 1947 rep. No. 101, 2006
S. 221YAA	ad. No. 62, 1987 rep. No. 101, 2006
Heading to Div. 3 of Part VI	am. No. 48, 1950; No. 44, 1951; No. 85, 1959; No. 103, 1965 rep. No. 101, 2006
Div. 3 of Part VI	ad. No. 3, 1944 rep. No. 101, 2006
Heading to Subdiv. A of Div. 3 of Part VI	ad. No. 154, 1986 rep. No. 101, 2006
S. 221YA	ad. No. 3, 1944 am. No. 48, 1950; No. 44, 1951; No. 28, 1952; No. 85, 1959; No. 110, 1964; Nos. 103 and 143, 1965; No. 51, 1973; No. 205, 1976; No. 126, 1977; No. 87, 1978; Nos. 111 and 154, 1981; No. 14, 1983; Nos. 123 and 124, 1984; No. 52, 1986; No. 61, 1987; No. 73, 1989; Nos. 87 and 135, 1990; No. 216, 1991; No. 224, 1992; No. 118, 1993; Nos. 138 and 174, 1994; No. 94, 1995; No. 31, 1996; Nos. 46 and 85, 1998; No. 11, 1999 rep. No. 101, 2006
S. 221YAAA	ad. No. 31, 1996 am. No. 54, 1999 rep. No. 101, 2006
S. 221YAB	ad. No. 87, 1990 am. No. 135, 1990; No. 100, 1991; No. 216, 1991(as am. by No. 43, 1996); No. 208, 1992; No. 138, 1994; No. 170, 1995; No. 78, 1996; Nos. 47 and 85, 1998; Nos. 11 and 60, 1999 rep. No. 101, 2006
S. 221YB	ad. No. 3, 1944 rs. No. 48, 1950 am. No. 44, 1951 rs. No. 103, 1965 am. No. 51, 1973; No. 56, 1976; No. 108, 1981; No. 103, 1983; Nos. 61 and 108, 1987; Nos. 20 and 135, 1990; No. 18, 1993; No. 178, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 221YB(2)	ad. No. 178, 1999 rep. No. 101, 2006
S. 221YBA	ad. No. 61, 1987 am. No. 138, 1987; No. 135, 1990; No. 101, 1992; No. 46, 1998; Nos. 11 and 178, 1999 rep. No. 101, 2006
Note to s. 221YBA(1)	ad. No. 178, 1999 rep. No. 101, 2006
Note to s. 221YBA(6)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221YC	ad. No. 3, 1944 am. No. 48, 1950; No. 28, 1952; No. 45, 1953; No. 85, 1959; No. 69, 1963; No. 143, 1965; No. 50, 1966; No. 38, 1967; No. 85, 1972; No. 126, 1974; No. 117, 1975; Nos. 50 and 56, 1976; No. 126, 1977; No. 87, 1978; No. 149, 1979; No. 108, 1981; No. 14, 1983; No. 52, 1986; No. 61, 1987; No. 73, 1989; No. 87, 1990; No. 138, 1994 rep. No. 101, 2006
S. 221YCAA	ad. No. 87, 1990 am. Nos. 100 and 216, 1991; No. 224, 1992; Nos. 56, 82, 138 and 174, 1994; Nos. 56, 121, 147 and 197, 1997; Nos. 41, 46, 85 and 128, 1998; No. 179, 1999 rep. No. 101, 2006
Note to s. 221YCAA(2)(m)	ad. No. 47, 1998 rep. No. 101, 2006
S. 221YCA	ad. No. 61, 1987 am. No. 11, 1999 rep. No. 101, 2006
S. 221YCB	ad. No. 70, 1989 rep. No. 101, 2006
S. 221YD	ad. No. 3, 1944 am. No. 44, 1951; No. 28, 1952; No. 85, 1959; No. 87, 1978; No. 108, 1981; No. 61, 1987; No. 73, 1989; No. 11, 1999 rep. No. 101, 2006
S. 221YDAA	ad. No. 61, 1987 am. No. 11, 1988; No. 58, 1990 rep. No. 101, 2006
S. 221YDA	ad. No. 28, 1952 rs. No. 28, 1953 am. No. 45, 1953; No. 51, 1973; No. 126, 1974; No. 117, 1975; Nos. 87 and 123, 1978; No. 19, 1980; No. 108, 1981; No. 106, 1982; Nos. 14 and 103, 1983; Nos. 52, 112 and 154, 1986; Nos. 61, 62 and 138, 1987; No. 153, 1988; Nos. 73, 97 and 107, 1989; No. 135, 1990; Nos. 100 and 216, 1991; No. 101, 1992; Nos. 56, 82 and 138, 1994; Nos. 63 and 78, 1996; Nos. 46 and 47, 1998; Nos. 11, 60 and 69, 1999 rep. No. 101, 2006
Note to s. 221YDA(2A)	ad. No. 11, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 221YDB	am. No. 11, 1999 rep. No. 101, 2006
S. 221YDB	ad. No. 28, 1952 am. Nos. 28 and 45, 1953; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 117, 1975; Nos. 87 and 123, 1978; No. 108, 1981; No. 14, 1983; No. 123, 1984; Nos. 61 and 62, 1987; No. 73, 1989; No. 135, 1990; Nos. 191 and 224, 1992; No. 138, 1994; No. 11, 1999 (as am. by No. 57, 2002); No. 178, 1999 rep. No. 101, 2006
Note to s. 221YDB(1)	ad. No. 11, 1999 rep. No. 101, 2006
Note to s. 221YDB(1AAA)	ad. No. 11, 1999 rep. No. 101, 2006
Note to s. 221YDB(1AA)	ad. No. 11, 1999 rep. No. 101, 2006
Note to s. 221YDB(1ABA)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221YDC	ad. No. 81, 1953 am. No. 18, 1960; No. 51, 1973; No. 124, 1980; No. 108, 1981; No. 14, 1983; No. 51, 1986; No. 61, 1987; No. 22, 1995 rep. No. 101, 2006
S. 221YE	ad. No. 3, 1944 rs. No. 44, 1951 am. No. 90, 1952 rs. No. 85, 1959 am. No. 85, 1967; No. 87, 1978; No. 61, 1987; Nos. 2 and 73, 1989; No. 58, 1990; No. 41, 1998 rs. No. 11, 1999 rep. No. 101, 2006
S. 221YF	ad. No. 3, 1944 am. No. 44, 1951; No. 85, 1959; No. 61, 1987 rep. No. 101, 2006
S. 221YG	ad. No. 3, 1944 am. No. 44, 1951; No. 85, 1959; No. 87, 1978; No. 108, 1981; No. 61, 1987; No. 73, 1989; No. 11, 1999 rep. No. 101, 2006
S. 221YH	ad. No. 3, 1944 am. No. 44, 1951; No. 85, 1959; No. 216, 1973 (as am. by No. 20, 1974); No. 61, 1987 rep. No. 101, 2006
Subdiv. B of Div. 3 of Part VI	ad. No. 154, 1986 rep. No. 101, 2006
S. 221YHAAA	ad. No. 154, 1986 am. No. 135, 1990; No. 46, 1998 rep. No. 101, 2006
S. 221YHAAB	ad. No. 154, 1986 rep. No. 101, 2006
Ss. 221YHAAC, 221YHAAD	ad. No. 154, 1986 am. No. 61, 1987; No. 87, 1990 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221YHAAE	ad. No. 154, 1986 am. No. 61, 1987; No. 216, 1991; No. 101, 1992; No. 11, 1999 rep. No. 101, 2006
Note to s. 221YHAAE(4)	ad. No. 11, 1999 rep. No. 101, 2006
Div. 3A of Part VI	ad. No. 14, 1983 rep. No. 101, 2006
Heading to Subdiv. A of Div. 3A of Part VI	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHAAF	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHAAG	ad. No. 227, 1992 am. No. 47, 1998 rep. No. 101, 2006
Heading to Subdiv. B of Div. 3A of Part VI	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHAAH	ad. No. 178, 1999 rep. No. 101, 2006
S. 221YHA	ad. No. 14, 1983 am. No. 103, 1983; Nos. 123 and 124, 1984; No. 168, 1985; No. 20, 1990; No. 227, 1992 rep. No. 101, 2006
S. 221YHB	ad. No. 14, 1983 am. No. 124, 1984 rs. No. 227, 1992 rep. No. 101, 2006
S. 221YHC	ad. No. 14, 1983 am. No. 103, 1983 rs. No. 227, 1992 rep. No. 101, 2006
S. 221YHD	ad. No. 14, 1983 am. No. 103, 1983; Nos. 123 and 124, 1984; No. 97, 1988 rs. No. 227, 1992 am. No. 118, 1993 rep. No. 101, 2006
S. 221YHDA	ad. No. 227, 1992 am. No. 118, 1993 rep. No. 101, 2006
S. 221YHDB	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHDC	ad. No. 227, 1992 am. No. 47, 1998; No. 11, 1999 rep. No. 101, 2006
S. 221YHDD	ad. No. 227, 1992 am. No. 178, 1999 rep. No. 101, 2006
S. 221YHDE	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHE	ad. No. 124, 1984 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221YHF	ad. No. 14, 1983 am. No. 124, 1984; No. 227, 1992 rep. No. 101, 2006
S. 221YHG	ad. No. 14, 1983 am. No. 124, 1984; No. 2, 1989; Nos. 11 and 178, 1999 rep. No. 101, 2006
S. 221YHH	ad. No. 14, 1983 am. No. 123, 1984; No. 191, 1992 rs. No. 11, 1999 am. No. 11, 1999 rep. No. 101, 2006
S. 221YHL	ad. No. 14, 1983 am. No. 123, 1984; No. 227, 1992; No. 47, 1998; No. 11, 1999 rep. No. 101, 2006
S. 221YHM	ad. No. 14, 1983 am. No. 227, 1992 rep. No. 101, 2006
S. 221YHN	ad. No. 14, 1983 am. No. 123, 1984; No. 32, 1993; No. 47, 1998; Nos. 11 and 179, 1999 rep. No. 101, 2006
S. 221YHP	ad. No. 14, 1983 am. No. 124, 1984 rs. No. 227, 1992 rep. No. 101, 2006
S. 221YHQ	ad. No. 14, 1983 am. No. 103, 1983; No. 124, 1984; No. 227, 1992 rep. No. 101, 2006
S. 221YHR	ad. No. 14, 1983 rs. No. 103, 1983 am. Nos. 123 and 124, 1984 rs. No. 227, 1992 rep. No. 101, 2006
S. 221YHS	ad. No. 14, 1983 am. No. 227, 1992 rep. No. 101, 2006
S. 221YHSA	ad. No. 227, 1992 rep. No. 101, 2006
S. 221YHT	ad. No. 14, 1983 am. No. 49, 1985; No. 48, 1986; No. 216, 1991; No. 227, 1992 rep. No. 101, 2006
S. 221YHU	ad. No. 14, 1983 am. No. 103, 1983; No. 227, 1992 rep. No. 101, 2006
Ss. 221YHW–221YHZ	ad. No. 14, 1983 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to Div. 3B of Part VI	rs. No. 97, 1988 rep. No. 101, 2006
Div. 3B of Part VI	ad. No. 154, 1986 rep. No. 101, 2006
Subdiv. AA of Div. 3B of Part VI	ad. No. 163, 2001 rep. No. 101, 2006
S. 221YHZAA	ad. No. 163, 2001 rep. No. 101, 2006
Heading to Subdiv. A of Div. 3B of Part VI	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZA	ad. No. 154, 1986 am. No. 97, 1988; Nos. 100 and 216, 1991; Nos. 35 and 224, 1992; No. 82, 1994 rep. No. 101, 2006
Heading to Subdiv. B of Div. 3B of Part VI	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZA	ad. No. 154, 1986 am. No. 224, 1992; No. 178, 1999 rep. No. 101, 2006
S. 221YHZA	ad. No. 154, 1986 am. No. 97, 1988; No. 57, 1990; Nos. 191 and 224, 1992; No. 118, 1993; No. 169, 1995; Nos. 11, 93 and 178, 1999 rep. No. 101, 2006
Note to s. 221YHZA(1)	ad. No. 11, 1999 rep. No. 101, 2006
Note 1 to s. 221YHZA(1A)	ad. No. 11, 1999 rep. No. 101, 2006
Note 2 to s. 221YHZA(1A)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221YHZA	ad. No. 11, 1999 rep. No. 101, 2006
S. 221YHZA	ad. No. 154, 1986 am. No. 97, 1988; No. 100, 1991; No. 191, 1992; No. 32, 1993; Nos. 169 and 170, 1995; No. 47, 1998; Nos. 11, 178 and 179, 1999; No. 101, 2003 rep. No. 101, 2006
Note to s. 221YHZA(1)	ad. No. 11, 1999 rep. No. 101, 2006
Heading to s. 221YHZA	am. No. 169, 1995 rep. No. 101, 2006
S. 221YHZA	ad. No. 97, 1988 am. No. 169, 1995 rep. No. 101, 2006
Ss. 221YHZA, 221YHZA	ad. No. 169, 1995 rep. No. 101, 2006
S. 221YHZA	ad. No. 169, 1995 am. No. 41, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 221YHZDB	rs. No. 169, 1995 rep. No. 101, 2006
S. 221YHZDB	ad. No. 97, 1988 rep. No. 101, 2006
S. 221YHZE	ad. No. 154, 1986 am. No. 11, 1999 rep. No. 101, 2006
S. 221YHZH	ad. No. 154, 1986 am. No. 97, 1988 rep. No. 101, 2006
S. 221YHZJ	ad. No. 154, 1986 am. No. 32, 1993; Nos. 11 and 179, 1999 rep. No. 101, 2006
S. 221YHZK	ad. No. 154, 1986 am. No. 97, 1988; No. 100, 1991; No. 35, 1992 rep. No. 101, 2006
S. 221YHZL	ad. No. 154, 1986 am. Nos. 11 and 178, 1999 rep. No. 101, 2006
S. 221YHZM	ad. No. 154, 1986 rs. No. 216, 1991 rep. No. 101, 2006
S. 221YHZN	ad. No. 154, 1986 rep. No. 101, 2006
S. 221YHZO	ad. No. 97, 1988 rep. No. 101, 2006
Subdiv. C of Div. 3B of Part VI	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZP	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZQ	ad. No. 216, 1991 am. Nos. 178 and 179, 1999 rep. No. 101, 2006
Ss. 221YHZR– 221YHZV	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZW	ad. No. 216, 1991 am. No. 44, 2000 rep. No. 101, 2006
S. 221YHZX	ad. No. 216, 1991 am. No. 32, 1993 rep. No. 101, 2006
Ss. 221YHZXA, 221YHZXB	ad. No. 179, 1999 rep. No. 101, 2006
S. 221YHZY	ad. No. 216, 1991 rep. No. 101, 2006
S. 221YHZZ	ad. No. 216, 1991 am. No. 179, 1999 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 221YHZZA– 221YHZZC	ad. No. 216, 1991 rep. No. 101, 2006
Heading to Div. 4 of Part VI	rs. No. 85, 1967 rep. No. 101, 2006
Div. 4 of Part VI	ad. No. 85, 1959 rep. No. 101, 2006
S. 221YJ	ad. No. 85, 1959 am. No. 85, 1967 rep. No. 101, 2006
S. 221YJA	ad. No. 163, 2001 rep. No. 101, 2006
S. 221YK	ad. No. 85, 1959 am. Nos. 38 and 85, 1967; Nos. 51 and 165, 1973; No. 80, 1975; No. 108, 1981; No. 49, 1986; No. 224, 1992; No. 181, 1994 rep. No. 101, 2006
S. 221YL	ad. No. 85, 1959 am. No. 18, 1960; No. 27, 1961; No. 143, 1965; Nos. 38 and 85, 1967; No. 26, 1974; No. 50, 1976; No. 108, 1981; No. 123, 1984; No. 49, 1986; No. 57, 1990; No. 224, 1992; Nos. 93 and 178, 1999 rep. No. 101, 2006
S. 221YM	ad. No. 85, 1959 am. No. 85, 1967; No. 108, 1981; No. 224, 1992 rep. No. 101, 2006
S. 221YMA	ad. No. 49, 1986 rep. No. 101, 2006
S. 221YN	ad. No. 85, 1959 am. No. 143, 1965; No. 85, 1967; No. 51, 1973; No. 108, 1981; No. 123, 1982; No. 123, 1984; No. 57, 1990; Nos. 191 and 224, 1992; No. 120, 1995; No. 11, 1999 rep. No. 101, 2006
S. 221YP	ad. No. 85, 1959 am. No. 143, 1965; No. 85, 1967; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 49, 1986; No. 178, 1999 rep. No. 101, 2006
S. 221YQ	ad. No. 85, 1959 am. No. 85, 1967; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 49, 1986; No. 224, 1992; No. 95, 1997; No. 11, 1999 rep. No. 101, 2006
S. 221YQA	ad. No. 95, 1997 rep. No. 101, 2006
S. 221YR	ad. No. 85, 1959 am. No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 32, 1993; No. 179, 1999 rep. No. 101, 2006
S. 221YRA	ad. No. 85, 1967 am. No. 51, 1973; No. 108, 1981; No. 224, 1992; No. 95, 1997 rep. No. 101, 2006
S. 221YS	ad. No. 85, 1959 am. No. 85, 1967; No. 51, 1973; No. 49, 1986; No. 224, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221YSA	ad. No. 49, 1986 am. No. 82, 1994 rep. No. 101, 2006
S. 221YT	ad. No. 85, 1959 am. No. 108, 1981; Nos. 11 and 178, 1999 rep. No. 101, 2006
S. 221YU	ad. No. 85, 1959 am. No. 85, 1967; No. 108, 1981; No. 224, 1992; No. 32, 1993 rep. No. 101, 2006
S. 221YV	ad. No. 85, 1959 am. No. 85, 1967; No. 51, 1973; No. 224, 1992 rep. No. 101, 2006
S. 221YY	ad. No. 85, 1959 am. No. 108, 1981 rep. No. 101, 2006
Div. 5 of Part VI	ad. No. 27, 1979 rep. No. 101, 2006
Ss. 221Z, 221ZA	ad. No. 27, 1979 rep. No. 101, 2006
S. 221ZB	ad. No. 27, 1979 am. No. 106, 1982; No. 123, 1984; No. 109, 1986; No. 178, 1999 rep. No. 101, 2006
Note to s. 221ZB(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221ZC	ad. No. 27, 1979 am. No. 108, 1981; No. 123, 1982; No. 39, 1983; No. 123, 1984; No. 191, 1992; No. 11, 1999 rep. No. 101, 2006
S. 221ZD	ad. No. 27, 1979 am. No. 108, 1981; No. 123, 1984; No. 191, 1992; No. 11, 1999 rep. No. 101, 2006
S. 221ZE	ad. No. 27, 1979 am. No. 108, 1981; No. 123, 1984; No. 179, 1999 rep. No. 101, 2006
S. 221ZF	ad. No. 27, 1979 am. No. 108, 1981 rep. No. 101, 2006
S. 221ZG	ad. No. 27, 1979 am. Nos. 11 and 178, 1999 rep. No. 101, 2006
S. 221ZH	ad. No. 27, 1979 rep. No. 101, 2006
S. 221ZL	ad. No. 27, 1979 rep. No. 101, 2006
Div. 6 of Part VI	ad. No. 14, 1983 rep. No. 101, 2006
S. 221ZMA	ad. No. 178, 1999 rep. No. 101, 2006
S. 221ZM	ad. No. 14, 1983 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221ZN	ad. No. 14, 1983 am. Nos. 14 and 123, 1984; No. 168, 1985; No. 153, 1988; No. 20, 1990; No. 11, 1999 rep. No. 101, 2006
Note to s. 221ZN(1)	ad. No. 11, 1999 rep. No. 101, 2006
S. 221ZNA	ad. No. 11, 1999 rep. No. 101, 2006
S. 221ZO	ad. No. 14, 1983 am. No. 123, 1984; No. 191, 1992; No. 11, 1999 rep. No. 101, 2006
S. 221ZP	ad. No. 14, 1983 am. No. 123, 1984; No. 191, 1992 rs. No. 11, 1999 rep. No. 101, 2006
S. 221ZR	ad. No. 14, 1983 am. No. 123, 1984; No. 179, 1999 rep. No. 101, 2006
Ss. 221ZS, 221ZT	ad. No. 14, 1983 am. No. 11, 1999 rep. No. 101, 2006
S. 221ZU	ad. No. 14, 1983 rep. No. 101, 2006
S. 221ZX	ad. No. 14, 1983 rep. No. 101, 2006
Div. 6A of Part VI	ad. No. 85, 1998 rep. No. 101, 2006
S. 221ZXA	ad. No. 85, 1998 rep. No. 101, 2006
S. 221ZXB	ad. No. 85, 1998 am. No. 178, 1999 rep. No. 101, 2006
Ss. 221ZXC, 221ZXD	ad. No. 85, 1998 am. No. 11, 1999 rep. No. 101, 2006
Ss. 221ZXE, 221ZXF	ad. No. 85, 1998 rep. No. 101, 2006
S. 221ZYG	ad. No. 85, 1998 am. No. 11, 1999 rep. No. 101, 2006
Note to s. 221ZYG	ad. No. 11, 1999 rep. No. 101, 2006
Ss. 221ZYK, 221ZYL	ad. No. 85, 1998 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 8	
Heading to Div. 8 of Part VI	am. No. 138, 1994 rs. No. 47, 1998; No. 179, 1999
Div. 8 of Part VI	ad. No. 32, 1993
Subdivision A	
S. 222AFA	ad. No. 32, 1993 am. No. 138, 1994 (as am. by No. 147, 1997); No. 47, 1998; No. 179, 1999; No. 44, 2000; No. 101, 2006
S. 222AFB	ad. No. 32, 1993 am. No. 138, 1994; No. 170, 1995; No. 47, 1998; No. 179, 1999; No. 55, 2001; No. 119, 2002; No. 101, 2006
S. 222AFC	ad. No. 32, 1993
Subdivision B	
S. 222AGA	ad. No. 32, 1993 am. No. 119, 2002
S. 222AGB	ad. No. 32, 1993 am. No. 138, 1994; No. 119, 2002
S. 222AGC	ad. No. 32, 1993
S. 222AGD	ad. No. 32, 1993 am. No. 138, 1994; No. 119, 2002
S. 222AGE	ad. No. 32, 1993
S. 222AGF	ad. No. 32, 1993 am. No. 138, 1994; No. 170, 1995; No. 119, 2002
S. 222AGG	ad. No. 32, 1993
Subdivision C	
Ss. 222AHA–222AHD	ad. No. 32, 1993
Note to s. 222AHD(3)	am. No. 41, 1998
S. 222AHE	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 86, 2000
Subdivision D	
S. 222AIA	ad. No. 32, 1993
S. 222AIB	ad. No. 32, 1993 am. No. 55, 2001; No. 119, 2002
S. 222AIC	ad. No. 32, 1993 am. No. 119, 2002
S. 222AID	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 86, 2000
S. 222AIE	ad. No. 32, 1993
S. 222AIF	ad. No. 32, 1993 am. No. 55, 2001
S. 222AIG	ad. No. 32, 1993
S. 222AIH	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 86, 2000
Heading to s. 222All	am. No. 55, 2001
S. 222All	ad. No. 32, 1993 am. No. 55, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision E	
Heading to Subdiv. E of Div. 8 of Part VI	rs. No. 11, 1999
Heading to s. 222AJA	am. No. 11, 1999
S. 222AJA	ad. No. 32, 1993 am. No. 11, 1999; No. 91, 2000
Note to s. 222AJA(3)	am. No. 101, 2006
Heading to s. 222AJB	am. No. 47, 1998; No. 11, 1999 rs. No. 179, 1999 am. No. 119, 2002
S. 222AJB	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; Nos. 11 and 179, 1999; No. 119, 2002
Subdivision F	
Ss. 222AKA, 222AKB	ad. No. 32, 1993
Subdivision G	
S. 222ALA	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998
S. 222ALB	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 11, 1999
Subdivision H	
Ss. 222AMA, 222AMB	ad. No. 32, 1993
Division 9	
Div. 9 of Part VI	ad. No. 32, 1993
Subdivision A	
S. 222ANA	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 44, 2000; No. 55, 2001; No. 101, 2006
S. 222ANB	ad. No. 32, 1993 am. No. 119, 2002
Subdivision B	
Heading to Subdiv. B of Div. 9 of Part VI	am. No. 138, 1994 rs. No. 47, 1998; No. 179, 1999
S. 222AOA	ad. No. 32, 1993 am. No. 138, 1994; No. 179, 1999; No. 86, 2000; No. 55, 2001; No. 57, 2002
Heading to s. 222AOB	am. No. 179, 1999
S. 222AOB	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 55, 2001
S. 222AOBAA	ad. No. 169, 2001
S. 222AOBA	ad. No. 179, 1999 am. No. 55, 2001
S. 222AOC	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998; No. 179, 1999; No. 169, 2001
S. 222AOD	ad. No. 32, 1993 am. No. 179, 1999; No. 169, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 222AOE	ad. No. 32, 1993 am. No. 179, 1999; Nos. 55 and 169, 2001
S. 222AOF	ad. No. 32, 1993 am. No. 55, 2001; No. 119, 2002; No. 101, 2007
Heading to s. 222AOG	am. No. 179, 1999; No. 169, 2001
S. 222AOG	ad. No. 32, 1993 am. No. 179, 1999; No. 169, 2001
S. 222AOH.....	ad. No. 32, 1993 am. No. 179, 1999; No. 169, 2001
Ss. 222AOI.....	ad. No. 32, 1993 am. No. 179, 1999
S. 222AOJ.....	ad. No. 32, 1993 am. No. 179, 1999; No. 169, 2001
Subdivision C	
Ss. 222APA, 222APB	ad. No. 32, 1993 am. No. 55, 2001
Ss. 222APC, 222APD	ad. No. 32, 1993
S. 222APE	ad. No. 32, 1993 am. No. 55, 2001
Ss. 222APF–222API	ad. No. 32, 1993
Subdivision D	
S. 222AQA	ad. No. 32, 1993 am. No. 55, 2001
Ss. 222AQB–222AQD	ad. No. 32, 1993
Division 10	
Div. 10 of Part VI.....	ad. No. 32, 1993
Heading to s. 222ARA	am. No. 55, 2001
S. 222ARA	ad. No. 32, 1993 am. No. 55, 2001
Part VII	ad. No. 123, 1984 rep. No. 101, 2006
S. 222AA	ad. No. 91, 2000 rep. No. 101, 2006
S. 222A	ad. No. 101, 1992 am. No. 18, 1993; No. 174, 1997; Nos. 11 and 179, 1999 rep. No. 101, 2006
Ss. 222B–222F	ad. No. 101, 1992 rep. No. 101, 2006
S. 222	rs. No. 123, 1984 am. No. 20, 1990; No. 18, 1993; No. 169, 1995; No. 179, 1999 rep. No. 101, 2006
S. 224	am. No. 143, 1965; No. 108, 1981 rs. No. 123, 1984 am. No. 101, 1992 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 225	am. No. 143, 1965; No. 108, 1981 rs. No. 123, 1984 am. No. 101, 1992; No. 22, 1995; No. 121, 1997 rep. No. 101, 2006
Heading to s. 226	am. No. 11, 1999 rep. No. 101, 2006
S. 226	am. No. 143, 1965; No. 117, 1975; No. 87, 1978; No. 149, 1979; Nos. 108 and 110, 1981; Nos. 29 and 76, 1982 rs. No. 123, 1984 am. No. 101, 1992; No. 95, 1997 rep. No. 101, 2006
S. 226AA	ad. No. 11, 1999 rep. No. 101, 2006
Ss. 226B–226H.....	ad. No. 101, 1992 rep. No. 101, 2006
Ss. 226J–226N	ad. No. 101, 1992 rep. No. 101, 2006
Ss. 226P–226Y	ad. No. 101, 1992 rep. No. 101, 2006
S. 226Z	ad. No. 101, 1992 am. No. 91, 2000 rep. No. 101, 2006
Ss. 226ZA, 226ZB	ad. No. 101, 1992 rep. No. 101, 2006
S. 227	am. No. 143, 1965; No. 87, 1978; No. 108, 1981 rs. No. 123, 1984 rep. No. 101, 2006
Note to s. 227	ad. No. 11, 1999 rep. No. 101, 2006
S. 228	am. No. 143, 1965; No. 108, 1981 rs. No. 123, 1984 rep. No. 101, 2006
Part VIIA	
Part VIIA	ad. No. 10, 1943
Division 1	
Heading to Div. 1	ad. No. 78, 1988 of Part VIIA
S. 251A	ad. No. 10, 1943 am. No. 78, 1988; Nos. 91 and 137, 2000; No. 146, 2001; No. 54, 2003; No. 143, 2007
S. 251B	ad. No. 10, 1943 am. No. 18, 1960 rs. No. 164, 1973 am. No. 80, 1975
Ss. 251BA–251BC	ad. No. 78, 1988
Division 2	
Heading to Div. 2	ad. No. 78, 1988 of Part VIIA
S. 251C	ad. No. 10, 1943

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 251D	ad. No. 10, 1943 am. No. 33, 1965; No. 108, 1981; No. 39, 1983; No. 78, 1988
S. 251DA	ad. No. 78, 1988 am. No. 43, 1996
S. 251E	ad. No. 10, 1943 am. No. 108, 1981; No. 78, 1988
Ss. 251F, 251G	ad. No. 10, 1943
Division 3	
Heading to Div. 3 of Part VIIA	ad. No. 78, 1988
Subdivision A	
Heading to Subdiv. A of Div. 3 of Part VIIA	ad. No. 78, 1988
S. 251J	ad. No. 10, 1943 am. No. 28, 1944; No. 11, 1947; No. 143, 1965; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 123, 1984; No. 78, 1988
S. 251JA	ad. No. 11, 1947 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974) rs. No. 78, 1988
Subdivision B	
Heading to Subdiv. B of Div. 3 of Part VIIA	ad. No. 78, 1988
Ss. 251JB, 251JC	ad. No. 78, 1988
Subdivision C	
Heading to Subdiv. C of Div. 3 of Part VIIA	ad. No. 78, 1988
S. 251JD	ad. No. 78, 1988
Subdivision D	
Heading to Subdiv. D of Div. 3 of Part VIIA	ad. No. 78, 1988
Ss. 251JE, 251JF	ad. No. 78, 1988
Subdivision E	
Heading to Subdiv. E of Div. 3 of Part VIIA	ad. No. 78, 1988
S. 251JG	ad. No. 78, 1988
Subdivision F	
Heading to Subdiv. F of Div. 3 of Part VIIA	ad. No. 78, 1988
S. 251JH	ad. No. 78, 1988
Subdivision G	
Heading to Subdiv. G of Div. 3 of Part VIIA	ad. No. 78, 1988
Ss. 251JK, 251JM	ad. No. 78, 1988

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision H	
Heading to Subdiv. H of Div. 3 of Part VIIA	ad. No. 78, 1988
S. 251K	ad. No. 10, 1943 am. No. 11, 1947; No. 143, 1965; Nos. 51 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 57, 1977; No. 172, 1978; No. 108, 1981; No. 123, 1984 (as am. by No. 65, 1985); No. 48, 1986; No. 78, 1988; No. 146, 2001
Division 4	
Heading to Div. 4 of Part VIIA	ad. No. 78, 1988
Ss. 251KA–251KE	ad. No. 78, 1988
Division 5	
Heading to Div. 5 of Part VIIA	ad. No. 78, 1988
S. 251KF	ad. No. 78, 1988
Division 6	
Heading to Div. 6 of Part VIIA	ad. No. 78, 1988
Ss. 251KG, 251KH	ad. No. 78, 1988 am. No. 146, 2001; No. 143, 2007
S. 251KJ	ad. No. 78, 1988 am. No. 146, 2001; No. 143, 2007
Note to s. 251KJ(2)	ad. No. 146, 2001
S. 251KK	ad. No. 78, 1988 am. No. 146, 2001; No. 143, 2007
Division 7	
Heading to Div. 7 of Part VIIA	ad. No. 78, 1988
S. 251L	ad. No. 10, 1943 am. No. 28, 1944; No. 11, 1947; No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 48, 1986; No. 91, 2000; No. 73, 2006
S. 251LA	ad. No. 91, 2000
S. 251M	ad. No. 10, 1943 am. No. 108, 1981; No. 101, 1992; No. 11, 1999; No. 75, 2005
Note 1 to s. 251M(1)	ad. No. 11, 1999 am. No. 75, 2005; No. 101, 2006
Note 2 to s. 251M(1)	ad. No. 11, 1999 am. No. 75, 2005
S. 251N	ad. No. 10, 1943 am. No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 48, 1986; No. 78, 1988; No. 146, 2001; No. 143, 2007
S. 251O	ad. No. 10, 1943 am. No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984; No. 78, 1988; No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 8	
Heading to Div. 8 of Part VIIA	ad. No. 78, 1988
S. 251P	ad. No. 10, 1943 am. No. 123, 1984
S. 251Q	ad. No. 11, 1947 am. No. 51, 1973
Ss. 251QA, 251QB	ad. No. 78, 1988
Part VIIB	
Heading to Part VIIB	rs. No. 17, 1999
Part VIIB	ad. No. 51, 1983
S. 251R	ad. No. 53, 1976 am. No. 98, 1976; Nos. 90 and 123, 1978; No. 108, 1981; No. 106, 1982 rs. No. 51, 1983 am. No. 173, 1985; No. 58, 1987; No. 78, 1988; Nos. 57 and 135, 1990; Nos. 5 and 100, 1991; No. 80, 1992; No. 17, 1996; Nos. 17, 83 and 179, 1999; No. 45, 2000; Nos. 63 and 161, 2005; No. 101, 2006; No. 82, 2007; No. 144, 2008
S. 251S	ad. No. 53, 1976 am. No. 126, 1977; No. 123, 1978; No. 108, 1981 rs. No. 51, 1983 am. No. 49, 1985; No. 105, 1989; No. 100, 1991; No. 56, 1997; No. 15, 2007
Note to s. 251S(1)	ad. No. 80, 2006
Heading to s. 251T	am. No. 56, 1997
S. 251T	ad. No. 53, 1976 rs. No. 51, 1983 am. No. 56, 1997
S. 251U	ad. No. 53, 1976 am. Nos. 90 and 123, 1978; No. 108, 1981; No. 49, 1985; No. 173, 1985 (as am. by No. 49, 1986) rs. No. 51, 1983 am. Nos. 100 and 216, 1991; No. 80, 1992; No. 146, 1995; No. 17, 1996; No. 39, 2002; No. 52, 2004; No. 97, 2008
Note to s. 251U(1)	ad. No. 144, 2008
Ss. 251V, 251VA	ad. No. 56, 1997
S. 251W	ad. No. 53, 1976 rs. No. 98, 1976 am. No. 108, 1981 rs. No. 51, 1983 am. No. 17, 1999
S. 251X	ad. No. 53, 1976 rs. No. 98, 1976; No. 51, 1983; No. 17, 1999
S. 251Y	ad. No. 51, 1983 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 251Z	ad. No. 17, 1999
Part VIII	
S. 252	am. No. 143, 1965; No. 108, 1981; No. 123, 1984; No. 146, 2001; Nos. 4 and 143, 2007
S. 252A	ad. No. 12, 1979 am. No. 123, 1984; No. 146, 2001; No. 143, 2007
S. 254	am. No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 52, 1986; No. 101, 1992; Nos. 11 and 178, 1999; No. 43, 2000; No. 75, 2005; No. 101, 2006; No. 143, 2007
Note 1 to s. 254(2)	ad. No. 11, 1999 am. No. 75, 2005; No. 101, 2006
Note 2 to s. 254(2)	ad. No. 11, 1999 am. No. 75, 2005
S. 255	am. No. 50, 1942; No. 4, 1968; No. 108, 1981; No. 123, 1984; No. 52, 1986 (as am. by No. 141, 1987); No. 154, 1986; Nos. 101 and 224, 1992; Nos. 11, 178 and 179, 1999; No. 163, 2001; No. 75, 2005; No. 101, 2006; No. 79, 2007
Note 1 to s. 255(4)	ad. No. 11, 1999 am. No. 75, 2005; No. 101, 2006
Note 2 to s. 255(4)	ad. No. 11, 1999 am. No. 75, 2005
S. 257	am. No. 52, 1986
S. 258	am. No. 87, 1978; No. 123, 1984; No. 101, 1992; Nos. 11, 178 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 258(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 259	am. No. 87, 1978; No. 108, 1981; No. 123, 1984; No. 101, 1992; Nos. 11, 178 and 179, 1999; No. 44, 2000 rep. No. 101, 2006
Notes to s. 259(2)	ad. No. 11, 1999 rep. No. 101, 2006
S. 260	am. No. 110, 1981
S. 262A	ad. No. 10, 1943 am. No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984 rs. No. 20, 1990 am. No. 135, 1990; No. 216, 1991; Nos. 35, 98, 191, 208 and 224, 1992; No. 57, 1993; No. 138, 1994; No. 145, 1995; No. 39 (as am. by No. 121, 1997); Nos. 121 and 174, 1997; Nos. 16, 17 and 48, 1998; Nos. 16, 93 and 178, 1999; Nos. 58, 86 and 91, 2000; Nos. 71, 146 and 162, 2001; Nos. 53 and 57, 2002; No. 142, 2003; Nos. 41, 64 and 161, 2005; No. 101, 2006; Nos. 15 and 79, 2007
Note to s. 262A(1)	ad. No. 91, 2000
Note to s. 262A(1AA)	ad. No. 146, 2001
Note to s. 262A(4AAA)	ad. No. 146, 2001
Note to s. 262A(4ACA)	rep. No. 72, 2001 ad. No. 146, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 262A(5).....	ad. No. 146, 2001
S. 263	am. No. 62, 1987; No. 91, 2000
S. 264	am. No. 41, 1998
S. 264AA	ad. No. 85, 1998 am. No. 146, 2001
S. 264A	ad. No. 5, 1991
Heading to s. 264BB	am. No. 32, 2007
S. 264BB.....	ad. No. 128, 1998 am. No. 32, 2007
S. 264BA.....	ad. No. 56, 1997 (as am. by No. 11, 1999)
Renumbered s. 264CA	No. 57, 2002
S. 264CA	rep. No. 101, 2006
S. 265	am. No. 50, 1942; No. 44, 1951; No. 1, 1953; No. 143, 1965; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 117, 1975 (as am. by No. 50, 1976); No. 50, 1976; Nos. 57 and 87, 1978; No. 62, 1979; No. 133, 1980; Nos. 63 and 123, 1984; No. 123, 1985; No. 48, 1986; No. 101, 1992; No. 175, 1995; Nos. 11 and 178, 1999 rep. No. 67, 2003
Notes to s. 265(12)	ad. No. 11, 1999 rep. No. 67, 2003
S. 265A	ad. No. 3, 1944 am. Nos. 4 and 37, 1945; No. 101, 1956; No. 98, 1962; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 108, 1981; No. 173, 1985 (as am. by No. 49, 1986); No. 73, 1989; No. 179, 1999; No. 52, 2004; No. 101, 2006
S. 265B	ad. No. 49, 1986
S. 266	am. No. 143, 1965; No. 53, 1973; No. 165, 1976; No. 108, 1981; No. 123, 1984; No. 23, 1987; No. 39, 1997; No. 143, 2007
Part IX	ad. No. 97, 1989 rep. No. 15, 2007
S. 267	ad. No. 97, 1989 am. No. 105, 1989; Nos. 35, 58 and 61, 1990; No. 208, 1992; Nos. 7 and 82, 1993; Nos. 82 and 181, 1994; No. 62, 1997; No. 89, 2000; Nos. 83 and 101, 2004 rep. No. 15, 2007
S. 268	ad. No. 97, 1989 rep. No. 15, 2007
S. 269	ad. No. 97, 1989 am. No. 105, 1989; No. 82, 1993 rep. No. 15, 2007
S. 269A	ad. No. 105, 1989 rep. No. 15, 2007
S. 269B	ad. No. 105, 1989 am. No. 56, 1994; No. 169, 1995; No. 121, 1997; No. 101, 2004; No. 63, 2005 rep. No. 15, 2007
S. 270	ad. No. 97, 1989 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 271	ad. No. 97, 1989 am. No. 82, 1994 rep. No. 15, 2007
S. 271A	ad. No. 82, 1994 rep. No. 15, 2007
S. 272	ad. No. 97, 1989 am. No. 105, 1989; No. 181, 1994 rep. No. 15, 2007
S. 273	ad. No. 97, 1989 am. No. 63, 1998; No. 96, 1999; No. 163, 2001 rep. No. 15, 2007
S. 273A	ad. No. 105, 1989 am. No. 58, 1990; No. 93, 2004 rep. No. 15, 2007
S. 273B	ad. No. 105, 1989 am. No. 58, 1990 rep. No. 15, 2007
S. 274	ad. No. 97, 1989 am. No. 105, 1989; Nos. 20, 61 and 135, 1990; Nos. 92 and 101, 1992; Nos. 7 and 118, 1993; No. 181, 1994; No. 53, 1995; Nos. 62 and 147, 1997; No. 179, 1999; No. 51, 2002; No. 111, 2003; No. 83, 2004; No. 78, 2005; Nos. 32 and 101, 2006 rep. No. 15, 2007
Note to s. 274(1)	ad. No. 78, 2005 rep. No. 15, 2007
S. 275	ad. No. 97, 1989 rs. No. 105, 1989 am. No. 101, 1992; No. 101, 2004 rep. No. 15, 2007
S. 275A	ad. No. 105, 1989 am. No. 82, 1993; No. 48, 1998 rep. No. 15, 2007
S. 275B	ad. No. 105, 1989 am. Nos. 101 and 208, 1992; No. 181, 1994; No. 80, 2006 rep. No. 15, 2007
S. 275C	ad. No. 105, 1989 am. No. 208, 1992 rep. No. 80, 2006
S. 276	ad. No. 97, 1989 am. No. 105, 1989; No. 7, 1993; No. 62, 1997; No. 23, 2005 rep. No. 15, 2007
S. 277	ad. No. 97, 1989 rs. No. 181, 1994 rep. No. 15, 2007
S. 277AA.....	ad. No. 62, 1997 rep. No. 15, 2007
S. 277A	ad. No. 181, 1994 am. No. 101, 2006 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 278	ad. No. 97, 1989 rep. No. 15, 2007
S. 279	ad. No. 97, 1989 am. No. 105, 1989; No. 58, 1990; No. 101, 1992 rep. No. 15, 2007
Ss. 279A, 279B	ad. No. 105, 1989 rep. No. 15, 2007
S. 279D	ad. No. 105, 1989 am. No. 101, 2004 rep. No. 15, 2007
S. 279E	ad. No. 76, 1996 am. No. 89, 2000; No. 101, 2004 rep. No. 15, 2007
S. 280	ad. No. 97, 1989 am. No. 105, 1989; No. 61, 1990 rep. No. 15, 2007
S. 281	ad. No. 97, 1989 rep. No. 15, 2007
S. 281A	ad. No. 168, 2001 rep. No. 15, 2007
S. 282	ad. No. 97, 1989 rep. No. 15, 2007
Heading to s. 282A	am. No. 83, 2004 rep. No. 15, 2007
S. 282A	ad. No. 105, 1989 am. No. 83, 2004 rep. No. 15, 2007
S. 282B	ad. No. 105, 1989 rep. No. 15, 2007
S. 283	ad. No. 97, 1989 rs. No. 105, 1989 am. No. 58, 1990; No. 93, 2004 rep. No. 15, 2007
Ss. 284, 285	ad. No. 97, 1989 rep. No. 15, 2007
S. 286	ad. No. 97, 1989 rep. No. 15, 2007
S. 286A	ad. No. 105, 1989 am. No. 61, 1990 rep. No. 15, 2007
S. 287	ad. No. 97, 1989 am. No. 105, 1989 rep. No. 15, 2007
S. 288	ad. No. 97, 1989 rep. No. 15, 2007
S. 288A	ad. No. 181, 1994 rep. No. 15, 2007
Div. 4A of Part IX	ad. No. 181, 1994 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 288B	ad. No. 181, 1994 rep. No. 15, 2007
S. 289.....	ad. No. 97, 1989 rep. No. 15, 2007
S. 289A	ad. No. 76, 1996 am. No. 101, 2004 rep. No. 15, 2007
S. 290	ad. No. 97, 1989 rep. No. 15, 2007
S. 290A	ad. No. 105, 1989 am. No. 20, 1990; No. 101, 1992; No. 7, 1993; No. 101, 2004 rep. No. 15, 2007
S. 291	ad. No. 97, 1989 rep. No. 15, 2007
Heading to s. 291A	am. No. 83, 2004 rep. No. 15, 2007
S. 291A	ad. No. 105, 1989 am. No. 83, 2004 rep. No. 15, 2007
Ss. 292, 293	ad. No. 97, 1989 rep. No. 15, 2007
Ss. 294, 295	ad. No. 97, 1989 rep. No. 15, 2007
S. 296	ad. No. 97, 1989 am. No. 105, 1989; No. 101, 2006 rep. No. 15, 2007
S. 297	ad. No. 97, 1989 rep. No. 15, 2007
Heading to s. 297A	am. No. 83, 2004 rep. No. 15, 2007
S. 297A	ad. No. 105, 1989 am. No. 83, 2004 rep. No. 15, 2007
S. 297B	ad. No. 105, 1989 rep. No. 15, 2007
S. 297C	ad. No. 82, 1994 rep. No. 15, 2007
Ss. 298, 299	ad. No. 97, 1989 rep. No. 15, 2007
Div. 7A of Part IX	ad. No. 62, 1997 rep. No. 15, 2007
S. 299A	ad. No. 62, 1997 am. No. 44, 1999; No. 89, 2000 rep. No. 15, 2007
Note to s. 299A	ad. No. 89, 2000 rep. No. 15, 2007
Heading to s. 299B	rs. No. 44, 1999 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 299B	ad. No. 62, 1997 am. No. 44, 1999; No. 101, 2004 rep. No. 15, 2007
Ss. 299C, 299CA	ad. No. 62, 1997 rep. No. 15, 2007
S. 299D	ad. No. 62, 1997 am. No. 44, 1999; No. 101, 2004 rep. No. 15, 2007
Ss. 299E–299G	ad. No. 62, 1997 rep. No. 15, 2007
Heading to Div. 8 of Part IX	rs. No. 105, 1989 rep. No. 15, 2007
S. 300	ad. No. 97, 1989 am. No. 20, 1990 rs. No. 101, 2006 rep. No. 15, 2007
Heading to Div. 9 of Part IX	ad. No. 105, 1989 rep. No. 15, 2007
Ss. 300A, 300B	ad. No. 105, 1989 am. No. 82, 1993; No. 48, 1998 rep. No. 15, 2007
S. 301	ad. No. 97, 1989 rep. No. 15, 2007
Div. 10 of Part IX	ad. No. 105, 1989 rep. No. 15, 2007
S. 302	ad. No. 105, 1989 rep. No. 15, 2007
S. 303	ad. No. 105, 1989 am. No. 46, 1998; No. 44, 1999 rep. No. 15, 2007
S. 304	ad. No. 105, 1989 am. No. 17, 1993; Nos. 39 and 121, 1997 rs. No. 46, 1998; No. 94, 1999 am. No. 58, 2000 rep. No. 15, 2007
S. 305	ad. No. 105, 1989 rep. No. 101, 2006
S. 306	ad. No. 105, 1989 rs. No. 46, 1998 rep. No. 15, 2007
S. 308	ad. No. 105, 1989 am. No. 46, 1998 rep. No. 15, 2007
S. 309	ad. No. 105, 1989 rep. No. 15, 2007
S. 310	ad. No. 105, 1989 am. No. 101, 2006 rep. No. 15, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 311	ad. No. 105, 1989 rs. No. 46, 1998 rep. No. 15, 2007
S. 315	ad. No. 105, 1989 rs. No. 46, 1998 rep. No. 15, 2007
Div. 11 of Part IX	ad. No. 82, 1993 rep. No. 15, 2007
Ss. 315A–315E	ad. No. 82, 1993 rep. No. 15, 2007
S. 315F	ad. No. 82, 1993 am. No. 46, 1998 rep. No. 15, 2007
Part X	
Part X	ad. No. 5, 1991
Division 1	
S. 316	ad. No. 5, 1991 am. No. 96, 2004; No. 143, 2007
S. 317	ad. No. 5, 1991 am. No. 48, 1991; Nos. 35 and 80, 1992; Nos. 17 and 18, 1993; No. 22, 1995; No. 39, 1996; Nos. 39, 121, 155 and 174, 1997; Nos. 46 and 48, 1998; Nos. 58, 79 and 89, 2000; Nos. 77 and 121, 2001; No. 96, 2004; No. 101, 2006; Nos. 15 and 143, 2007; No. 144, 2008
S. 318	ad. No. 5, 1991 am. No. 135, 1990; No. 41, 1998; No. 144, 2008
S. 319	ad. No. 5, 1991 am. No. 170, 1995; No. 155, 1997
S. 320	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004
Ss. 321–323	ad. No. 5, 1991
S. 324	ad. No. 5, 1991 am. No. 48, 1991; No. 143, 2007
Note to s. 324.....	ad. No. 101, 2004
Heading to s. 325.....	am. No. 155, 1997
S. 325	ad. No. 5, 1991 am. No. 155, 1997
Ss. 326, 327	ad. No. 5, 1991
S. 327A	ad. No. 35, 1992 am. No. 80, 1992
S. 327B	ad. No. 80, 1992
S. 328	ad. No. 5, 1991 am. No. 18, 1993; No. 121, 1997; No. 144, 2008
Note to s. 328(3)	ad. No. 144, 2008
Ss. 329, 330	ad. No. 5, 1991
S. 331	ad. No. 5, 1991 am. No. 155, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 332.....	rs. No. 96, 2004
S. 332	ad. No. 5, 1991 rs. No. 155, 1997 am. No. 96, 2004
Heading to s. 332A	rs. No. 96, 2004
S. 332A	ad. No. 155, 1997 am. No. 96, 2004
S. 333.....	ad. No. 5, 1991
S. 334.....	ad. No. 5, 1991 rep. No. 143, 2007
S. 334A	ad. No. 143, 2007
S. 335.....	ad. No. 5, 1991
Division 2	
Subdivision A	
Ss. 336–338	ad. No. 5, 1991
Subdivision B	
Ss. 339–342	ad. No. 5, 1991
Subdivision C	
Ss. 343–348	ad. No. 5, 1991
Division 3	
Subdivision A	
Ss. 349–355	ad. No. 5, 1991
Subdivision B	
S. 356	ad. No. 5, 1991 am. Nos. 35 and 80, 1992; No. 93, 1999; No. 96, 2004
Ss. 357–360	ad. No. 5, 1991
Subdivision C	
S. 361	ad. No. 5, 1991 am. No. 32, 2006
S. 362	ad. No. 5, 1991
Division 4	
S. 363	ad. No. 5, 1991 am. No. 216, 1991
S. 364	ad. No. 5, 1991
S. 365	ad. No. 5, 1991 am. No. 93, 1999; No. 23, 2005
S. 366	ad. No. 5, 1991 am. Nos. 35 and 80, 1992
Ss. 367–370	ad. No. 5, 1991
S. 371	ad. No. 5, 1991 am. No. 216, 1991; No. 190, 1992; No. 170, 1995; No. 41, 1998; No. 96, 2004; No. 15, 2007
S. 372	ad. No. 5, 1991 am. No. 96, 2004; No. 58, 2006
S. 373.....	ad. No. 5, 1991

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 5 of Part X.....	rep. No. 143, 2007
S. 374	ad. No. 5, 1991 rep. No. 143, 2007
S. 375	ad. No. 5, 1991 am. No. 190, 1992; No. 170, 1995; No. 96, 2004 rep. No. 143, 2007
S. 376	ad. No. 5, 1991 rep. No. 143, 2007
Div. 6 of Part X.....	rep. No. 96, 2004
S. 377	ad. No. 5, 1991 am. No. 48, 1991; No. 155, 1997; No. 46, 1998; No. 93, 1999 rep. No. 96, 2004
S. 378	ad. No. 5, 1991 am. No. 216, 1991 rep. No. 96, 2004
S. 379	ad. No. 5, 1991 rep. No. 96, 2004
S. 380	ad. No. 5, 1991 am. No. 190, 1992 rep. No. 96, 2004
Division 7	
Subdivision A	
Ss. 381, 382	ad. No. 5, 1991
S. 383	ad. No. 5, 1991 am. No. 190, 1992
Heading to s. 384.....	am. No. 155, 1997 rs. No. 96, 2004
S. 384	ad. No. 5, 1991 am. No. 190, 1992; No. 155, 1997; No. 96, 2004; No. 64, 2005
Heading to s. 385.....	am. No. 155, 1997 rs. No. 96, 2004
S. 385	ad. No. 5, 1991 am. No. 190, 1992; Nos. 122 and 155, 1997; Nos. 73 and 96, 2004; No. 64, 2005
Ss. 386, 387	ad. No. 5, 1991 am. No. 96, 2004
Subdivision B	
S. 388	ad. No. 5, 1991 am. No. 22, 1995
S. 389	ad. No. 5, 1991 am. No. 48, 1991; Nos. 190 and 224, 1992; No. 138, 1994; No. 155, 1997; No. 162, 2001; No. 133, 2003; No. 96, 2004; No. 23, 2005; No. 101, 2006; No. 143, 2007
S. 389A	ad. No. 163, 2001
S. 390.....	ad. No. 5, 1991 am. No. 16, 1998
S. 391	ad. No. 5, 1991 rep. No. 133, 2003

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 392	ad. No. 5, 1991 am. No. 96, 2004
S. 393	ad. No. 5, 1991 am. No. 48, 1991; No. 96, 2004
S. 394	ad. No. 5, 1991 am. Nos. 35 and 80, 1992
S. 395	ad. No. 5, 1991
S. 396	ad. No. 5, 1991 am. No. 121, 1997; No. 46, 1998; No. 89, 2000; Nos. 101 and 168, 2006
S. 397	ad. No. 5, 1991 rs. No. 121, 1997
S. 398	ad. No. 5, 1991 am. No. 121, 1997; No. 79, 2000; No. 77, 2001; No. 101, 2006
S. 398A	ad. No. 48, 1991 rs. No. 163, 2001
S. 399	ad. No. 5, 1991 am. No. 190, 1992; No. 46, 1998; No. 96, 2004; Nos. 101 and 168, 2006
S. 399A	ad. No. 100, 1991 am. No. 98, 1992; No. 39, 1997; No. 46, 1998; No. 54, 1999; No. 101, 2006
S. 400	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004
Heading to s. 401	rs. No. 46, 1998 am. No. 101, 2006
S. 401	ad. No. 5, 1991 am. No. 101, 1992; No. 46, 1998; No. 58, 2000; No. 101, 2006; No. 143, 2007
S. 402	ad. No. 5, 1991 am. No. 48, 1991; Nos. 35, 80 and 190, 1992; No. 18, 1993; No. 5, 1995; No. 174, 1997; No. 93, 1999; No. 96, 2004; No. 23, 2005
S. 403	ad. No. 5, 1991 am. No. 155, 1997 rs. No. 96, 2004
Heading to s. 404	rs. No. 96, 2004
S. 404	ad. No. 5, 1991 am. No. 96, 2004
Subdivision C	
S. 405	ad. No. 5, 1991 am. No. 170, 1995; No. 46, 1998; No. 101, 2006
Heading to s. 406	rs. No. 46, 1998
S. 406	ad. No. 5, 1991 rs. No. 170, 1995 am. No. 46, 1998; No. 89, 2000; No. 64, 2005; No. 168, 2006
S. 407	ad. No. 5, 1991 rep. No. 101, 2006
S. 408	ad. No. 5, 1991

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
	rs. No. 46, 1998 am. No. 168, 2006
S. 408A	ad. No. 170, 1995 rs. No. 46, 1998; No. 101, 2006
S. 409	ad. No. 5, 1991 rs. No. 46, 1998
S. 410	ad. No. 5, 1991 am. No. 48, 1991 rs. No. 46, 1998 am. No. 41, 2005; No. 168, 2006
Heading to s. 411	rs. No. 170, 1995; No. 46, 1998
S. 411	ad. No. 5, 1991 am. No. 170, 1995; No. 46, 1998
Heading to s. 412	rs. No. 170, 1995; No. 46, 1998
S. 412	ad. No. 5, 1991 am. No. 170, 1995; No. 46, 1998
Heading to s. 413	am. No. 170, 1995
S. 413	ad. No. 5, 1991 am. No. 170, 1995; No. 46, 1998; No. 54, 1999; No. 101, 2006
S. 414	ad. No. 5, 1991 am. No. 170, 1995 rs. No. 46, 1998
S. 418	ad. No. 5, 1991 am. No. 170, 1995; No. 46, 1998
Heading to s. 418A	am. No. 155, 1997 rs. No. 96, 2004
S. 418A	ad. No. 48, 1991 am. No. 170, 1995; No. 155, 1997; No. 46, 1998; No. 96, 2004; No. 101, 2006
S. 419	ad. No. 5, 1991 am. No. 76, 1996; No. 155, 1997 rs. No. 46, 1998 am. No. 96, 2004
S. 421	ad. No. 5, 1991 am. No. 80, 1992; No. 155, 1997; Nos. 41 and 46, 1998
Heading to s. 422	rs. No. 46, 1998
S. 422	ad. No. 5, 1991 am. No. 155, 1997; No. 46, 1998; No. 64, 2005
Heading to s. 423	rs. No. 46, 1998
S. 423	ad. No. 5, 1991 am. No. 46, 1998; No. 96, 2004; No. 101, 2006
Subdivision D	
S. 424	ad. No. 5, 1991 am. No. 46, 1998; No. 101, 2006 rep. No. 143, 2007
S. 425.....	ad. No. 5, 1991 am. No. 143, 2007
Heading to s. 426.....	am. No. 143, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 426	ad. No. 5, 1991 am. No. 143, 2007
S. 427	ad. No. 5, 1991 rs. No. 39, 1997 am. No. 46, 1998; No. 89, 2000; No. 162, 2005; No. 101, 2006; No. 143, 2007
S. 428.....	ad. No. 5, 1991
Heading to s. 429.....	am. No. 143, 2007
S. 429.....	ad. No. 5, 1991 am. No. 143, 2007
S. 430.....	ad. No. 5, 1991 rep. No. 143, 2007
Heading to s. 431.....	am. No. 143, 2007
S. 431	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004; No. 101, 2006; No. 143, 2007
Subdivision E	
Subdiv. E of Div. 7 of Part X	ad. No. 190, 1992
S. 431A	ad. No. 190, 1992
Division 8	
Subdivision A	
S. 432	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004; No. 41, 2005
Subdivision B	
S. 433	ad. No. 5, 1991 am. No. 155, 1997
S. 434	ad. No. 5, 1991 am. No. 170, 1995; No. 58, 2000
S. 435	ad. No. 5, 1991
S. 436	ad. No. 5, 1991 am. No. 48, 1991; No. 155, 1997; No. 93, 1999; No. 96, 2004; No. 23, 2005
Subdivision C	
S. 437	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004; No. 41, 2005
Subdivision D	
S. 438	ad. No. 5, 1991 am. No. 80, 1992; No. 155, 1997; Nos. 41 and 46, 1998; Nos. 101 and 168, 2006
S. 439	ad. No. 5, 1991 am. No. 121, 1997; No. 77, 2001; No. 101, 2006
Ss. 440–444	ad. No. 5, 1991
S. 445	ad. No. 5, 1991 am. No. 58, 2000
Subdivision E	
S. 446	ad. No. 5, 1991 am. No. 120, 1995; No. 16, 1999; No. 89, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 447	ad. No. 5, 1991 am. No. 80, 1992
S. 448	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004
Subdivision F	
S. 449	ad. No. 5, 1991
S. 450.....	ad. No. 5, 1991 am. No. 96, 2004
Subdivision G	
Ss. 451–455	ad. No. 5, 1991
Division 9	
S. 456	ad. No. 5, 1991
S. 456A	ad. No. 48, 1991 am. No. 100, 1991; No. 155, 1997; No. 96, 2004
S. 457	ad. No. 5, 1991 am. No. 155, 1997; No. 96, 2004; No. 64, 2005
S. 458	ad. No. 5, 1991 am. No. 100, 1991; No. 138, 1994 rep. No. 96, 2004
S. 459	ad. No. 5, 1991 am. No. 80, 1992 rep. No. 96, 2004
S. 459A	ad. No. 48, 1991 am. No. 96, 2004; No. 15, 2007
S. 460	ad. No. 5, 1991 am. No. 48, 1991; No. 96, 2004; No. 15, 2007
Heading to s. 460A	am. No. 58, 2000
S. 460A	ad. No. 58, 2000 am. No. 58, 2000
Note to s. 460A(2)	am. No. 58, 2000
Division 10	
Heading to s. 461	am. No. 101, 2006
S. 461	ad. No. 5, 1991 am. No. 101, 1992; No. 46, 1998; No. 58, 2000; No. 101, 2006; No. 143, 2007
Division 11	
S. 462	ad. No. 5, 1991
Note to s. 462	ad. No. 91, 2000
S. 462A	ad. No. 100, 1991
Ss. 463, 464	ad. No. 5, 1991 rep. No. 96, 2004
S. 464A	ad. No. 100, 1991
S. 465	ad. No. 5, 1991 am. No. 100, 1991; No. 91, 2000; No. 146, 2001; No. 96, 2004
Note to s. 465.....	ad. No. 91, 2000
S. 466	ad. No. 5, 1991

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 467	ad. No. 5, 1991 am. No. 100, 1991; No. 96, 2004
S. 468	ad. No. 5, 1991
Part XI	
Part XI	ad. No. 190, 1992
Division 1	
Subdivision A	
S. 469	ad. No. 190, 1992 am. No. 32, 2006; No. 143, 2007
Subdivision B	
S. 470	ad. No. 190, 1992 am. No. 18, 1993; No. 5, 1995; No. 73, 2004; No. 15, 2007; No. 45, 2008
Ss. 471–476	ad. No. 190, 1992
Heading to s. 477	am. No. 15, 2007 rs. No. 15, 2007
S. 477	ad. No. 190, 1992 rs. No. 181, 1994; No. 15, 2007
Ss. 478, 479	ad. No. 190, 1992
Subdivision C	
S. 480	ad. No. 190, 1992
S. 481	ad. No. 190, 1992 am. No. 15, 2007
S. 482	ad. No. 190, 1992 am. No. 5, 1995; No. 101, 2004
Ss. 483, 484	ad. No. 190, 1992
S. 485	ad. No. 190, 1992 am. No. 18, 1993; No. 15, 2007
S. 485AA	ad. No. 101, 2004 am. No. 58, 2006
S. 485A	ad. No. 18, 1993 am. No. 155, 1997
Ss. 486, 487	ad. No. 190, 1992
Subdivision D	
Ss. 488–490	ad. No. 190, 1992
Subdivision E	
S. 491	ad. No. 190, 1992 am. No. 15, 2007; No. 144, 2008
Note to s. 491(2)	ad. No. 144, 2008
Division 2	
Ss. 492–494	ad. No. 190, 1992
Division 3	
S. 495	ad. No. 190, 1992
S. 496	ad. No. 190, 1992 am. No. 82, 1994

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 497–499	ad. No. 190, 1992
S. 500	ad. No. 190, 1992 am. No. 55, 2001
S. 501	ad. No. 190, 1992
Division 4	
Ss. 502–504	ad. No. 190, 1992
Division 5	
Ss. 505, 506	ad. No. 190, 1992
S. 507	ad. No. 190, 1992 am. No. 5, 1995; No. 55, 2001
S. 507A	ad. No. 82, 1994
Division 6	
S. 508	ad. No. 190, 1992
S. 509	ad. No. 190, 1992 am. No. 18, 1993
S. 509A	ad. No. 82, 1994
Division 7	
S. 510	ad. No. 190, 1992
S. 511	ad. No. 190, 1992 am. No. 138, 1994
S. 511A	ad. No. 82, 1994
Division 8	
Div. 8 of Part XI	ad. No. 93, 1999
S. 512	ad. No. 93, 1999
S. 512A	ad. No. 93, 1999
S. 513	ad. No. 93, 1999
Division 9	
Ss. 514, 515	ad. No. 190, 1992
Div. 10 of Part XI	rep. No. 32, 2006
S. 516	ad. No. 190, 1992 rep. No. 32, 2006
S. 517	ad. No. 190, 1992 am. No. 122, 1997 rep. No. 32, 2006
Division 11	
Ss. 518, 519	ad. No. 190, 1992
Division 11A	
Heading to Div. 11A	rs. No. 45, 2008 of Part XI
Div. 11A of Part XI	ad. No. 73, 2004
S. 519A	ad. No. 73, 2004 am. No. 45, 2008
Subhead. to s. 519B(1)	am. No. 45, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 519B	ad. No. 73, 2004 am. No. 45, 2008
Division 12	
Ss. 520, 521	ad. No. 190, 1992 am. No. 121, 1997
Division 13	
S. 522	ad. No. 190, 1992
S. 523	ad. No. 190, 1992 am. No. 18, 1993; No. 138, 1994
S. 523A	ad. No. 82, 1994
Division 14	
Heading to Div. 14 of Part XI ...	rs. No. 73, 2004
Ss. 524, 525	ad. No. 190, 1992 am. No. 73, 2004
Division 15	
Ss. 526, 527	ad. No. 190, 1992
Division 16	
S. 528.....	ad. No. 190, 1992
S. 529.....	ad. No. 190, 1992 am. No. 76, 1996
S. 530	ad. No. 190, 1992 am. No. 18, 1993; No. 76, 1996; No. 66, 2003; No. 96, 2004
S. 530A	ad. No. 169, 1995 am. No. 64, 2005; No. 56, 2007
Division 17	
Ss. 531–533	ad. No. 190, 1992
S. 533A	ad. No. 138, 1994
Division 17A	
Div. 17A of Part XI	ad. No. 83, 2004
S. 533B	ad. No. 83, 2004 am. No. 15, 2007
Division 18	
Subdivision A	
S. 534	ad. No. 190, 1992
S. 535	ad. No. 190, 1992 am. No. 18, 1993; No. 143, 2007
S. 536	ad. No. 190, 1992
Subdivision B	
S. 537	ad. No. 190, 1992
Ss. 538, 539	ad. No. 190, 1992 am. No. 18, 1993
Ss. 540, 541	ad. No. 190, 1992
S. 542	ad. No. 190, 1992 am. No. 18, 1993; No. 138, 1994

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision C	
S. 543	ad. No. 190, 1992
S. 544	ad. No. 190, 1992 am. No. 58, 2006
S. 545	ad. No. 190, 1992
Ss. 546–549	ad. No. 190, 1992 rep. No. 101, 2006
Ss. 550–554	ad. No. 190, 1992
S. 555	ad. No. 190, 1992 am. No. 181, 1994; No. 11, 1999; No. 101, 2006
Ss. 556, 557	ad. No. 190, 1992
Subdivision D	
S. 557A	ad. No. 163, 2001
Ss. 558, 559	ad. No. 190, 1992
S. 559A	ad. No. 143, 2007
Ss. 560–563	ad. No. 190, 1992
S. 564	ad. No. 190, 1992 am. No. 93, 1999
Ss. 565–567	ad. No. 190, 1992
S. 567A	ad. No. 122, 1997
S. 568	ad. No. 190, 1992 am. No. 18, 1993; No. 55, 2001
S. 569	ad. No. 190, 1992
S. 570	ad. No. 190, 1992 am. No. 18, 1993; No. 121, 1997; No. 46, 1998; No. 77, 2001; No. 101, 2006
Ss. 571–573	ad. No. 190, 1992
S. 574	ad. No. 190, 1992 am. No. 77, 2001
S. 575	ad. No. 190, 1992 am. No. 93, 1999
S. 576	ad. No. 190, 1992
S. 577	ad. No. 190, 1992 am. No. 16, 1998
S. 578	ad. No. 190, 1992
S. 579	ad. No. 190, 1992 am. No. 16, 1998
S. 580	ad. No. 190, 1992 am. No. 18, 1993
S. 581	ad. No. 190, 1992 am. No. 138, 1994
S. 582	ad. No. 190, 1992 am. No. 18, 1993; No. 138, 1994
S. 583	ad. No. 190, 1992

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision E	
Ss. 584–586	ad. No. 190, 1992
Ss. 587, 588	ad. No. 190, 1992 rep. No. 101, 2006
Ss. 589–591	ad. No. 190, 1992
S. 592	ad. No. 190, 1992 am. No. 181, 1994; No. 11, 1999; No. 101, 2006
Ss. 593, 594	ad. No. 190, 1992
Subdivision F	
S. 595	ad. No. 190, 1992
S. 596	ad. No. 190, 1992 am. No. 18, 1993
S. 597	ad. No. 190, 1992 rep. No. 101, 2006
Ss. 598, 599	ad. No. 190, 1992
S. 600	ad. No. 190, 1992 am. No. 138, 1994
Division 19	
Ss. 601, 602	ad. No. 190, 1992
S. 603	ad. No. 190, 1992 am. No. 181, 1994; No. 15, 2007
S. 604	ad. No. 190, 1992
S. 605	ad. No. 190, 1992 am. No. 15, 2007
S. 606	ad. No. 190, 1992 am. No. 18, 1993
S. 607	ad. No. 190, 1992
S. 607AA	ad. No. 83, 2004
S. 607A	ad. No. 18, 1993
Div. 20 of Part XI	rep. No. 143, 2007
Ss. 608–612	ad. No. 190, 1992 rep. No. 143, 2007
Division 21	
Heading to s. 613	am. No. 101, 2006
S. 613	ad. No. 190, 1992 am. No. 46, 1998; No. 101, 2006
Division 22	
S. 614	ad. No. 190, 1992
S. 615	ad. No. 190, 1992
Note to s. 615	ad. No. 91, 2000
Ss. 616–620	ad. No. 190, 1992
S. 621	ad. No. 190, 1992 am. No. 91, 2000; No. 146, 2001
Note to s. 621	ad. No. 91, 2000
Ss. 622–624	ad. No. 190, 1992

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part XII	ad. No. 31, 1995 rep. No. 101, 2006
Ss. 625–631	ad. No. 31, 1995 rep. No. 101, 2006
S. 632	ad. No. 31, 1995 am. Nos. 39 and 121, 1997; No. 164, 1999; No. 170, 2001 rep. No. 101, 2006
Ss. 633, 634	ad. No. 31, 1995 rep. No. 101, 2006
S. 635	ad. No. 31, 1995 am. No. 121, 1997 rep. No. 101, 2006
Ss. 636, 637	ad. No. 31, 1995 rep. No. 101, 2006
S. 638	ad. No. 31, 1995 am. No. 39, 1997 rep. No. 101, 2006
S. 639	ad. No. 31, 1995 rep. No. 101, 2006
Ss. 640, 641	ad. No. 31, 1995 am. No. 39, 1997 rep. No. 101, 2006
S. 642	ad. No. 31, 1995 am. Nos. 39 and 121, 1997; No. 164, 1999; No. 170, 2001 rep. No. 101, 2006
Ss. 643–645	ad. No. 31, 1995 rep. No. 101, 2006
S. 646	ad. No. 31, 1995 am. No. 121, 1997 rep. No. 101, 2006
S. 647	ad. No. 31, 1995 am. No. 39, 1997 rep. No. 101, 2006
Ss. 648–671	ad. No. 31, 1995 rep. No. 101, 2006
S. 672	ad. No. 31, 1995 am. No. 72, 2001 rep. No. 101, 2006
Heading to s. 673	am. No. 174, 1997; No. 72, 2001 rep. No. 101, 2006
S. 673	ad. No. 31, 1995 rs. No. 121, 1997 am. No. 174, 1997; No. 72, 2001 rep. No. 101, 2006
S. 674	ad. No. 31, 1995 rs. No. 72, 2001 rep. No. 101, 2006
S. 675.....	ad. No. 31, 1995 rep. No. 72, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 676–684	ad. No. 31, 1995 rep. No. 101, 2006
Heading to Schedule 1	ad. No. 51, 1973 rep. No. 101, 2006
Schedule 1	am. No. 108, 1981 rep. No. 101, 2006
Schedule 2	
Heading to Schedule 2	ad. No. 51, 1973
The Second Schedule	ad. No. 4, 1945 am. No. 62, 1955; No. 101, 1956; No. 51, 1973
Schedule 2	am. No. 80, 1975; No. 49, 1985; No. 4, 1991
Schedule 2A	ad. No. 30, 1995 rep. No. 101, 2006
Schedule 2B	ad. No. 30, 1995 rep. No. 101, 2006
Schedule 2C	
Schedule 2C	ad. No. 76, 1996
Division 245	
S. 245-1	ad. No. 76, 1996
S. 245-2	ad. No. 76, 1996
S. 245-3	ad. No. 76, 1996
Subdivision 245-A	
S. 245-5	ad. No. 76, 1996
S. 245-6	ad. No. 76, 1996
S. 245-10	ad. No. 76, 1996 am. No. 77, 2001
S. 245-15	ad. No. 76, 1996 am. No. 101, 2006
S. 245-20	ad. No. 76, 1996
S. 245-25	ad. No. 76, 1996 am. Nos. 121 and 122, 1997; No. 163, 2001
S. 245-26	ad. No. 76, 1996
Subdivision 245-B	
S. 245-30	ad. No. 76, 1996
S. 245-31	ad. No. 76, 1996
S. 245-35	ad. No. 76, 1996
S. 245-40	ad. No. 76, 1996
Subdivision 245-C	
S. 245-45	ad. No. 76, 1996
S. 245-46	ad. No. 76, 1996
S. 245-47	ad. No. 76, 1996
S. 245-50	ad. No. 76, 1996
S. 245-55	ad. No. 76, 1996 am. No. 122, 1997; No. 46, 1998; No. 168, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 245-60	ad. No. 76, 1996
S. 245-61	ad. No. 76, 1996
S. 245-65	ad. No. 76, 1996 am. No. 122, 1997; No. 46, 1998; No. 168, 2006
S. 245-70	ad. No. 76, 1996 am. No. 101, 2006
S. 245-75	ad. No. 76, 1996 am. No. 122, 1997
Subdivision 245-D	
S. 245-80	ad. No. 76, 1996
S. 245-81	ad. No. 76, 1996
S. 245-85	ad. No. 76, 1996 am. No. 46, 1998; No. 169, 1999; No. 90, 2002
Note to s. 245-85(1)	ad. No. 90, 2002
Heading to s. 245-90	am. No. 121, 1997
S. 245-90	ad. No. 76, 1996 am. No. 121, 1997; No. 46, 1998
Subdivision 245-E	
S. 245-95	ad. No. 76, 1996
S. 245-96	ad. No. 76, 1996
S. 245-100	ad. No. 76, 1996
S. 245-105	ad. No. 76, 1996 am. No. 93, 1999
S. 245-110	ad. No. 76, 1996 am. No. 121, 1997; No. 142, 2003; No. 143, 2007
S. 245-115	ad. No. 76, 1996
S. 245-120	ad. No. 76, 1996
S. 245-125	ad. No. 76, 1996 am. No. 95, 1997; No. 46, 1998
S. 245-130	ad. No. 76, 1996
S. 245-135	ad. No. 76, 1996
S. 245-140	ad. No. 76, 1996 am. Nos. 121 and 122, 1997; No. 46, 1998; Nos. 39, 54 and 169, 1999; Nos. 77 and 170, 2001; No. 101, 2006; No. 164, 2007
S. 245-145	ad. No. 76, 1996
S. 245-150	ad. No. 76, 1996
S. 245-155	ad. No. 76, 1996 am. No. 121, 1997; No. 77, 2001
S. 245-160	ad. No. 76, 1996
S. 245-165	ad. No. 76, 1996 am. No. 46, 1998
S. 245-170	ad. No. 76, 1996 am. No. 46, 1998; No. 57, 2002
S. 245-175	ad. No. 76, 1996
S. 245-180	ad. No. 76, 1996

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 245-185	ad. No. 76, 1996
S. 245-190	ad. No. 76, 1996 am. No. 122, 1997; No. 46, 1998
S. 245-195	ad. No. 76, 1996
Subdivision 245-F	
S. 245-200	ad. No. 76, 1996
S. 245-201	ad. No. 76, 1996
S. 245-205	ad. No. 76, 1996
S. 245-210	ad. No. 76, 1996
S. 245-215	ad. No. 76, 1996
Subdivision 245-G	
S. 245-220	ad. No. 76, 1996
S. 245-221	ad. No. 76, 1996
S. 245-225	ad. No. 76, 1996 am. No. 122, 1997
S. 245-230	ad. No. 76, 1996 am. No. 122, 1997; No. 16, 1998
S. 245-235	ad. No. 76, 1996
S. 245-240	ad. No. 76, 1996
Subdivision 245-H	
S. 245-245	ad. No. 76, 1996
S. 245-250	ad. No. 76, 1996 am. No. 94, 1999; No. 90, 2002
S. 245-255	ad. No. 76, 1996 am. No. 46, 1998 (as am. by No. 57, 2002)
S. 245-260	ad. No. 76, 1996
S. 245-265	ad. No. 76, 1996 am. No. 146, 2001; No. 161, 2005
Note to s. 245-265(1)	ad. No. 91, 2000
Schedule 2D	
Schedule 2D	ad. No. 78, 1996
Division 57	
S. 57-1	ad. No. 78, 1996
Subdivision 57-A	
S. 57-5	ad. No. 78, 1996
Subdivision 57-B	
S. 57-10	ad. No. 78, 1996 am. No. 77, 2001
Note to s. 57-10(1)	am. No. 16, 1998
Subdivision 57-C	
S. 57-15	ad. No. 78, 1996
Subdivision 57-D	
S. 57-20	ad. No. 78, 1996 am. No. 16, 1998

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 57-E	
S. 57-25	ad. No. 78, 1996 am. Nos. 16 and 46, 1998; No. 77, 2001; No. 133, 2003; No. 101, 2006; No. 97, 2008
S. 57-30	ad. No. 78, 1996 am. No. 16, 1998; No. 133, 2003
S. 57-35	ad. No. 78, 1996 am. No. 46, 1998; No. 101, 2006
Subdivision 57-F	
S. 57-40	ad. No. 78, 1996 am. No. 174, 1997; No. 15, 2007
Heading to s. 57-45	am. No. 174, 1997
S. 57-45	ad. No. 78, 1996 am. No. 174, 1997
S. 57-50	ad. No. 78, 1996 am. No. 174, 1997; No. 51, 2002; No. 15, 2007
Note to s. 57-50(8)	ad. No. 51, 2002
S. 57-52	ad. No. 174, 1997
S. 57-55	ad. No. 78, 1996
Subdivision 57-G	
S. 57-60	ad. No. 78, 1996 am. No. 16, 1998
Note to s. 57-60(1)	am. No. 16, 1998
S. 57-65	ad. No. 78, 1996 am. No. 174, 1997
Heading to s. 57-70	rs. No. 15, 2007
S. 57-70	ad. No. 78, 1996 am. No. 16, 1998; No. 15, 2007
Subdivision 57-H	
S. 57-75	ad. No. 78, 1996 am. No. 16, 1998; No. 142, 2003
Subdiv. 57-I	rep. No. 101, 2006
S. 57-80	ad. No. 78, 1996 rep. No. 101, 2006
Subdivision 57-J	
S. 57-85	ad. No. 78, 1996 rs. No. 16, 1998 am. No. 46, 1998; Nos. 39 and 54, 1999; Nos. 77 and 170, 2001; No. 119, 2002; No. 101, 2006; No. 164, 2007
S. 57-90	ad. No. 78, 1996 am. No. 16, 1998; No. 101, 2006
S. 57-95	ad. No. 78, 1996
S. 57-100	ad. No. 78, 1996 am. No. 16, 1998; No. 101, 2006
S. 57-105	ad. No. 78, 1996 am. No. 16, 1998; No. 77, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 57-K	
S. 57-110	ad. No. 78, 1996 am. Nos. 16 and 46, 1998; No. 54, 1999; Nos. 77 and 170, 2001; No. 101, 2006
Subdivision 57-L	
S. 57-115	ad. No. 78, 1996 am. No. 16, 1998
Subdivision 57-M	
S. 57-120	ad. No. 147, 1997 am. No. 23, 2005
S. 57-125	ad. No. 147, 1997
Subdivision 57-N	
Subdiv. 57-N.....	rs. No. 77, 2001
S. 57-130	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 119, 2002; No. 101, 2006
Schedule 2E	
Schedule 2E.....	ad. No. 95, 1997
Division 42A	
S. 42A-1.....	ad. No. 95, 1997
Subdivision 42A-A	
S. 42A-5.....	ad. No. 95, 1997
S. 42A-10.....	ad. No. 95, 1997 am. No. 174, 1997
S. 42A-15.....	ad. No. 95, 1997
S. 42A-20.....	ad. No. 95, 1997 am. No. 101, 2006
S. 42A-25.....	ad. No. 95, 1997
Subdivision 42A-B	
S. 42A-30.....	ad. No. 95, 1997
S. 42A-35.....	ad. No. 95, 1997
S. 42A-40.....	ad. No. 95, 1997 rs. No. 174, 1997
Subdivision 42A-C	
S. 42A-45.....	ad. No. 95, 1997
S. 42A-50.....	ad. No. 95, 1997
S. 42A-55.....	ad. No. 95, 1997
Subdivision 42A-D	
S. 42A-60.....	ad. No. 95, 1997
S. 42A-65.....	ad. No. 95, 1997
S. 42A-70.....	ad. No. 95, 1997
Subdivision 42A-E	
S. 42A-75.....	ad. No. 95, 1997
S. 42A-80.....	ad. No. 95, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 42A-85.....	ad. No. 95, 1997
S. 42A-90.....	ad. No. 95, 1997 am. No. 174, 1997; No. 77, 2001; No. 101, 2006
Subdivision 42A-F	
S. 42A-95.....	ad. No. 95, 1997
S. 42A-100.....	ad. No. 95, 1997
S. 42A-105.....	ad. No. 95, 1997 am. No. 174, 1997; No. 77, 2001; No. 101, 2006
Subdivision 42A-G	
S. 42A-110.....	ad. No. 95, 1997
S. 42A-115.....	ad. No. 95, 1997 am. No. 101, 2006
S. 42A-120.....	ad. No. 95, 1997 am. No. 174, 1997; No. 77, 2001; No. 101, 2006
S. 42A-125.....	ad. No. 95, 1997
S. 42A-130.....	ad. No. 95, 1997 am. No. 174, 1997
S. 42A-135.....	ad. No. 95, 1997
S. 42A-140.....	ad. No. 95, 1997
S. 42A-145.....	ad. No. 95, 1997
S. 42A-150.....	ad. No. 95, 1997
Schedule 2F	
Schedule 2F.....	ad. No. 17, 1998
Division 265	
S. 265-5.....	ad. No. 17, 1998
S. 265-10.....	ad. No. 17, 1998
Division 266	
Subdivision 266-A	
S. 266-5.....	ad. No. 17, 1998
S. 266-10.....	ad. No. 17, 1998
Subdivision 266-B	
S. 266-15.....	ad. No. 17, 1998
S. 266-20.....	ad. No. 17, 1998
S. 266-25.....	ad. No. 17, 1998
S. 266-30.....	ad. No. 17, 1998
S. 266-35.....	ad. No. 17, 1998
Note to s. 266-35(1).....	ad. No. 41, 2005 rs. No. 162, 2005
S. 266-40.....	ad. No. 17, 1998
S. 266-45.....	ad. No. 17, 1998
S. 266-50.....	ad. No. 17, 1998
S. 266-55.....	ad. No. 17, 1998
S. 266-60.....	ad. No. 17, 1998 am. No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 266-C	
S. 266-65	ad. No. 17, 1998
S. 266-70	ad. No. 17, 1998
S. 266-75	ad. No. 17, 1998
S. 266-80	ad. No. 17, 1998
S. 266-85	ad. No. 17, 1998
Note to s. 266-85(3)	ad. No. 41, 2005 rs. No. 162, 2005
S. 266-90	ad. No. 17, 1998
S. 266-95	ad. No. 17, 1998
Subdivision 266-D	
S. 266-100	ad. No. 17, 1998
S. 266-105	ad. No. 17, 1998
S. 266-110	ad. No. 17, 1998
S. 266-115	ad. No. 17, 1998
S. 266-120	ad. No. 17, 1998
Note to s. 266-120(1)	ad. No. 41, 2005 rs. No. 162, 2005
S. 266-125	ad. No. 17, 1998
S. 266-130	ad. No. 17, 1998
S. 266-135	ad. No. 17, 1998
Subdivision 266-E	
S. 266-140	ad. No. 17, 1998
S. 266-145	ad. No. 17, 1998
S. 266-150	ad. No. 17, 1998
S. 266-155	ad. No. 17, 1998
S. 266-160	ad. No. 17, 1998
Note to s. 266-160(2)	ad. No. 41, 2005 rs. No. 162, 2005
S. 266-165	ad. No. 17, 1998
S. 266-170	ad. No. 17, 1998
Subdivision 266-F	
S. 266-175	ad. No. 17, 1998
S. 266-180	ad. No. 17, 1998
S. 266-185	ad. No. 17, 1998 am. No. 101, 2006
Division 267	
Subdivision 267-A	
S. 267-5	ad. No. 17, 1998
S. 267-10	ad. No. 17, 1998
Subdivision 267-B	
S. 267-15	ad. No. 17, 1998
S. 267-20	ad. No. 17, 1998

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 267-25	ad. No. 17, 1998
Note to s. 267-25(1)	ad. No. 41, 2005 rs. No. 162, 2005
S. 267-30	ad. No. 17, 1998
S. 267-35	ad. No. 17, 1998
S. 267-40	ad. No. 17, 1998
S. 267-45	ad. No. 17, 1998
S. 267-50	ad. No. 17, 1998
Subdivision 267-C	
S. 267-55	ad. No. 17, 1998
S. 267-60	ad. No. 17, 1998
S. 267-65	ad. No. 17, 1998
Note to s. 267-65(1)	ad. No. 41, 2005 rs. No. 162, 2005
S. 267-70	ad. No. 17, 1998
S. 267-75	ad. No. 17, 1998
Subdivision 267-D	
S. 267-80	ad. No. 17, 1998
S. 267-85	ad. No. 17, 1998
S. 267-90	ad. No. 17, 1998
Division 268	
Subdivision 268-A	
S. 268-5	ad. No. 17, 1998
Subdivision 268-B	
S. 268-10	ad. No. 17, 1998
S. 268-15	ad. No. 17, 1998
S. 268-20	ad. No. 17, 1998
S. 268-25	ad. No. 17, 1998
Subdivision 268-C	
S. 268-30	ad. No. 17, 1998
S. 268-35	ad. No. 17, 1998 am. No. 85, 1998; No. 169, 1999; No. 77, 2001; No. 101, 2006
Note to s. 268-35(2)(b)	am. No. 77, 2001 rep. No. 101, 2006
Note to s. 268-35(2)(c)	am. No. 77, 2001 rep. No. 101, 2006
Note to s. 268-35(5)(f)	am. No. 101, 2006
Note to s. 268-35(6)	am. No. 101, 2006
S. 268-40	ad. No. 17, 1998 am. No. 41, 1998; No. 101, 2006; No. 79, 2007
Note to s. 268-40(3)(a)	am. No. 101, 2006
Note to s. 268-40(3)(b)	am. No. 101, 2006
Note to s. 268-40(3)(c)	am. No. 77, 2001; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 268-45	ad. No. 17, 1998 am. No. 101, 2006
S. 268-50	ad. No. 17, 1998 rep. No. 101, 2006
S. 268-55	ad. No. 17, 1998 rep. No. 101, 2006
S. 268-60	ad. No. 17, 1998
Note to s. 268-60(5)	am. No. 142, 2003
S. 268-65	ad. No. 17, 1998 rep. No. 41, 1998
Subdivision 268-D	
S. 268-70	ad. No. 17, 1998
Note to s. 268-70(2)	am. No. 101, 2006
S. 268-75	ad. No. 17, 1998
S. 268-80	ad. No. 17, 1998
S. 268-85	ad. No. 17, 1998
Division 269	
Subdivision 269-A	
S. 269-5	ad. No. 17, 1998
Subdivision 269-B	
S. 269-10	ad. No. 17, 1998
S. 269-15	ad. No. 17, 1998
S. 269-20	ad. No. 17, 1998
S. 269-25	ad. No. 17, 1998
S. 269-30	ad. No. 17, 1998
S. 269-35	ad. No. 17, 1998
S. 269-40	ad. No. 17, 1998
S. 269-45	ad. No. 17, 1998
S. 269-47	ad. No. 17, 1998
S. 269-49	ad. No. 17, 1998
Subdivision 269-C	
S. 269-50	ad. No. 17, 1998
S. 269-55	ad. No. 17, 1998
Subdivision 269-D	
S. 269-60	ad. No. 17, 1998
S. 269-65	ad. No. 17, 1998
S. 269-70	ad. No. 17, 1998
S. 269-75	ad. No. 17, 1998
Heading to s. 269-80	am. No. 144, 2008
S. 269-80	ad. No. 17, 1998 am. No. 144, 2008
S. 269-85	ad. No. 17, 1998

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 269-E	
S. 269-95	ad. No. 17, 1998 am. No. 144, 2008
Subdivision 269-F	
S. 269-100	ad. No. 17, 1998
Division 270	
S. 270-5	ad. No. 17, 1998
S. 270-10	ad. No. 17, 1998
S. 270-15	ad. No. 17, 1998
S. 270-20	ad. No. 17, 1998
S. 270-25	ad. No. 17, 1998 am. No. 143, 2007
Division 271	
S. 271-5	ad. No. 17, 1998
S. 271-10	ad. No. 17, 1998
S. 271-15	ad. No. 17, 1998
S. 271-20	ad. No. 17, 1998
S. 271-25	ad. No. 17, 1998
S. 271-30	ad. No. 17, 1998
S. 271-35	ad. No. 17, 1998
S. 271-40	ad. No. 17, 1998
S. 271-45	ad. No. 17, 1998
S. 271-50	ad. No. 17, 1998
S. 271-55	ad. No. 17, 1998
Subhead. to s. 271-60(3)....	am. No. 58, 2000
S. 271-60	ad. No. 17, 1998 am. No. 58, 2000; No. 162, 2005; No. 101, 2006
S. 271-65	ad. No. 17, 1998
S. 271-70	ad. No. 17, 1998
S. 271-75	ad. No. 17, 1998 am. No. 179, 1999
S. 271-80	ad. No. 17, 1998 rs. No. 178, 1999
Note to s. 271-80	am. No. 101, 2006
S. 271-85	ad. No. 17, 1998 am. No. 178, 1999 (as am. by No. 57, 2002); No. 179, 1999 rep. No. 101, 2006
S. 271-90	ad. No. 17, 1998
S. 271-95	ad. No. 17, 1998
S. 271-100	ad. No. 17, 1998
Heading to s. 271-105	rs. No. 66, 2003
S. 271-105	ad. No. 17, 1998 am. No. 66, 2003

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 272	
Subdivision 272-A	
S. 272-5	ad. No. 17, 1998
S. 272-10	ad. No. 17, 1998 am. No. 63, 1998
S. 272-15	ad. No. 17, 1998
S. 272-20	ad. No. 17, 1998
S. 272-25	ad. No. 17, 1998 am. No. 15, 2007
Notes to s. 272-25(3)	rep. No. 15, 2007
Note to s. 272-25(3)	ad. No. 15, 2007
S. 272-30	ad. No. 17, 1998
S. 272-35	ad. No. 17, 1998
S. 272-40	ad. No. 17, 1998
Subdivision 272-B	
S. 272-45	ad. No. 17, 1998
S. 272-50	ad. No. 17, 1998 am. No. 63, 1998; No. 163, 2001
S. 272-55	ad. No. 17, 1998
S. 272-60	ad. No. 17, 1998
S. 272-63	ad. No. 17, 1998
Subdivision 272-C	
S. 272-65	ad. No. 17, 1998
S. 272-70	ad. No. 17, 1998
Subdivision 272-D	
S. 272-75	ad. No. 17, 1998
Subead. to s. 272-80(6)	am. No. 143, 2007
S. 272-80	ad. No. 17, 1998 am. No. 41, 2005; No. 143, 2007
S. 272-85	ad. No. 17, 1998 am. No. 41, 2005; No. 143, 2007
S. 272-87	ad. No. 17, 1998 am. No. 93, 1999
S. 272-90	ad. No. 17, 1998 am. No. 63, 1998; No. 101, 2004; No. 63, 2005; No. 101, 2006; No. 143, 2007; No. 144, 2008
S. 272-95	ad. No. 17, 1998 rs. No. 143, 2007
Note to s. 272-95(1).....	rep. No. 144, 2008
Notes 1, 2 to s. 272-95(1)	ad. No. 144, 2008
Subdivision 272-E	
S. 272-100	ad. No. 17, 1998 am. No. 78, 2007; No. 45, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 272-F	
S. 272-105	ad. No. 17, 1998
Subdivision 272-G	
S. 272-110	ad. No. 17, 1998
S. 272-115	ad. No. 17, 1998
Subdivision 272-H	
S. 272-120	ad. No. 17, 1998
Subdivision 272-I	
S. 272-125	ad. No. 17, 1998 am. No. 101, 2004
Subdivision 272-J	
S. 272-127	ad. No. 17, 1998
Subdivision 272-K	
S. 272-130	ad. No. 17, 1998
Subdivision 272-L	
S. 272-135	ad. No. 17, 1998
Subdivision 272-M	
S. 272-140	ad. No. 17, 1998 am. No. 55, 2001; No. 101, 2006; No. 143, 2007; No. 144, 2008
Schedule 2G	
Schedule 2G	ad. No. 85, 1998
Division 393	
S. 393-1	ad. No. 85, 1998
Subdivision 393-A	
S. 393-5	ad. No. 85, 1998
S. 393-7	ad. No. 85, 1998
Link note to Guide	rep. No. 41, 2005
S. 393-10	ad. No. 85, 1998 am. No. 55, 2007
Note 4 to s. 393-10(1)	ad. No. 138, 2002
S. 393-15	ad. No. 85, 1998
Note 3 to s. 393-15(1)	ad. No. 138, 2002
Note to s. 393-15(2) Renumbered Note 1	No. 138, 2002
Note 2 to s. 393-15(2)	ad. No. 138, 2002
Note 2 to s. 393-15(4)	rs. No. 101, 2006
Subdivision 393-B	
S. 393-20	ad. No. 85, 1998
Link note to Guide	rep. No. 41, 2005
S. 393-25	ad. No. 85, 1998 am. No. 138, 2002; No. 107, 2003; No. 101, 2006
S. 393-30	ad. No. 85, 1998 am. No. 146, 2001; No. 138, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 393-30(3)(a)	am. No. 101, 2006
Subhead. to s. 393-35(6)....	rs. No. 55, 2007
S. 393-35	ad. No. 85, 1998 am. No. 138, 2002; No. 55, 2007
S. 393-37	ad. No. 138, 2002 rs. No. 138, 2002 am. No. 38, 2008
S. 393-40	ad. No. 85, 1998 am. No. 138, 2002
S. 393-45	ad. No. 85, 1998 am. No. 138, 2002
S. 393-50	ad. No. 85, 1998 am. No. 101, 2006
Note to s. 393-50(5)(a)	am. No. 101, 2006
Note to s. 393-50(5)(c)	am. No. 101, 2006
S. 393-52	ad. No. 107, 2003
Subdivision 393-C	
S. 393-55	ad. No. 85, 1998
Link note to Guide	rep. No. 41, 2005
S. 393-60	ad. No. 85, 1998 am. No. 101, 2006; No. 15, 2007
S. 393-65	ad. No. 85, 1998
Schedule 2H	
Heading to Schedule 2H.....	rs. No. 97, 2008
Schedule 2H	ad. No. 103, 1999
Division 326	
S. 326-1	ad. No. 103, 1999 am. No. 97, 2008
Subdivision 326-A	
S. 326-5	ad. No. 103, 1999 am. No. 57, 2002; No. 101, 2006
S. 326-10	ad. No. 103, 1999 am. No. 97, 2008
S. 326-15	ad. No. 103, 1999 am. No. 97, 2008
S. 326-20	ad. No. 103, 1999
S. 326-25	ad. No. 103, 1999 am. No. 57, 2002
S. 326-30	ad. No. 103, 1999
S. 326-35	ad. No. 103, 1999
Subdivision 326-B	
S. 326-40	ad. No. 103, 1999 am. No. 57, 2002
S. 326-45	ad. No. 103, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 326-50	ad. No. 103, 1999 am. No. 57, 2002
S. 326-52	ad. No. 57, 2002
S. 326-55	ad. No. 103, 1999
S. 326-60	ad. No. 103, 1999 am. No. 57, 2002
Subdivision 326-C	
S. 326-65	ad. No. 103, 1999 am. No. 57, 2002
Subdivision 326-D	
S. 326-70	ad. No. 103, 1999 am. No. 57, 2002; No. 101, 2006
S. 326-75	ad. No. 103, 1999
S. 326-80	ad. No. 103, 1999
S. 326-85	ad. No. 103, 1999
S. 326-90	ad. No. 103, 1999
S. 326-95	ad. No. 103, 1999
S. 326-100	ad. No. 103, 1999 am. No. 101, 2006
S. 326-105	ad. No. 103, 1999 am. No. 101, 2006
S. 326-110	ad. No. 103, 1999 am. No. 101, 2006
S. 326-115	ad. No. 103, 1999 am. No. 101, 2006
S. 326-120	ad. No. 103, 1999 am. No. 23, 2005
S. 326-125	ad. No. 103, 1999
S. 326-130	ad. No. 103, 1999 am. No. 23, 2005; No. 97, 2008
Subdivision 326-E	
S. 326-135	ad. No. 103, 1999 am. No. 57, 2002; No. 101, 2006
S. 326-140	ad. No. 103, 1999
S. 326-145	ad. No. 103, 1999
S. 326-150	ad. No. 103, 1999
S. 326-155	ad. No. 103, 1999 am. No. 101, 2006
S. 326-160	ad. No. 103, 1999 am. No. 101, 2006
S. 326-165	ad. No. 103, 1999 am. No. 101, 2006
S. 326-170	ad. No. 103, 1999 am. No. 23, 2005
S. 326-175	ad. No. 103, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 326-F	
S. 326-180	ad. No. 103, 1999
Subdivision 326-G	
S. 326-185	ad. No. 103, 1999 am. No. 57, 2002
S. 326-190	ad. No. 103, 1999 am. No. 57, 2002 rs. No. 101, 2006
S. 326-195	ad. No. 103, 1999 am. No. 57, 2002
S. 326-200	ad. No. 103, 1999
Subdivision 326-H	
S. 326-205	ad. No. 103, 1999 am. No. 101, 2006
Subdivision 326-I	
S. 326-210	ad. No. 103, 1999
Subdivision 326-J	
S. 326-215	ad. No. 103, 1999 am. No. 101, 2006
Subdivision 326-K	
S. 326-220	ad. No. 103, 1999 am. No. 101, 2006; No. 97, 2008
Subdivision 326-L	
S. 326-225	ad. No. 103, 1999 am. No. 101, 2006
Subdivision 326-M	
S. 326-230	ad. No. 103, 1999
S. 326-235	ad. No. 103, 1999
S. 326-240	ad. No. 103, 1999
Subdivision 326-N	
S. 326-245	ad. No. 103, 1999
Schedule 2J	
Schedule 2J	ad. No. 97, 2002
Division 321	
S. 321-1	ad. No. 97, 2002
Subdivision 321-A	
S. 321-5	ad. No. 97, 2002
Link note to Guide	rep. No. 41, 2005
S. 321-10	ad. No. 97, 2002
S. 321-15	ad. No. 97, 2002
S. 321-20	ad. No. 97, 2002
S. 321-25	ad. No. 97, 2002
S. 321-30	ad. No. 97, 2002
S. 321-35	ad. No. 97, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 321-B	
S. 321-40	ad. No. 97, 2002
Link note to Guide	rep. No. 41, 2005
S. 321-45	ad. No. 97, 2002
S. 321-50	ad. No. 97, 2002
S. 321-55	ad. No. 97, 2002
S. 321-60	ad. No. 97, 2002
S. 321-65	ad. No. 97, 2002
Division 323	
S. 323-1	ad. No. 97, 2002
Link note to Guide	rep. No. 41, 2005
S. 323-5	ad. No. 97, 2002
S. 323-10	ad. No. 97, 2002
S. 323-15	ad. No. 97, 2002
S. 323-20	ad. No. 97, 2002
S. 323-25	ad. No. 97, 2002
Schedule 3	
Schedule 3	ad. No. 190, 1992 am. No. 97, 2008
Schedule 4	
Schedule 4	ad. No. 190, 1992 am. No. 82, 1994; No. 73, 2004
Schedule 5	
Schedule 5	ad. No. 190, 1992

Income Tax Assessment Act 1936

Act No. 27 of 1936 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

Volume 7 includes: Repeal Table
Notes 2 – 4
Tables A and B

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

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

Repeal Table**Notes to the *Income Tax Assessment Act 1936*****Repeal Table**

The amendment history of the repealed provisions of the *Income Tax Assessment Act 1936* up to and including Act No. 132, 2000 appears in the Table below.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 5	am. Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; No. 22, 1942; No. 10, 1943; No. 3, 1944; No. 6, 1946; Nos. 11 and 63, 1947; No. 48, 1950; No. 44, 1951; Nos. 45 and 81, 1953 rs. No. 101, 1956 am. No. 65, 1957; Nos. 12 and 85, 1959; No. 18, 1960; No. 17, 1961; No. 39, 1962; No. 69, 1963; No. 110, 1964; No. 103, 1965; No. 50, 1966; Nos. 38 and 85, 1967; No. 60, 1968; No. 101, 1969; No. 87, 1970; No. 54, 1971 rep. No. 164, 1973
S. 6D	ad. No. 46, 1972 am. Nos. 51 and 165, 1973; No. 108, 1981 rep. No. 107, 1989
S. 6E	ad. No. 138, 1987 rep. No. 97, 1989
S. 7	am. No. 62, 1955; No. 65, 1957; No. 70, 1959; No. 18, 1960; No. 87, 1968; No. 51, 1973 rs. No. 164, 1973 rep. No. 80, 1975
S. 9	rep. No. 1, 1953
S. 10	am. No. 1, 1953; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974) rep. No. 123, 1984
Ss. 11, 12	rep. No. 1, 1953
S. 13	am. No. 1, 1953; No. 216, 1973 (as am. by No. 20, 1974) rep. No. 123, 1984
S. 15	rep. No. 87, 1978
S. 23A	ad. No. 50, 1942 am. No. 10, 1943 rs. No. 45, 1953 am. Nos. 18 and 58, 1960; No. 39, 1962; No. 60, 1968; Nos. 51 and 164, 1973 rep. No. 126, 1974
S. 23AAA	ad. No. 19, 1967 rep. No. 65, 1972

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 23AD	ad. No. 165, 1973 am. No. 56, 1976; No. 57, 1977; No. 108, 1981; No. 106, 1982; No. 103, 1983; Nos. 14 and 123, 1984; No. 49, 1985; No. 173, 1985 (as am. by No. 49, 1986); No. 154, 1986; Nos. 78 and 95, 1988; Nos. 20 and 35, 1990; Nos. 48 and 216, 1991 rep. No. 100, 1991
S. 23B	ad. No. 44, 1951 rep. No. 101, 1956
S. 23F	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 51, 1973; No. 108, 1981; No. 47, 1984 rep. No. 138, 1987
Ss. 23FA, 23FB	ad. No. 47, 1984 rep. No. 138, 1987
Ss. 23FC, 23FD	ad. No. 138, 1987 rep. No. 97, 1989
S. 23M	ad. No. 11, 1989 rep. No. 223, 1992
S. 24	rep. No. 121, 1997
S. 24AA	ad. No. 52, 1973 rs. No. 205, 1976 am. No. 108, 1981 rep. No. 107, 1989
S. 24A	ad. No. 12, 1959 rs. No. 110, 1964 am. No. 51, 1973; No. 108, 1981 rep. No. 76, 1984
S. 24ABDAA	ad. No. 191, 1992 rep. No. 120, 1995
S. 24ABDA	ad. No. 216, 1991 rep. No. 169, 1995
S. 24ABK	ad. No. 100, 1991 rep. No. 69, 1992
S. 24ABL	ad. No. 100, 1991 rs. No. 216, 1991 am. No. 69, 1992; Nos. 56 and 174, 1994 rep. No. 1, 1996
S. 24ABRA	ad. No. 191, 1992 rep. No. 120, 1995
S. 24ABX	ad. No. 100, 1991 am. No. 216, 1991 rep. No. 69, 1992
S. 24ACX	ad. No. 100, 1991 am. No. 191, 1992 rep. No. 146, 1995
Ss. 24AD, 24ADA	ad. No. 100, 1991 rep. No. 146, 1995
S. 26AAAA	ad. No. 19, 1980 am. No. 108, 1981 rep. No. 41, 1986

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 26AAAB	ad. No. 175, 1981 rep. No. 41, 1986
S. 26AAA	ad. No. 165, 1973 am. No. 57, 1978; No. 108, 1981; No. 29, 1982; No. 95, 1988 rep. No. 138, 1994
S. 26AAB	ad. No. 126, 1974 rep. No. 80, 1975
S. 26AA	ad. No. 43, 1954 am. No. 126, 1977; No. 108, 1981 rep. No. 47, 1984
S. 26AE	ad. No. 124, 1980 am. No. 108, 1981 rep. No. 47, 1984
S. 30	rep. No. 44, 1951
S. 31A	ad. No. 28, 1953 am. No. 51, 1973 rep. No. 165, 1973
S. 31B	ad. No. 50, 1976 am. No. 108, 1981 rep. No. 107, 1989
S. 35	rep. No. 44, 1951
S. 44A	ad. No. 103, 1965 am. Nos. 51 and 164, 1973 rep. No. 80, 1975
S. 45	rep. No. 58, 1941 ad. No. 11, 1947 am. No. 44, 1948; No. 44, 1951; No. 81, 1953; No. 18, 1960; No. 85, 1967; No. 4, 1968; Nos. 51 and 164, 1973; No. 80, 1975; No. 108, 1981 rep. No. 51, 1986
S. 46C	ad. No. 106, 1982 rep. No. 103, 1983
S. 50M	ad. No. 172, 1978 rep. No. 107, 1989
Heading to Div. 3 of Part III	rep. No. 172, 1978
S. 51AA	ad. No. 108, 1960 am. No. 51, 1973; No. 108, 1981 rep. No. 107, 1989
S. 51AB	ad. No. 108, 1960 am. No. 85, 1967 rep. No. 87, 1970
S. 51AC	ad. No. 27, 1961 am. No. 34, 1963; No. 50, 1966; No. 51, 1973; No. 126, 1974; No. 117, 1975; Nos. 108 and 111, 1981 rep. No. 107, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 51AGB	ad. No. 57, 1993 am. No. 145, 1995 rep. No. 16, 1999
S. 51A	ad. No. 4, 1945 am. No. 63, 1947; No. 44, 1948; No. 44, 1951; No. 108, 1960; No. 94, 1961; No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 29, 1982 rep. No. 41, 1986
Ss. 53A–53E	ad. No. 28, 1944 am. No. 51, 1973 rep. No. 216, 1973 (as am. by No. 20, 1974)
S. 53H	ad. No. 57, 1980 am. Nos. 108 and 109, 1981; No. 25, 1983 rep. No. 107, 1989
S. 56A	ad. No. 65, 1957 am. No. 51, 1973; No. 108, 1981 rep. No. 95, 1988
S. 57	am. No. 65, 1957; No. 51, 1973; No. 108, 1981 rep. No. 95, 1988
S. 57AA	ad. No. 28, 1952 am. No. 62, 1955; No. 25, 1956; No. 65, 1957; No. 55, 1958; No. 58, 1960; No. 39, 1962; No. 69, 1963; No. 143, 1965; No. 76, 1967; Nos. 51 and 165, 1973; No. 108, 1981; No. 95, 1988 rep. No. 107, 1989
S. 57AB	ad. No. 90, 1952 am. No. 65, 1957; Nos. 51 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 95, 1988 rep. No. 107, 1989
S. 57AC	ad. No. 80, 1975 am. No. 108, 1981; No. 95, 1988 rep. No. 107, 1989
S. 57AD	ad. No. 117, 1975 am. No. 50, 1976; No. 108, 1981; No. 95, 1988 rep. No. 107, 1989
S. 57AE	ad. No. 149, 1979 am. No. 108, 1981; Nos. 14 and 25, 1983 rep. No. 95, 1988
S. 57AG	ad. No. 124, 1980 am. No. 159, 1980; Nos. 108 and 109, 1981; No. 29, 1982; No. 14, 1983; No. 14, 1984; No. 95, 1988; No. 107, 1989 rep. No. 35, 1992
S. 57AH	ad. No. 159, 1980 am. No. 108, 1981; Nos. 14 and 25, 1983 rep. No. 95, 1988
S. 57AJ	ad. No. 108, 1981 am. No. 25, 1983; No. 95, 1988 rep. No. 107, 1989
S. 57AL	ad. No. 14, 1983 rep. No. 95, 1988

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 57A	ad. No. 6, 1946 am. No. 66, 1949 rep. No. 28, 1952
S. 58	rep. No. 65, 1957 ad. No. 69, 1963 am. Nos. 51 and 164, 1973; No. 108, 1981; No. 95, 1988 rep. No. 107, 1989
Ss. 59A–59C	ad. No. 50, 1942 rep. No. 65, 1957
S. 59D	ad. No. 50, 1942 am. No. 45, 1953 rep. No. 65, 1957
S. 59E	ad. No. 50, 1942 rep. No. 65, 1957
S. 62AA	ad. No. 39, 1962 am. No. 69, 1963; No. 60, 1968; No. 6, 1971; No. 5, 1972; Nos. 51 and 165, 1973; No. 108, 1981 rep. No. 107, 1989
S. 62AB	ad. No. 69, 1963 am. Nos. 51 and 165, 1973; No. 108, 1981 rep. No. 107, 1989
S. 62A	ad. No. 46, 1938 am. No. 57, 1978; No. 108, 1981 rep. No. 107, 1989
S. 66	am. No. 58, 1941 rs. No. 3, 1944 am. No. 90, 1952 rep. No. 110, 1964
S. 69	rep. No. 101, 1956
S. 70	rep. No. 101, 1956
S. 72A	ad. No. 50, 1942 am. No. 4, 1945 rep. No. 11, 1947
S. 72B	ad. No. 50, 1942 am. No. 10, 1943; No. 28, 1944 rep. No. 85, 1959
S. 75	am. No. 11, 1947; No. 55, 1958; No. 18, 1960; No. 94, 1961; No. 50, 1966; No. 76, 1967; No. 93, 1969; Nos. 164 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 80, 1975; No. 108, 1981 rep. No. 107, 1989
S. 75C	ad. No. 124, 1980 am. No. 108, 1981; No. 124, 1984 rep. No. 107, 1989
S. 76	am. No. 69, 1963; No. 165, 1973 rep. No. 107, 1989
S. 77	am. No. 18, 1960; No. 164, 1973; No. 80, 1975; No. 108, 1981; No. 103, 1983 rep. No. 107, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 77A	ad. No. 55, 1958 rs. No. 70, 1959 am. No. 18, 1960; No. 94, 1961; No. 69, 1963; No. 46, 1964; No. 38, 1967; No. 60, 1968 rep. No. 93, 1969
S. 77AA	ad. No. 39, 1962 am. No. 46, 1964; No. 38, 1967; No. 60, 1968 rep. No. 93, 1969
S. 77B	ad. No. 94, 1961 am. No. 60, 1968; No. 51, 1973; No. 108, 1981; No. 168, 1985 rep. No. 107, 1989
S. 77C	ad. No. 60, 1968 am. No. 93, 1969; Nos. 51, 52 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 107, 1989
S. 77D	ad. No. 93, 1969 am. Nos. 51, 52 and 164, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 108, 1981 (as am. by No. 29, 1982); No. 168, 1985; No. 108, 1987 rep. No. 107, 1989
S. 77E	ad. No. 52, 1973 am. No. 164, 1973; No. 108, 1981 rep. No. 107, 1989
S. 79	am. No. 46, 1938; No. 65, 1940; No. 58, 1941 rep. No. 22, 1942 ad. No. 3, 1944 am. No. 90, 1952; No. 18, 1960; No. 94, 1961 rs. No. 110, 1964; No. 103, 1965 am. No. 51, 1973; No. 108, 1981 rep. No. 47, 1984
Ss. 80C, 80D	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 50, 1966 rep. No. 51, 1973
S. 81	am. No. 88, 1936; Nos. 17 and 65, 1940 rep. No. 22, 1942 ad. No. 50, 1942 rs. No. 10, 1943 am. No. 3, 1944; No. 6, 1946 rep. No. 63, 1947
S. 81A	ad. No. 4, 1952 rep. No. 30, 1956
Subdiv. B of Div. 3 of Part III (ss. 82A–82H)	ad. No. 48, 1950
Subdiv. B of Div. 3 of Part III (ss. 82A, 82B, 82D–82H, 82HA, 82J, 82JAA, 82JA, 82K)	rep. No. 117, 1975
S. 82A	ad. No. 48, 1950 rep. No. 117, 1975

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82AAB	ad. No. 110, 1964 rep. No. 97, 1989
S. 82AAD	ad. No. 110, 1964 am. No. 108, 1981 rep. No. 97, 1989
S. 82AAE	ad. No. 110, 1964 am. No. 143, 1965; No. 108, 1981 rep. No. 97, 1989
S. 82AAF	ad. No. 110, 1964 am. No. 51, 1973; No. 108, 1981 rep. No. 97, 1989
S. 82AAG	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 51, 1973; No. 108, 1981 (as am. by No. 29, 1982) rep. No. 97, 1989
Ss. 82AAH–82AAJ	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 51, 1973; No. 108, 1981 rep. No. 97, 1989
S. 82AAK	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 108, 1981 rep. No. 97, 1989
S. 82AAL	ad. No. 110, 1964 rs. No. 103, 1965 am. No. 51, 1973; No. 108, 1981 rep. No. 97, 1989
S. 82AAM	ad. No. 110, 1964 rep. No. 97, 1989
S. 82AAN	ad. No. 110, 1964 am. No. 103, 1965; No. 51, 1973 rep. No. 97, 1989
S. 82AAO	ad. No. 110, 1964 rep. No. 103, 1965
S. 82AAP	ad. No. 110, 1964 am. No. 103, 1965; No. 51, 1973 rep. No. 97, 1989
S. 82AA	ad. No. 18, 1960 am. No. 87, 1968 rs. No. 164, 1973 rep. No. 80, 1975
S. 82AP	ad. No. 50, 1976 rep. No. 98, 1992
S. 82AW	ad. No. 18, 1993 rep. No. 82, 1994

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdiv. BA of Div. 3 of Part III (ss. 82B–82D)	ad. No. 57, 1977 rep. No. 107, 1989
S. 82B	ad. No. 48, 1950 am. No. 45, 1953; No. 65, 1957; No. 69, 1963; No. 143, 1965; No. 76, 1967; No. 93, 1971; No. 85, 1972; Nos. 51 and 52, 1973; No. 126, 1974 rep. No. 117, 1975 ad. No. 57, 1977 rep. No. 107, 1989
S. 82C	ad. No. 48, 1950 am. No. 45, 1953; No. 65, 1957 rep. No. 69, 1963 ad. No. 57, 1977 am. No. 43, 1979 rep. No. 107, 1989
S. 82D	ad. No. 48, 1950 am. No. 45, 1953; No. 65, 1957; No. 18, 1960; No. 69, 1963; No. 143, 1965; No. 76, 1967; No. 87, 1968; No. 85, 1972; Nos. 51 and 164, 1973; No. 80, 1975 rep. No. 117, 1975 ad. No. 57, 1977 am. No. 108, 1981 rep. No. 107, 1989
S. 82E	ad. No. 48, 1950 am. No. 69, 1963; No. 51, 1973 rep. No. 117, 1975
Subdiv. BB of Div. 3 of Part III (ss. 82EA–82EH, 82EJ–82EM)	ad. No. 57, 1980 rep. No. 107, 1989
S. 82EA	ad. No. 57, 1980 rep. No. 107, 1989
S. 82EB	ad. No. 57, 1980 am. No. 108, 1981; No. 25, 1983 rep. No. 107, 1989
S. 82EC	ad. No. 57, 1980 am. No. 111, 1981 rep. No. 107, 1989
S. 82ED	ad. No. 57, 1980 rep. No. 107, 1989
S. 82EE	ad. No. 57, 1980 am. No. 108, 1981 rep. No. 107, 1989
Ss. 82EF, 82EG	ad. No. 57, 1980 rep. No. 107, 1989
Ss. 82EH, 82EJ	ad. No. 57, 1980 am. No. 108, 1981 rep. No. 107, 1989
Ss. 82EK, 82EL	ad. No. 57, 1980 rep. No. 107, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82EM	ad. No. 57, 1980 am. No. 108, 1981 rep. No. 107, 1989
S. 82F	ad. No. 48, 1950 am. No. 45, 1953; No. 70, 1959; No. 94, 1961 rs. No. 69, 1963 am. Nos. 51 and 52, 1973; No. 216, 1973 (as am. by No. 20, 1974) rep. No. 117, 1975
S. 82G	ad. No. 48, 1950 am. No. 69, 1963; No. 143, 1965 rep. No. 117, 1975
S. 82H	ad. No. 48, 1950 am. No. 101, 1956; No. 70, 1959; No. 143, 1965; No. 76, 1967; No. 51, 1973; No. 26, 1974 rep. No. 117, 1975
S. 82HA	ad. No. 101, 1956 rep. No. 117, 1975
S. 82J	ad. No. 90, 1952 rs. No. 45, 1953 am. No. 101, 1956; No. 69, 1963 rs. No. 33, 1965 am. No. 143, 1965; No. 93, 1971; Nos. 51 and 52, 1973; No. 126, 1974 rep. No. 117, 1975
S. 82JAA	ad. No. 85, 1972 am. No. 51, 1973; No. 126, 1974 rep. No. 117, 1975
S. 82JA	ad. No. 93, 1971 am. No. 216, 1973 (as am. by No. 20, 1974) rep. No. 117, 1975
S. 82K	ad. No. 69, 1963 am. No. 93, 1971; No. 85, 1972; No. 51, 1973 rep. No. 117, 1975
Subdiv. C of Div. 3 of Part III (ss. 82KA, 82KB, 82KBA, 82KBB, 82KC–82KG)	ad. No. 126, 1974 rep. No. 107, 1989
S. 82KA	ad. No. 126, 1974 am. No. 108, 1981; No. 106, 1982; No. 123, 1984; No. 41, 1986 rep. No. 107, 1989
S. 82KB	ad. No. 126, 1974 am. No. 108, 1981 rep. No. 107, 1989
S. 82KBA	ad. No. 50, 1976 rep. No. 107, 1989
S. 82KBB	ad. No. 123, 1978 rep. No. 107, 1989
S. 82KC	ad. No. 126, 1974 rep. No. 107, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 82KD	ad. No. 126, 1974 am. No. 108, 1981 rep. No. 107, 1989
Ss. 82KE–82KG	ad. No. 126, 1974 rep. No. 107, 1989
Subdiv. E of Div. 3 of Part III (ss. 82KM–82KS)	ad. No. 108, 1981 rep. No. 107, 1989
S. 82KM	ad. No. 108, 1981 rep. No. 107, 1989
S. 82KN	ad. No. 108, 1981 am. No. 103, 1983 rep. No. 107, 1989
Ss. 82KO–82KS	ad. No. 108, 1981 rep. No. 107, 1989
Note 3 to s. 82KZME(1)	rep. No. 90, 2000
Div. 4A of Part III (ss. 89A, 89AA–89AC, 89B, 89C, 89CA, 89D, 89DA, 89DB, 89E, 89EA, 89EB, 89F, 89FA–89FD, 89G, 89GA–89GH, 89H, 89HA, 89J, 89JA–89JC)	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. A of Div. 4A of Part III (ss. 89A, 89AA–89AC)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89A, 89AA–89AC	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. B of Div. 4A of Part III (s. 89B)	ad. No. 145, 1995 rep. No. 16, 1999
S. 89B	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. C of Div. 4A of Part III (ss. 89C, 89CA)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89C, 89CA	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. D of Div. 4A of Part III (ss. 89D, 89DA, 89DB)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89D, 89DA, 89DB	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. E of Div. 4A of Part III (ss. 89E, 89EA, 89EB)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89E, 89EA, 89EB	ad. No. 145, 1995 rep. No. 16, 1999

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdiv. F of Div. 4A of Part III (ss. 89F, 89FA–89FD)	ad. No. 145, 1995 rep. No. 16, 1999
S. 89F	ad. No. 145, 1995 rep. No. 16, 1999
S. 89FA	ad. No. 145, 1995 am. No. 41, 1998 rep. No. 16, 1999
Heading to s. 89FB(2)	am. No. 41, 1998 rep. No. 16, 1999
Ss. 89FB, 89FC	ad. No. 145, 1995 am. No. 41, 1998 rep. No. 16, 1999
S. 89FD	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. G of Div. 4A of Part III (ss. 89G, 89GA– 89GH)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89G, 89GA–89GH	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. H of Div. 4A of Part III (ss. 89H, 89HA)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89H, 89HA	ad. No. 145, 1995 rep. No. 16, 1999
Subdiv. J of Div. 4A of Part III (ss. 89J, 89JA– 89JC)	ad. No. 145, 1995 rep. No. 16, 1999
Ss. 89J, 89JA–89JC	ad. No. 145, 1995 rep. No. 16, 1999
S. 93A	ad. No. 22, 1942 rep. No. 48, 1950
S. 95A	ad. No. 11, 1947 rep. No. 45, 1953 ad. No. 126, 1974 rep. No. 117, 1975
S. 100A	ad. No. 22, 1942 rs. No. 11, 1947 rep. No. 48, 1950
S. 102AA	ad. No. 50, 1942 am. No. 4, 1945 rep. No. 85, 1959
Div. 6A of Part III (ss. 102A, 102B)	ad. No. 58, 1941 rep. No. 48, 1950
Ss. 102A, 102B	ad. No. 58, 1941 rep. No. 48, 1950

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 7 of Part III (ss.103–109)	rep. No. 90, 1952
S. 103.....	rep. No. 90, 1952
S. 103A	ad. No. 44, 1951 rep. No. 90, 1952
Ss. 103B–103D	ad. No. 44, 1951 rep. No. 90, 1952
S. 104.....	rep. No. 90, 1952
S. 105	am. No. 44, 1948; No. 48, 1950 rs. No. 90, 1952 am. No. 85, 1959 rep. No. 110, 1964
S. 106.....	rep. No. 90, 1952
Ss. 106A–106D	ad. No. 51, 1973 rep. No. 205, 1976
Ss. 107–109	rep. No. 90, 1952
S. 109A	ad. No. 58, 1941 am. No. 3, 1944 rep. No. 90, 1952
Heading to Subdiv. A of Div. 8 of Part III	ad. No. 216, 1991 rep. No. 89, 2000
S. 110	am. No. 22, 1942; No. 17, 1961; No. 110, 1964; No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 47, 1984; No. 49, 1985; No. 138, 1987; No. 11, 1988; No. 97, 1989 (as am. by No. 105, 1989); No. 105, 1989; Nos. 20 and 57, 1990; No. 5, 1991; No. 80, 1992; No. 208, 1992 (as am. by No. 7, 1993); Nos. 7, 17 and 82, 1993; No. 5, 1995; Nos. 39, 62 and 121, 1997; No. 46, 1998; Nos. 16 and 44, 1999; No. 89, 2000 rep. No. 89, 2000
S. 110A	ad. No. 17, 1961 am. No. 51, 1973; No. 108, 1981 rep. No. 49, 1985 ad. No. 89, 2000 rep. No. 89, 2000
Ss. 110B, 110C	ad. No. 105, 1989 rep. No. 89, 2000
S. 110CA	ad. No. 82, 1994 rep. No. 89, 2000
S. 111	rs. No. 47, 1984 am. No. 62, 1987; No. 105, 1989; No. 62, 1997 rep. No. 89, 2000
S. 111A	ad. No. 105, 1989 am. No. 5, 1991; No. 56, 1994 rep. No. 56, 1994
S. 111AA	ad. No. 20, 1990 am. No. 5, 1991; No. 56, 1994 rep. No. 56, 1994
S. 111AB	ad. No. 56, 1994 rep. No. 89, 2000

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 111AC	am. No. 62, 1997 rep. No. 89, 2000
S. 111AC	ad. No. 56, 1994 am. Nos. 39 and 62, 1997 rep. No. 89, 2000
S. 111AD	ad. No. 56, 1994 am. Nos. 39 and 62, 1997 rep. No. 89, 2000
S. 111B	ad. No. 105, 1989 am. Nos. 39 and 121, 1997 rep. No. 89, 2000
S. 111C	ad. No. 105, 1989 am. No. 118, 1993; No. 56, 1994; Nos. 39 and 62, 1997 rep. No. 89, 2000
S. 111D	ad. No. 105, 1989 rep. No. 89, 2000
S. 111E	ad. No. 105, 1989 am. No. 121, 1997 rep. No. 89, 2000
S. 112	am. No. 47, 1984 rs. No. 105, 1989 (as am. by No. 56, 1994) am. No. 20, 1990; No. 56, 1994 rs. No. 56, 1994 am. No. 62, 1997 rep. No. 89, 2000
S. 112A	ad. No. 17, 1961 am. No. 51, 1973; No. 108, 1981; No. 47, 1984; No. 49, 1985; No. 52, 1986; No. 105, 1989; No. 5, 1991; No. 80, 1992; No. 62, 1997; No. 16, 1999 rep. No. 89, 2000
S. 112BA	ad. No. 56, 1994 rep. No. 89, 2000
S. 112B	ad. No. 51, 1986 rep. No. 5, 1991
S. 112C	ad. No. 80, 1992 am. No. 16, 1999 rep. No. 89, 2000
S. 113	rs. No. 17, 1961 am. No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 105, 1989; No. 216, 1991; No. 118, 1993; No. 56, 1994; Nos. 39 and 62, 1997 rep. No. 89, 2000
S. 113A	ad. No. 56, 1994 am. No. 62, 1997 rep. No. 89, 2000
S. 114	am. No. 108, 1981; No. 16, 1999 rep. No. 89, 2000
Ss. 114A, 114B	ad. No. 16, 1999 rep. No. 89, 2000

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 115	am. No. 22, 1942 rs. No. 17, 1961 am. Nos. 51 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 108, 1981; No. 47, 1984 rs. No. 49, 1985 am. No. 51, 1986 rep. No. 97, 1989
S. 115A	ad. No. 17, 1961 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981; No. 47, 1984 rep. No. 49, 1985
S. 116	am. No. 47, 1984 rep. No. 97, 1989
S. 116AA	ad. No. 165, 1973 am. No. 108, 1981; No. 51, 1986 rep. No. 62, 1987
S. 116A	ad. No. 17, 1961 am. No. 47, 1972; No. 51, 1973; No. 108, 1981 rep. No. 49, 1985
Ss. 116B, 116C	ad. No. 17, 1961 am. No. 51, 1973; No. 108, 1981 rep. No. 49, 1985
S. 116CA	ad. No. 105, 1989 am. No. 62, 1997 rep. No. 89, 2000
Heading to s. 116CB	rs. No. 46, 1998 rep. No. 89, 2000
S. 116CB	ad. No. 105, 1989 am. No. 5, 1991; No. 46, 1998; No. 16, 1999; No. 89, 2000 rep. No. 89, 2000
Heading to s. 116CC	rs. No. 46, 1998 rep. No. 89, 2000
S. 116CC	ad. No. 105, 1989 am. No. 62, 1997; No. 46, 1998 rep. No. 89, 2000
Heading to s. 116CD	rs. No. 46, 1998 rep. No. 89, 2000
S. 116CD	ad. No. 105, 1989 am. No. 62, 1997; No. 46, 1998; No. 89, 2000 rep. No. 89, 2000
S. 116CE	ad. No. 105, 1989 am. No. 5, 1991; Nos. 62 and 121, 1997; No. 46, 1998; No. 16, 1999 rep. No. 89, 2000
S. 116CF	ad. No. 105, 1989 am. No. 118, 1993; No. 56, 1994; No. 62, 1997; No. 46, 1998 rep. No. 89, 2000
S. 116CG	ad. No. 105, 1989 rep. No. 89, 2000

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 116CH	ad. No. 105, 1989 am. Nos. 39 and 62, 1997 rep. No. 89, 2000
S. 116CJ	ad. No. 105, 1989 rep. No. 89, 2000
S. 116D	ad. No. 17, 1961 am. No. 108, 1981; No. 101, 1992 rep. No. 89, 2000
Subdiv. AA of Div. 8 of Part III (ss. 116DAA–116DAD, 116DADA, 116DAE, 116DAF)	ad. No. 62, 1997 rep. No. 89, 2000
S. 116DAA	ad. No. 62, 1997 rep. No. 89, 2000
Note to s. 116DAA	rep. No. 44, 1999
Notes 1, 2 to s. 116DAA	ad. No. 44, 1999 rep. No. 89, 2000
Heading to s. 116DAB	rs. No. 44, 1999 rep. No. 89, 2000
Ss. 116DAB–116DAD, 116DADA, 116DAE, 116DAF	ad. No. 62, 1997 rep. No. 89, 2000
Subdiv. B of Div. 8 of Part III (ss. 116DA– 116DK)	ad. No. 216, 1991 rep. No. 89, 2000
Ss. 116DA, 116DB	ad. No. 216, 1991 rep. No. 89, 2000
Heading to s. 116DC	am. No. 62, 1997 rep. No. 89, 2000
S. 116DC	ad. No. 216, 1991 am. No. 62, 1997 rep. No. 89, 2000
S. 116DD	ad. No. 216, 1991 rep. No. 89, 2000
Heading to s. 116DE	am. No. 62, 1997 rep. No. 89, 2000
S. 116DE	ad. No. 216, 1991 am. No. 62, 1997 rep. No. 89, 2000
S. 116DF	ad. No. 216, 1991 am. No. 62, 1997 rep. No. 89, 2000
Ss. 116DG–116DJ	ad. No. 216, 1991 rep. No. 89, 2000
S. 116DK	ad. No. 216, 1991 am. No. 46, 1998 rep. No. 89, 2000

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 8A of Part III (ss. 116E–116J)	ad. No. 47, 1984 rep. No. 89, 2000
Heading to Subdiv. A of Div. 8A of Part III	ad. No. 44, 1999 rep. No. 89, 2000
S. 116E	ad. No. 47, 1984 am. Nos. 11 and 87, 1988; No. 105, 1989; No. 57, 1990; Nos. 7, 17, 55 and 82, 1993; No. 120, 1995; No. 60, 1996; Nos. 39 and 121, 1997; No. 46, 1998; No. 44, 1999; No. 89, 2000 rep. No. 89, 2000
S. 116F	ad. No. 47, 1984 rep. No. 89, 2000
Ss. 116FA, 116FB	ad. No. 105, 1989 rep. No. 89, 2000
S. 116FC	ad. No. 82, 1994 rep. No. 89, 2000
S. 116G	ad. No. 47, 1984 am. No. 11, 1988 rs. No. 105, 1989 am. No. 44, 1999 rep. No. 89, 2000
Heading to s. 116GA	rs. No. 46, 1998 rep. No. 89, 2000
S. 116GA	ad. No. 105, 1989 am. No. 120, 1995; No. 46, 1998; No. 44, 1999; No. 89, 2000 rep. No. 89, 2000
Heading to s. 116GB	rs. No. 46, 1998 rep. No. 89, 2000
S. 116GB	ad. No. 105, 1989 am. No. 46, 1998; No. 44, 1999; No. 89, 2000 rep. No. 89, 2000
S. 116GC	ad. No. 105, 1989 am. Nos. 39 and 121, 1997 rep. No. 89, 2000
S. 116GD	ad. No. 105, 1989 am. No. 44, 1999 rep. No. 89, 2000
S. 116GE	ad. No. 56, 1994 rep. No. 89, 2000
S. 116H	ad. No. 47, 1984 am. No. 56, 1994; No. 44, 1999 rep. No. 89, 2000
S. 116HA	ad. No. 105, 1989 am. No. 56, 1994 rep. No. 56, 1994
S. 116HAA	ad. No. 55, 1993 rep. No. 56, 1994
Ss. 116HAB, 116HAC	ad. No. 56, 1994 am. No. 39, 1997; No. 44, 1999 rep. No. 89, 2000

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 116HAD	ad. No. 56, 1994 rep. No. 89, 2000
S. 116HB	ad. No. 105, 1989 am. No. 46, 1998 rep. No. 89, 2000
S. 116HC	ad. No. 105, 1989 rep. No. 89, 2000
S. 116HD	ad. No. 105, 1989 am. No. 39, 1997; No. 44, 1999 rep. No. 89, 2000
S. 116HE	ad. No. 105, 1989 rep. No. 89, 2000
S. 116J	ad. No. 47, 1984 am. No. 35, 1992 rep. No. 89, 2000
Subdiv. B of Div. 8A of Part III (ss. 116K– 116Q)	ad. No. 44, 1999 rep. No. 89, 2000
Ss. 116K–116Q	ad. No. 44, 1999 rep. No. 89, 2000
Div. 9A of Part III (ss. 121A–121C)	ad. No. 63, 1947 rep. No. 62, 1955
Div. 9A of Part III (ss. 121A, 121B)	ad. No. 62, 1955
Div. 9A of Part III (s. 121A)	rep. No. 154, 1981
S. 121A	ad. No. 63, 1947 rs. No. 62, 1955 am. No. 51, 1973; No. 108, 1981 rep. No. 154, 1981
S. 121B	ad. No. 63, 1947 rs. No. 62, 1955 rep. No. 65, 1957
S. 121C	ad. No. 63, 1947 rep. No. 62, 1955
Heading to Div. 9B of Part III	am. No. 47, 1984 rep. No. 97, 1989
Div. 9B of Part III (ss. 121B–121E)	ad. No. 17, 1961
Div. 9B of Part III (ss. 121B, 121BA, 121CC, 121D, 121DA, 121DAA, 121DAAA, 121DAB, 121DB–121DD, 121E)	rep. No. 97, 1989
S. 121B	ad. No. 17, 1961 rs. No. 110, 1964 am. No. 51, 1973; No. 108, 1981; No. 47, 1984; Nos. 49 and 123, 1985; No. 138, 1987 rep. No. 97, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 121BA	ad. No. 110, 1964 am. No. 103, 1965; No. 51, 1973; No. 108, 1981 rep. No. 47, 1984 ad. No. 138, 1987 rep. No. 97, 1989
S. 121C	ad. No. 17, 1961 am. No. 110, 1964; No. 51, 1973; No. 108, 1981; No. 54, 1983 rep. No. 49, 1985 ad. No. 123, 1985 rep. No. 138, 1987
S. 121CA	ad. No. 110, 1964 am. No. 51, 1973; Nos. 49 and 123, 1985 rep. No. 138, 1987
S. 121CB	ad. No. 110, 1964 am. No. 51, 1973; No. 108, 1981 rs. No. 47, 1984 am. No. 123, 1985 rep. No. 138, 1987
S. 121CC	ad. No. 123, 1985 rs. No. 138, 1987 rep. No. 97, 1989
S. 121D	ad. No. 17, 1961 rs. No. 110, 1964 am. No. 51, 1973; No. 108, 1981 rep. No. 49, 1985 ad. No. 138, 1987 rep. No. 97, 1989
S. 121DA	ad. No. 110, 1964 am. No. 108, 1981; No. 47, 1984; Nos. 49 and 123, 1985; No. 138, 1987 rep. No. 97, 1989
S. 121DAA	ad. No. 47, 1984 am. No. 138, 1987 rep. No. 97, 1989
S. 121DAAA	ad. No. 138, 1987 rep. No. 97, 1989
S. 121DAB	ad. No. 47, 1984 am. Nos. 49 and 123, 1985 rs. No. 138, 1987 rep. No. 97, 1989
S. 121DB	ad. No. 110, 1964 am. No. 51, 1973; No. 47, 1984; No. 138, 1987 rep. No. 97, 1989
S. 121DC	ad. No. 110, 1964 am. No. 51, 1973; No. 47, 1984 rs. No. 138, 1987 rep. No. 97, 1989

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 121DD	ad. No. 110, 1964 am. No. 103, 1965; No. 47, 1972; No. 51, 1973; No. 126, 1977; No. 106, 1982 rs. No. 47, 1984 am. No. 138, 1987 rep. No. 97, 1989
S. 121DE	ad. No. 110, 1964 am. No. 51, 1973; No. 108, 1981 rep. No. 49, 1985
S. 121E	ad. No. 17, 1961 am. No. 51, 1973 rep. No. 97, 1989
Div. 10 of Part III (ss.122–124)	rep. No. 60, 1968
S. 122	rep. No. 60, 1968
S. 122AA	ad. No. 69, 1963 rep. No. 60, 1968
S. 122AB	ad. No. 70, 1959 rep. No. 60, 1968
S. 122E	ad. No. 60, 1968 am. No. 126, 1974; No. 108, 1981 rep. No. 107, 1989
Ss. 122F, 122G	ad. No. 60, 1968 am. No. 51, 1973; No. 126, 1974; No. 108, 1981 rep. No. 107, 1989
S. 122NA	ad. No. 108, 1981 rep. No. 107, 1989
S. 122Q	ad. No. 60, 1968 am. No. 93, 1969; No. 51, 1973; No. 108, 1981 rep. No. 107, 1989
S. 123	rs. No. 44, 1951 rep. No. 60, 1968
S. 123AA	ad. No. 11, 1947 am. No. 44, 1951; No. 18, 1960; No. 69, 1963 rep. No. 60, 1968
S. 123A	ad. No. 30, 1939 am. No. 17, 1940; No. 11, 1947; No. 44, 1951; No. 55, 1958; No. 70, 1959; No. 18, 1960 rep. No. 69, 1963
S. 124	rs. No. 44, 1951 am. No. 110, 1964 rep. No. 60, 1968
S. 124A	ad. No. 44, 1951 am. No. 18, 1960 rep. No. 60, 1968
S. 124AA	ad. No. 103, 1965 rep. No. 60, 1968
S. 124B	ad. No. 44, 1951 am. No. 70, 1959 rep. No. 60, 1968

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 124C	ad. No. 44, 1951 am. No. 69, 1963 rep. No. 60, 1968
S. 124D	ad. No. 28, 1952 rep. No. 60, 1968
S. 124DA	ad. No. 39, 1962 am. No. 69, 1963; No. 46, 1964 rep. No. 60, 1968
Div. 10AA of Part III (ss. 124DB–124DH, 124J–124DN)	ad. No. 69, 1963 rep. No. 126, 1974
S. 124AEA	ad. No. 57, 1978 rep. No. 107, 1989
S. 124ANA	ad. No. 108, 1981 rep. No. 107, 1989
S. 124AR	ad. No. 126, 1974 am. No. 205, 1976; No. 57, 1978; No. 24, 1980; Nos. 108, 109 and 154, 1981; No. 14, 1983 rep. No. 107, 1989
S. 124DB	ad. No. 69, 1963 am. No. 164, 1973 rep. No. 126, 1974
S. 124DC	ad. No. 69, 1963 rep. No. 126, 1974
S. 124DD	ad. No. 69, 1963 am. No. 148, 1968; No. 93, 1969; No. 51, 1973 rep. No. 126, 1974
S. 124DE	ad. No. 69, 1963 am. No. 51, 1973 rep. No. 126, 1974
S. 124DF	ad. No. 69, 1963 am. No. 103, 1965; No. 50, 1966; No. 93, 1969; No. 51, 1973 rep. No. 126, 1974
S. 124DG	ad. No. 69, 1963 rep. No. 126, 1974
S. 124DH	ad. No. 69, 1963 am. Nos. 51 and 164, 1973 rep. No. 126, 1974
S. 124DJ	ad. No. 69, 1963 am. No. 164, 1973 rep. No. 126, 1974
Ss. 124DK, 124DL	ad. No. 69, 1963 rep. No. 126, 1974
Ss. 124DM, 124DN	ad. No. 69, 1963 am. No. 60, 1968; No. 51, 1973 rep. No. 126, 1974
S. 124ZP	ad. No. 98, 1992 rep. No. 46, 1998

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subheads to s. 124ZZB(1)–(3)	rep. No. 46, 1998
S. 124ZZC	ad. No. 181, 1994 rep. No. 46, 1998
S. 125	am. No. 65, 1940; No. 22, 1942; No. 10, 1943; No. 48, 1950; No. 18, 1960; No. 69, 1963; Nos. 103 and 143, 1965 rep. No. 85, 1967 ad. No. 54, 1971 am. No. 51, 1973; No. 80, 1975; No. 25, 1983; No. 98, 1992 rep. No. 95, 1997
Div. 11A of Part III (ss. 128A–128D)	ad. No. 85, 1959 rep. No. 85, 1967
S. 128E	ad. No. 85, 1959 rep. No. 38, 1967
S. 128M	ad. No. 54, 1971 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974) rep. No. 138, 1994
Div. 11B of Part III (ss. 128S, 128T)	ad. No. 172, 1978 rep. No. 58, 1987
S. 128S	ad. No. 172, 1978 am. No. 108, 1981 rep. No. 58, 1987
S. 128T	ad. No. 172, 1978 rep. No. 58, 1987
Div. 13 of Part III (s. 136)	rep. No. 29, 1982
S. 136	rep. No. 29, 1982
Div. 13A of Part III (s. 136A)	ad. No. 126, 1977 rep. No. 224, 1992
S. 136A	ad. No. 126, 1977 am. No. 123, 1984 rep. No. 224, 1992
Div. 14 of Part III (ss. 137–140)	rep. No. 126, 1977
S. 137	rep. No. 126, 1977
S. 138	am. No. 50, 1942 rep. No. 126, 1977
S. 139	rep. No. 126, 1977
S. 139FH	ad. No. 169, 1995 rep. No. 122, 1997
S. 140	am. No. 143, 1965 rep. No. 126, 1977
S. 158AA	ad. No. 50, 1966 am. No. 51, 1973; No. 126, 1977; No. 57, 1978; No. 108, 1981 rep. No. 103, 1983
Ss. 158AB, 158AC	ad. No. 50, 1966 am. No. 51, 1973 rep. No. 126, 1977

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Div. 16A of Part III (ss. 158B–158E)	ad. No. 45, 1953 rep. No. 138, 1987
Ss. 158B–158E	ad. No. 45, 1953 rep. No. 138, 1987
Div. 16B of Part III (ss. 159, 159A–159G)	ad. No. 101, 1969 rep. No. 107, 1989
S. 159	am. No. 88, 1936; No. 65, 1940; No. 58, 1941; No. 22, 1942; No. 11, 1947; No. 38, 1950 rep. No. 81, 1953 ad. No. 101, 1969 am. No. 51, 1973; No. 205, 1976; No. 108, 1981 rep. No. 107, 1989
S. 159A	ad. No. 101, 1969 am. No. 51, 1973; No. 205, 1976; No. 108, 1981 rep. No. 107, 1989
S. 159B	ad. No. 101, 1969 am. No. 51, 1973; No. 108, 1981 rep. No. 107, 1989
S. 159C	ad. No. 101, 1969 am. No. 51, 1973; No. 205, 1976; No. 108, 1981 rep. No. 107, 1989
S. 159D	ad. No. 101, 1969 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 107, 1989
S. 159E	ad. No. 101, 1969 am. No. 108, 1981 rep. No. 107, 1989
S. 159F	ad. No. 101, 1969 rep. No. 107, 1989
S. 159G	ad. No. 101, 1969 am. No. 51, 1973; No. 108, 1981 rep. No. 107, 1989
S. 159GB	ad. No. 205, 1976 rep. No. 56, 1989
S. 159GZD	ad. No. 138, 1987 am. No. 78, 1988 rep. No. 58, 1990
Ss. 159GZO, 159GZP	ad. No. 138, 1987 rep. No. 174, 1997
S. 159GZZP	ad. No. 153, 1988 rep. No. 4, 1991
S. 159GZZZA	ad. No. 153, 1988 rep. No. 4, 1991
S. 159GZZZMA	ad. No. 82, 1994 rep. No. 170, 1995
Subdiv. E of Div. 16K of Part III (s. 159GZZZT)	ad. No. 58, 1990 rep. No. 46, 1998
S. 159GZZZT	ad. No. 58, 1990 rep. No. 46, 1998

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159GZZZU	ad. No. 98, 1992 am. No. 56, 1994 rep. No. 163, 1994
Ss. 159GZZZV–159GZZZZ	ad. No. 98, 1992 rep. No. 163, 1994
Ss. 159GZZZZA, 159GZZZZB	ad. No. 98, 1992 am. No. 56, 1994 rep. No. 163, 1994
S. 159GZZZZC	ad. No. 98, 1992 rep. No. 163, 1994
S. 159GZZZZD	ad. No. 98, 1992 rep. No. 163, 1994
Heading to Subdiv. B of Div. 16L of Part III	rep. No. 163, 1994
S. 159N	ad. No. 117, 1975 am. No. 56, 1976; No. 126, 1977; No. 108, 1981; No. 106, 1982; No. 103, 1983 rep. No. 123, 1985
S. 159Q	ad. No. 117, 1975 rep. No. 123, 1985
S. 159R	ad. No. 117, 1975 am. Nos. 50 and 53, 1976; No. 124, 1980; No. 108, 1981; No. 54, 1983; No. 47, 1984; No. 49, 1985 rep. No. 123, 1985
S. 159S	ad. No. 117, 1975 rep. No. 53, 1976
Ss. 159SB–159SE	ad. No. 105, 1989 rep. No. 7, 1993
S. 159SH	ad. No. 105, 1989 rep. No. 7, 1993
S. 159SK	ad. No. 105, 1989 rep. No. 208, 1992
S. 159SN	ad. No. 105, 1989 am. No. 56, 1994 rep. No. 208, 1992
Ss. 159SP–159SR	ad. No. 105, 1989 rep. No. 208, 1992
S. 159SV	ad. No. 105, 1989 am. No. 56, 1994 rep. No. 208, 1992
Ss. 159SW–159SY	ad. No. 105, 1989 rep. No. 208, 1992
S. 159T	ad. No. 117, 1975 am. Nos. 50 and 56, 1976; No. 108, 1981 rep. No. 123, 1985

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdiv. AAC of Div. 17 of Part III (ss. 159T, 159TA– 159TL)	ad. No. 135, 1990 rep. No. 208, 1992
Ss. 159T, 159TA–159TL	ad. No. 135, 1990 rep. No. 208, 1992
S. 159V	ad. No. 117, 1975 am. No. 108, 1981 rep. No. 123, 1985
S. 159W	ad. No. 117, 1975 rep. No. 123, 1985
S. 159X	ad. No. 117, 1975 am. No. 50, 1976 rep. No. 123, 1985
S. 159XA	ad. No. 109, 1981 am. No. 106, 1982; No. 25, 1983 rep. No. 123, 1985
S. 159Y	ad. No. 117, 1975 rep. No. 123, 1985
Subdiv. AA of Div. 17 of Part III (ss. 159ZA– 159ZQ)	ad. No. 38, 1982 rep. No. 138, 1994
S. 159ZA	ad. No. 38, 1982 am. No. 49, 1983; No. 135, 1990 rep. No. 138, 1994
Ss. 159ZB–159ZE	ad. No. 38, 1982 rep. No. 138, 1994
S. 159ZF	ad. No. 38, 1982 rs. No. 106, 1982 rep. No. 138, 1994
Ss. 159ZG, 159ZH	ad. No. 38, 1982 rep. No. 138, 1994
S. 159ZJ	ad. No. 38, 1982 am. No. 106, 1982; No. 49, 1983 rep. No. 138, 1994
S. 159ZK	ad. No. 38, 1982 am. No. 106, 1982; No. 49, 1983; No. 109, 1986 rep. No. 138, 1994
S. 159ZKA	ad. No. 49, 1983 rep. No. 138, 1994
Ss. 159ZL, 159ZM	ad. No. 38, 1982 am. No. 106, 1982 rep. No. 138, 1994
S. 159ZN	ad. No. 38, 1982 am. No. 106, 1982; No. 49, 1983 rep. No. 138, 1994
S. 159ZNA	ad. No. 106, 1982 am. No. 25, 1983 rep. No. 138, 1994
Ss. 159ZNB, 159ZNC	ad. No. 106, 1982 rep. No. 138, 1994

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 159ZO, 159ZP	ad. No. 38, 1982 rep. No. 138, 1994
S. 159ZQ	ad. No. 38, 1982 am. No. 106, 1982 rep. No. 138, 1994
S. 160	rs. No. 58, 1941; No. 22, 1942 am. No. 50, 1942; No. 10, 1943; No. 28, 1944; No. 4, 1945; No. 6, 1946; No. 11, 1947; No. 44, 1948; No. 66, 1949 rep. No. 48, 1950 ad. No. 44, 1951 am. No. 90, 1952; No. 45, 1953; No. 70, 1959; No. 110, 1964; No. 143, 1965; No. 50, 1966; No. 76, 1967; No. 51, 1973; No. 126, 1974; No. 117, 1975; Nos. 57 and 126, 1977; No. 108, 1981 rep. No. 107, 1989
S. 160AA	ad. No. 58, 1941 am. Nos. 22 and 50, 1942; No. 11, 1947 rep. No. 48, 1950 ad. No. 126, 1974 rep. No. 117, 1975 ad. No. 123, 1978 am. No. 149, 1979; No. 57, 1980; Nos. 108 and 109, 1981; No. 106, 1982 rs. No. 47, 1984 am. Nos. 123 and 129, 1985; Nos. 49 and 109, 1986 rep. No. 105, 1989
S. 160ABA	ad. No. 6, 1946 rs. No. 44, 1948 am. No. 48, 1950; No. 44, 1951; No. 34, 1963; Nos. 51 and 52, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 36, 1978; No. 108, 1981; No. 123, 1984 rep. No. 107, 1989
S. 160AC	ad. No. 22, 1942 am. No. 50, 1942 rep. No. 48, 1950 ad. No. 87, 1968 am. No. 18, 1969; Nos. 51 and 165, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 126, 1974; No. 117, 1975; Nos. 108 and 111, 1981 rep. No. 107, 1989
S. 160ACA	ad. No. 57, 1978 am. No. 24, 1980; Nos. 108 and 109, 1981; No. 168, 1985; No. 11, 1988; No. 129, 1989 rep. No. 107, 1989
Ss. 160ACB, 160ACC	ad. No. 57, 1978 rep. No. 107, 1989
S. 160ACD	ad. No. 49, 1985 am. No. 24, 1980; No. 108, 1981 rep. No. 107, 1989
S. 160AE	ad. No. 22, 1942 am. No. 50, 1942; No. 37, 1945 rep. No. 48, 1950

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AF	ad. No. 3, 1944 rep. No. 85, 1959
Div. 18 of Part III (ss. 160AF–160AH, 160AJ–160AM)	ad. No. 3, 1944 rep. No. 85, 1959
Div. 18 of Part III (ss. 160AE–160AG)	ad. No. 18, 1960 rs. No. 80, 1975
Ss. 160AE–160AF	ad. No. 18, 1960 rs. No. 80, 1975 rep. No. 51, 1986
S. 160AG	ad. No. 3, 1944 rep. No. 85, 1959 ad. No. 18, 1960 rs. No. 4, 1968 am. No. 51, 1973 rs. No. 80, 1975 rep. No. 51, 1986
Ss. 160AH–160AM	ad. No. 3, 1944 rep. No. 85, 1959
Div. 19 of Part III (160AN–160AT)	ad. No. 6, 1946 rep. No. 85, 1959
Ss. 160AN, 160AO.....	ad. No. 6, 1946 rep. No. 85, 1959
S. 160AP	ad. No. 6, 1946 rep. No. 85, 1959 ad. No. 87, 1978 am. No. 123, 1984 rep. No. 73, 1989
S. 160APKB	ad. No. 216, 1991 rep. No. 89, 2000
S. 160APM	ad. No. 58, 1987 rep. No. 216, 1991
S. 160APN	ad. No. 58, 1987 rep. No. 216, 1991
S. 160APNA	ad. No. 20, 1990 rep. No. 216, 1991
Ss. 160APR–160APT	ad. No. 58, 1987 rep. No. 216, 1991
Ss. 160APVA, 160APVB	ad. No. 48, 1991 rep. No. 216, 1991
S. 160APVE	ad. No. 48, 1991 rep. No. 216, 1991
S. 160APY	ad. No. 58, 1987 rep. No. 216, 1991
S. 160APYA	ad. No. 20, 1990 am. No. 4, 1991 rep. No. 216, 1991
S. 160APYAA	ad. No. 4, 1991 rep. No. 216, 1991

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160AQ	ad. No. 6, 1946 rep. No. 85, 1959 ad. No. 58, 1987 rep. No. 216, 1991
S. 160AQA	ad. No. 58, 1987 rep. No. 216, 1991
Ss. 160AQCF–160AQCH	ad. No. 48, 1991 rep. No. 216, 1991
Subdiv. BB of Div. 7 of Part IIIA (ss. 160AQZI– 160AQZK)	ad. No. 93, 1999 rep. No. 89, 2000
Ss. 160AQZI–160AQZK	ad. No. 93, 1999 rep. No. 89, 2000
S. 160AR	ad. No. 6, 1946 am. No. 44, 1948; No. 44, 1951 rep. No. 85, 1959
S. 160AS	ad. No. 6, 1946 rep. No. 85, 1959 ad. No. 58, 1987 am. No. 5, 1991 rep. No. 101, 1992
S. 160AT	ad. No. 6, 1946 rep. No. 85, 1959
S. 160ATE	ad. No. 79, 2000 rep. No. 89, 2000
S. 160ATI	ad. No. 79, 2000 rep. No. 89, 2000
Part IIIA	ad. No. 17, 1940
(ss. 160A–160D)	rep. No. 44, 1951
Part IIIA	rep. No. 44, 1951
(ss. 160A–160E)	
S. 160A	ad. No. 17, 1940 rs. No. 3, 1944 am. No. 44, 1948 rep. No. 44, 1951
S. 160B	ad. No. 17, 1940 am. No. 48, 1950 rep. No. 44, 1951
S. 160C	ad. No. 17, 1940 am. No. 65, 1940; No. 58, 1941; Nos. 22 and 50, 1942; No. 10, 1943; No. 44, 1948 rep. No. 44, 1951
S. 160D	ad. No. 17, 1940 rep. No. 44, 1951
S. 160E	ad. No. 58, 1941 am. Nos. 22 and 50, 1942 rs. No. 11, 1947 am. No. 63, 1947 rep. No. 44, 1951

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZZOA	ad. No. 35, 1990 am. No. 5, 1991 rep. No. 48, 1991
Part IIIB	ad. No. 69, 1941
(ss. 160F–160J)	rep. No. 22, 1942
Part IIIB	ad. No. 11, 1947
(ss. 160F–160T)	rep. No. 81, 1953
S. 160F	ad. No. 69, 1941 rep. No. 22, 1942 ad. No. 11, 1947 am. No. 48, 1950 rep. No. 81, 1953
Ss. 160G, 160H	ad. No. 69, 1941 rep. No. 22, 1942 ad. No. 11, 1947 rep. No. 81, 1953
S. 160J	ad. No. 69, 1941 rep. No. 22, 1942 ad. No. 11, 1947 am. No. 48, 1950 rep. No. 81, 1953
S. 160K	ad. No. 11, 1947 am. No. 44, 1948; No. 48, 1950 rs. No. 44, 1951 am. No. 90, 1952 rep. No. 81, 1953
Ss. 160L, 160M	ad. No. 11, 1947 rep. No. 81, 1953
S. 160N	ad. No. 11, 1947 am. No. 48, 1950 rep. No. 81, 1953
S. 160P	ad. No. 11, 1947 rep. No. 81, 1953
S. 160Q	ad. No. 11, 1947 am. No. 44, 1948; No. 44, 1951 rep. No. 81, 1953
Ss. 160R, 160S	ad. No. 11, 1947 am. No. 48, 1950 rep. No. 81, 1953
S. 160T	ad. No. 11, 1947 rep. No. 81, 1953
S. 160ZLA	ad. No. 82, 1994 rep. No. 170, 1995
S. 160ZZPJA	ad. No. 46, 1998 rep. No. 94, 1999
S. 160ZZPZAA	ad. No. 46, 1998 rep. No. 94, 1999
S. 160ZZRAAAA	ad. No. 46, 1998 rep. No. 94, 1999
Note to s. 160ZZSJ	rep. No. 94, 1999

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160ZZSQ	ad. No. 122, 1997 rep. No. 94, 1999
Ss. 161B–161D	ad. No. 174, 1997 rep. No. 91, 2000
S. 161E	ad. No. 174, 1997 am. No. 179, 1999 rep. No. 91, 2000
S. 163C	ad. No. 169, 1995 rep. No. 11, 1999
S. 165	am. No. 10, 1943; No. 51, 1973; No. 123, 1984; No. 78, 1988; No. 174, 1997 rep. No. 91, 2000
S. 170B	ad. No. 103, 1965 am. No. 51, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 91, 2000
Div. 1 of Part V	rep. No. 48, 1986
(ss. 178, 180–184)	
S. 178	am. No. 108, 1981 rep. No. 48, 1986
S. 179	rep. No. 49, 1985
S. 180	am. No. 10, 1943 rep. No. 48, 1986
S. 181	rep. No. 48, 1986
S. 182	am. No. 63, 1947; No. 48, 1950; No. 18, 1955; No. 39, 1957; No. 17, 1960; No. 115, 1964; No. 143, 1965; No. 85, 1967 rs. No. 123, 1984 rep. No. 48, 1986
S. 183	am. No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 48, 1986
S. 184	am. No. 216, 1973 (as am. by No. 20, 1974); No. 108, 1981 rep. No. 48, 1986 ad. No. 23, 1987 rs. No. 8, 1988 rep. No. 216, 1991
S. 184A	ad. No. 165, 1976 am. No. 123, 1984 rep. No. 23, 1987
S. 184B	ad. No. 165, 1976 rep. No. 123, 1984
S. 184C	ad. No. 165, 1976 rep. No. 23, 1987
Part V	rep. No. 216, 1991
(ss. 185–188, 188A, 188B, 189, 189A, 189B, 190, 193, 199, 200B, 201)	
S. 185	am. No. 108, 1981; No. 48, 1986 rep. No. 216, 1991
S. 186	rep. No. 216, 1991

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 187	am. No. 53, 1973; No. 165, 1976; No. 87, 1978; No. 108, 1981 rs. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
S. 188	am. No. 143, 1965; No. 108, 1981 rs. No. 48, 1986 rep. No. 216, 1991
S. 188A	ad. No. 48, 1986 rep. No. 216, 1991
S. 188B	ad. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
S. 189	am. No. 143, 1965; No. 108, 1981 rs. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
S. 189A	ad. No. 48, 1986 rep. No. 216, 1991
S. 189B	ad. No. 8, 1988 rep. No. 216, 1991
S. 190	am. Nos. 48 and 112, 1986 rep. No. 216, 1991
S. 191	rep. No. 48, 1986
S. 192	am. No. 216, 1973 (as am. by No. 20, 1974) rep. No. 48, 1986
S. 193	am. No. 143, 1965; No. 51, 1973; No. 117, 1975; No. 149, 1979; Nos. 108 and 110, 1981; No. 29, 1982; No. 123, 1984; No. 48, 1986 rep. No. 216, 1991
S. 194	am. No. 108, 1981 rep. No. 48, 1986
S. 195	rep. No. 48, 1986
S. 196	rs. No. 53, 1973; No. 165, 1976 am. No. 87, 1978 rep. No. 48, 1986
S. 196A	ad. No. 53, 1973 am. No. 165, 1976; No. 48, 1986 rep. No. 23, 1987
S. 197	am. No. 53, 1973; No. 165, 1976 rep. No. 48, 1986
S. 198	rs. No. 165, 1976 am. No. 48, 1986 rep. No. 23, 1987
S. 199	rs. No. 165, 1976 am. No. 48, 1986; No. 23, 1987 rep. No. 216, 1991
S. 200	rs. No. 165, 1976 rep. No. 23, 1987

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 200A	ad. No. 19, 1979 rep. No. 23, 1987
S. 200B	ad. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
S. 201	am. No. 123, 1984; No. 48, 1986 rep. No. 216, 1991
S. 202	rs. No. 123, 1984 am. No. 46, 1986 rep. No. 48, 1986
S. 202E	ad. No. 97, 1988 rep. No. 57, 1990
S. 202ED	ad. No. 97, 1988 rep. No. 57, 1990
S. 203	rep. No. 5, 1937 ad. No. 87, 1978 rep. No. 73, 1989
S. 204A	ad. No. 87, 1978 rep. No. 73, 1989
S. 207	am. No. 46, 1938; No. 108, 1981; No. 123, 1982; No. 123, 1984; No. 101, 1992; No. 120, 1995 rep. No. 11, 1999
S. 207A	ad. No. 101, 1992 am. No. 120, 1995 rep. No. 11, 1999
S. 208A	ad. No. 87, 1978 rep. No. 73, 1989
S. 208B	ad. No. 87, 1978 am. No. 108, 1981; No. 73, 1989 rep. No. 11, 1999
S. 210	am. No. 46, 1938 rep. No. 39, 1962
Ss. 211, 212	rep. No. 39, 1962
S. 212A	ad. No. 48, 1950 rep. No. 39, 1962
S. 217	am. No. 87, 1978 rep. No. 123, 1984
S. 220AAV	ad. No. 47, 1998 rep. No. 11, 1999
Ss. 220AAX, 220AAY	ad. No. 47, 1998 rep. No. 11, 1999
S. 220AG	ad. No. 138, 1994 rep. No. 47, 1998
S. 220AI	ad. No. 138, 1994 rep. No. 47, 1998
S. 220AT	ad. No. 138, 1994 rep. No. 47, 1998

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 220AV	ad. No. 138, 1994 am. No. 47, 1998 rep. No. 11, 1999
S. 220AW	ad. No. 138, 1994 rep. No. 120, 1995
S. 221	rep. No. 58, 1941 ad. No. 22, 1942 am. No. 6, 1946; No. 43, 1954; No. 85, 1959; No. 143, 1965; No. 50, 1966; No. 51, 1973 rep. No. 134, 1980
S. 221AB	ad. No. 165, 1973 rep. No. 26, 1974
S. 221B	ad. No. 65, 1940 rs. No. 63, 1947 rep. No. 216, 1991
Div. 2 of Part VI	ad. No. 65, 1940
(ss. 221A–221H, 221J– 221H, 221P–221Y)	rep. No. 63, 1947
Ss. 221A–221E	ad. No. 65, 1940 rep. No. 63, 1947
S. 221EA	ad. No. 87, 1978 rep. No. 73, 1989
S. 221EB	ad. No. 87, 1978 am. No. 108, 1981 rep. No. 73, 1989
S. 221EC	ad. No. 45, 1990 am. No. 170, 1995 rep. No. 47, 1998
S. 221ED	ad. No. 45, 1990 rep. No. 47, 1998
Ss. 221EDA–221EDC	ad. No. 170, 1995 rep. No. 47, 1998
S. 221F	ad. No. 65, 1940 rep. No. 63, 1947
S. 221G	ad. No. 65, 1940 am. No. 3, 1944 rs. No. 63, 1947 am. No. 44, 1951; No. 143, 1965; No. 51, 1973; No. 87, 1978; No. 108, 1981; Nos. 47 and 123, 1984; No. 97, 1988; Nos. 73 and 167, 1989; No. 191, 1992; No. 32, 1993 rep. No. 170, 1995
S. 221H	ad. No. 65, 1940 rep. No. 63, 1947
S. 221HA	ad. No. 10, 1943 rs. No. 3, 1944 rep. No. 63, 1947
S. 221J	ad. No. 65, 1940 rep. No. 63, 1947
S. 221KA	ad. No. 3, 1944 rep. No. 63, 1947

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221KB	ad. No. 3, 1944 am. No. 4, 1945 rep. No. 63, 1947
Ss. 221KC, 221KD	ad. No. 3, 1944 rep. No. 63, 1947
S. 221KE	ad. No. 28, 1944 rep. No. 63, 1947
S. 221KF	ad. No. 11, 1947 rep. No. 63, 1947
S. 221L	ad. No. 65, 1940 am. No. 3, 1944 rs. No. 63, 1947 am. No. 66, 1949; No. 143, 1965; No. 51, 1973; No. 108, 1981; No. 123, 1984 rep. No. 170, 1995
S. 221M	ad. No. 65, 1940 am. No. 10, 1943; No. 3, 1944 rs. No. 63, 1947 am. No. 143, 1965; No. 108, 1981; No. 123, 1984 rep. No. 170, 1995
S. 221N	ad. No. 65, 1940 rep. No. 63, 1947
S. 221NA	ad. No. 123, 1984 am. No. 170, 1995; No. 47, 1998 rep. No. 11, 1999
S. 221NB	ad. No. 123, 1984 rep. No. 120, 1995
S. 221P	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 44, 1951; No. 85, 1959; No. 87, 1978; No. 108, 1981; No. 14, 1983; No. 123, 1984; No. 154, 1986; No. 73, 1989; No. 3, 1992; No. 32, 1993 rep. No. 170, 1995
S. 221Q	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 216, 1973 (as am. by No. 20, 1974); No. 87, 1978; No. 133, 1980; No. 123, 1984; No. 97, 1988; No. 73, 1989 rep. No. 170, 1995
Ss. 221R, 221S	ad. No. 65, 1940 rep. No. 63, 1947
S. 221TA	ad. No. 87, 1978 am. No. 108, 1981 rep. No. 73, 1989
S. 221T	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 143, 1965; No. 108, 1981; No. 123, 1984 rep. No. 170, 1995
Ss. 221V–221X	ad. No. 65, 1940 rep. No. 63, 1947

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221U	ad. No. 65, 1940 am. No. 3, 1944 rs. No. 63, 1947 am. No. 87, 1978 rep. No. 123, 1984 ad. No. 49, 1985 am. No. 48, 1986 rep. No. 216, 1991
S. 221Y	ad. No. 65, 1940 rs. No. 63, 1947 am. No. 108, 1981; No. 123, 1984 rep. No. 170, 1995
S. 221YAA	ad. No. 44, 1951 rep. No. 123, 1984
S. 221YAB	ad. No. 85, 1959 rep. No. 38, 1967
S. 221YBA	ad. No. 44, 1951 rep. No. 85, 1959
S. 221YCA	ad. No. 44, 1951 rep. No. 85, 1959
S. 221YDBA	ad. No. 87, 1978 am. No. 108, 1981 rep. No. 73, 1989
S. 221YHAA	ad. No. 103, 1983 am. No. 124, 1984 rep. No. 227, 1992
S. 221YHE	ad. No. 14, 1983 rep. No. 47, 1984
S. 221YHJ	ad. No. 14, 1983 am. Nos. 123 and 124, 1984; No. 154, 1986; Nos. 191 and 227, 1992; No. 32, 1993; No. 170, 1995 rep. No. 47, 1998
S. 221YHK	ad. No. 14, 1983 am. Nos. 123 and 124, 1984 rep. No. 227, 1992
S. 221YHLA	ad. No. 123, 1984 am. No. 47, 1998 rep. No. 11, 1999
S. 221YHLB	ad. No. 123, 1984 rep. No. 120, 1995
S. 221YHO	ad. No. 14, 1983 rep. No. 123, 1984
S. 221YHZF	ad. No. 154, 1986 rep. No. 11, 1999
S. 221YHZG	ad. No. 154, 1986 rep. No. 120, 1995
S. 221YHZLA	ad. No. 35, 1992 rep. No. 11, 1999
S. 221ZDA	ad. No. 123, 1984 rep. No. 11, 1999

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 221ZDB	ad. No. 123, 1984 rep. No. 120, 1995
S. 221ZQ	ad. No. 14, 1983 rep. No. 11, 1999
S. 221ZQA	ad. No. 123, 1984 rep. No. 11, 1999
S. 221ZQB	ad. No. 123, 1984 rep. No. 120, 1995
Ss. 221ZXH–221ZXJ	ad. No. 85, 1998 rep. No. 11, 1999
Div. 7 of Part VI (s. 221ZY)	ad. No. 2, 1989 rs. No. 138, 1992 rep. No. 11, 1999
S. 221ZY	ad. No. 2, 1989 rs. No. 138, 1992 am. No. 116, 1993; No. 138, 1994; No. 45, 1998 rep. No. 11, 1999
S. 222AJC	ad. No. 32, 1993 am. No. 138, 1994; No. 47, 1998 rep. No. 11, 1999
S. 223	am. No. 143, 1965; No. 108, 1981 rs. No. 123, 1984 am. No. 49, 1984; No. 20, 1990; No. 5, 1991 rep. No. 101, 1992
S. 223A	ad. No. 62, 1987 am. No. 95, 1988 rep. No. 30, 1995
Part VII (ss. 222–251)	rep. No. 123, 1984
Ss. 222–226	rep. No. 123, 1984
S. 226A	ad. No. 101, 1992 am. No. 11, 1999 rep. No. 91, 2000
Ss. 227, 228	rep. No. 123, 1984
S. 229	am. No. 108, 1981 rep. No. 123, 1984
S. 230	am. No. 143, 1965; No. 87, 1978; No. 108, 1981 rep. No. 123, 1984
Ss. 231, 232	am. No. 143, 1965; No. 108, 1981 rep. No. 123, 1984
S. 233	am. No. 44, 1951; No. 143, 1965; No. 216, 1973 (as am. by No. 20, 1974); No. 165, 1976; No. 108, 1981 rep. No. 123, 1984
S. 234	am. No. 44, 1951; No. 143, 1965; No. 216, 1973 (as am. by No. 20, 1974) rs. No. 165, 1976 rep. No. 123, 1984
S. 235	rs. No. 165, 1976 rep. No. 123, 1984

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 236	am. No. 44, 1951; No. 216, 1973 (as am. by No. 20, 1974) rep. No. 123, 1984
S. 237	am. No. 44, 1951; No. 216, 1973 (as am. by No. 20, 1974); No. 165, 1976 rep. No. 123, 1984
Ss. 238–246	rep. No. 123, 1984
S. 247	am. No. 34, 1963; No. 108, 1981 rep. No. 123, 1984
S. 248	am. No. 143, 1965; No. 108, 1981 rep. No. 123, 1984
Ss. 249, 250	rep. No. 123, 1984
S. 251	am. No. 87, 1978 rep. No. 123, 1984
S. 251H	ad. No. 10, 1943 rep. No. 216, 1973
Part VIIB	ad. No. 53, 1976
(ss. 251–251Z, 251ZA– 251ZH, 251J)	rep. No. 51, 1983
Ss. 251R–251X	ad. No. 53, 1976 rep. No. 51, 1983
S. 251Y	ad. No. 53, 1976 rep. No. 98, 1976
S. 251Z	ad. No. 53, 1976 rep. No. 98, 1976
Ss. 251ZA–251ZE	ad. No. 53, 1976 rep. No. 98, 1976
Ss. 251ZF, 251ZG	ad. No. 53, 1976 rep. No. 51, 1983
S. 251ZH	ad. No. 53, 1976 rs. No. 98, 1976 rep. No. 51, 1983
S. 251ZJ	ad. No. 53, 1976 rep. No. 51, 1983
S. 253	rep. No. 88, 1936
S. 256	am. No. 50, 1942; No. 4, 1968; No. 108, 1981 rep. No. 154, 1986
S. 261	am. No. 51, 1973; No. 108, 1981 rep. No. 76, 1996
S. 264B	ad. No. 174, 1997 rep. No. 91, 2000
S. 264C	ad. No. 174, 1997 rep. No. 91, 2000
S. 265B	ad. No. 37, 1945 rep. No. 87, 1978
S. 279C	ad. No. 105, 1989 rep. No. 61, 1990
Note to s. 299A	rep. No. 44, 1999

Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Notes 1, 2 to s. 299A	ad. No. 44, 1999 rep. No. 89, 2000
S. 307	ad. No. 105, 1989 rep. No. 46, 1998
Ss. 312–314	ad. No. 105, 1989 rep. No. 46, 1998
Ss. 415–417	ad. No. 5, 1991 am. No. 170, 1995 rep. No. 46, 1998
S. 420	ad. No. 5, 1991 rep. No. 48, 1991
S. 431B	ad. No. 190, 1992 rep. No. 138, 1994
Div. 8 of Part XI	ad. No. 190, 1992
(ss. 512, 513)	rep. No. 155, 1997
Ss. 512, 513	ad. No. 190, 1992 rep. No. 155, 1997
Heading to The Schedule	rep. No. 4, 1945
Heading to The First Schedule	ad. No. 4, 1945 rep. No. 51, 1973
Heading to The Second Schedule	rep. No. 51, 1973
The Third Schedule	ad. No. 11, 1947 rep. No. 81, 1953
Schedule 6	ad. No. 190, 1992 rep. No. 155, 1997

Note 2

Note 2

There is no express provision in the text of the ITAA 36 specifying that the internal table of contents do not form part of the Act. There have been no express amendments to these Tables. They have been updated for the convenience of readers only.

Note 3

Tax Laws Amendment (2007 Measures No. 5) Act 2007 (No. 164, 2007)
(as amended by the *Tax Laws Amendment (2008 Measures No. 4) Act 2008* (No. 97, 2008))

The amendments made by the *Tax Laws Amendment (2008 Measures No. 4) Act 2008* commenced on 3 October 2008 and have been incorporated into this Note.

The following amendments commence on 1 July 2010:

Schedule 10

26 Paragraph 26AG(1)(a)

Before “section”, insert “former”.

27 Paragraph 26AG(1)(c)

Omit “under section”.

28 Paragraph 26AG(12)(b)

Repeal the paragraph, substitute:

- (b) by reason of that disposal, an amount would, but for former subsection 124T(3), be included in the assessable income of the taxpayer of a year of income under former section 124P or would be applied, under former section 124N or 124S, in reducing the residual value, for the purposes of former Division 10B, of a unit of industrial property owned by the taxpayer; and

29 Subsection 26AG(12)

After “applied under”, insert “former”.

30 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)

Before “subsections 124R(2)”, insert “former”.

31 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

32 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)

Before “subsection 124R(3)”, insert “former”.

33 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

34 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)

Before “subsections 124R(2)”, insert “former”.

35 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

36 Subsection 82KH(1) (definition of *unit of industrial property*)

Before “Division”, insert “former”.

37 Paragraph 82KH(1AD)(a)

Before “section 124M”, insert “former”.

38 Subsection 82KH(1BA)

Before “Subdivision 375-G”, insert “former”.

39 Subsection 82KH(1S)

Before “section 124KA”, insert “former”.

Note 3

40 Paragraph 82KH(1T)(b)

Before “subsection 124K(2)”, insert “former”.

41 Divisions 10B and 10BA of Part III

Repeal the Divisions.

42 Subsection 170(10) (table item 23, column headed “Provision”)

Before “Division 10BA”, insert “Former”.

43 Subsection 170(10AA) (table item 185, column headed “Provision”)

Before “Subdivision 375-H”, insert “Former”.

44 Subsection 262A(4AA)

Omit “or 124AO or under section 124W”, substitute “, 124AO or 124W”.

45 Subsection 262A(4AC)

Omit “, former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) or subsection 124PA(1)”, substitute “or former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1), 124JD(1) or 124PA(1)”.

46 Paragraph 262A(4AC)(a)

Omit “, former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA or 124JD or section 124PA”, substitute “or former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA, 124JD or 124PA”.

47 Subparagraph 570(1)(a)(ii)

After “meaning of”, insert “former”.

48 Paragraph 57-25(4)(e) in Schedule 2D

Before “Division 10B”, insert “former”.

49 Paragraph 57-25(4)(f) in Schedule 2D

Before “Division 10BA”, insert “former”.

50 Subsection 57-85(3) in Schedule 2D (table item 5, column 3)

Before “**Division 10BA**”, insert “**Former**”.

51 Subsection 57-85(3) in Schedule 2D (table item 7, column 3)

Before “**Division 10B**”, insert “**Former**”.

52 Paragraph 57-100(b) in Schedule 2D

Before “subsection 124ZADA(1)”, insert “former”.

53 Subsection 57-110(2) in Schedule 2D (table item 5, column headed “Balancing adjustment provision”)

Omit “**Sections**”, substitute “**Former sections**”.

54 Subsection 57-110(2) in Schedule 2D (table item 5, column headed “Deduction rule to which the balancing adjustment provision relates”)

Before “**Division 10B**”, insert “**Former**”.

55 Paragraph 268-35(2)(d) in Schedule 2F (note)

Before “section 124ZAFA”, insert “former”.

56 Subsection 272-140(1) in Schedule 2F (note to the definition of *tax loss*)

Repeal the note.

As at 18 December 2008 the amendments are not incorporated in this compilation.

Note 4

Note 4

Tax Laws Amendment (Personal Income Tax Reduction) Act 2008
(No. 29, 2008)

The following amendments commence on 1 July 2009:

Schedule 1

11 Subsection 159N(1)

Omit "\$60,000", substitute "\$63,750".

12 Subsection 159N(2)

Omit "\$1,200", substitute "\$1,350".

The following amendments commence on 1 July 2010:

Schedule 1

21 Subsection 159N(1)

Omit "\$63,750", substitute "\$67,500".

22 Subsection 159N(2)

Omit "\$1,350", substitute "\$1,500".

As at 18 December 2008 the amendments are not incorporated in this compilation.

Table A

Application, saving or transitional provisions

Income Tax (Consequential Amendments) Act 1997 (No. 39, 1997)

Schedule 1

274 Application of amendments

The amendments made by this Schedule apply to assessments for the 1997-98 year of income and later years of income.

Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997
(No. 56, 1997)

Schedule 1

5 Application

The amendments made by this Schedule (other than item 2) apply to assessments in respect of income for the 1997-98 year of income and all later years of income.

Schedule 2

10 Application

- (1) The amendments of the *Income Tax Assessment Act 1936* apply to assessments in respect of income for the 1997-98 year of income and all later years of income.

Schedule 3

2 Application

The amendment made by this Schedule applies to assessments in respect of the 1996-97 year of income and for all later years of income.

Table A

Taxation Laws Amendment Act (No. 2) 1997 (No. 95, 1997)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

22 Application

- (1) The amendments made by items 1 to 8 and 21 apply in determining net capital gains and net capital losses for the 1996-97 year of income and all later years of income.
- (2) In determining a taxpayer's net capital gain for those years:
 - (a) the taxpayer's net capital loss for the 1995-96 year of income is to be worked out disregarding the amendments made by those items; and
 - (b) the taxpayer is taken (other than for the purposes of paragraph (a)) not to have incurred a net capital loss for any year of income before the 1995-96 year of income.
- (3) The amendments made by items 9 to 20 apply to transfers of net capital losses where the gain year is the 1996-97 year of income or a later year of income.

Schedule 2

19 Application

The amendments made by this Schedule apply to payments made after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

20 Transitional—regulations

The first regulations made after the commencement of this item for the purposes of section 221YL of the *Income Tax Assessment Act 1936* may be expressed:

- (a) to have been in effect at all relevant times before the date of notification of the regulations; or
- (b) to apply in relation to a period of any part of which occurred before the date of notification of the regulations; or

- (c) to take effect from:
- (i) a specified date; or
 - (ii) a specified time on a specified date;
- before the date of notification of the regulations.

Schedule 3**14 Application**

- (1) The amendment made by item 1 of this Schedule applies to assessments in respect of the year of income in which 1 July 1997 occurs and of all later years of income.
- (2) The amendment made by item 2 of this Schedule applies in relation to dividends paid or received by a prescribed dual resident on or after 1 July 1997.
- (3) The amendment made by item 3 of this Schedule applies in relation to the year of income for the loss company in which 1 July 1997 occurred and all later years of income.
- (4) The amendment made by item 4 of this Schedule applies in relation to the year of income for the income company in which 1 July 1997 occurred and all later years of income.
- (5) The amendments made by items 5 to 8 of this Schedule apply in relation to interest incurred or accrued on or after 1 July 1997.
- (6) The amendment made by item 9 of this Schedule applies in relation to the year of income for the loss company in which 1 July 1997 occurred and all later years of income.
- (7) The amendment made by item 10 of this Schedule applies in relation to the year of income for the gain company in which 1 July 1997 occurred and all later years of income.
- (8) The amendments made by items 11 to 13 of this Schedule apply in relation to asset transfers undertaken on or after 1 July 1997.

Schedule 4**3 Application**

The amendments made by this Schedule apply to assessments in respect of the year of income after the year in which 20 August 1996 occurs and of all later years of income.

Table A

4 Transitional

If a taxpayer elects that subsection 82AAC(2D) of the *Income Tax Assessment Act 1936* is to apply for the year of income in which 20 August 1996 occurs:

- (a) the total deductions allowed under subsection 82AAC(1) of that Act for contributions made by the taxpayer, or by the taxpayer and one or more of the associates of the taxpayer in respect of a particular employee, must not exceed the greater of:
 - (i) the amounts contributed at or before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and
 - (ii) the employee's deduction limit for that year of income; and
- (b) the total deductions allowed under subsection 82AAC(1) of that Act for contributions made by the taxpayer, or by the taxpayer and one or more of the associates of the taxpayer in respect of all the employees, must not exceed the elective deduction limit worked out under subsection 82AAC(2D) for that year of income.

Schedule 5

18 Application

The amendment made by this Part applies to interest paid on or after 1 January 1996.

21 Application

The amendments made by this Part, so far as they affect section 160ZZY of the *Income Tax Assessment Act 1936*, apply to foreign tax paid after the commencement of this Part.

Tax Law Improvement Act 1997 (No. 121, 1997)

4 Application of amendments

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

Schedule 2**31 Application of amendment of subsection 221A(1)
(definition of *salary or wages*)**

Section 4 of this Act does not apply to the amendment made by item 30.

**33 Saving of regulations made for purposes of subsection
221C(1AC) of the *Income Tax Assessment Act 1936***

The amendment of subsection 221C(1AC) of the *Income Tax Assessment Act 1936* does not affect the validity of regulations prescribing rates of deduction specifically for salary or wages that are amounts to which paragraph 26(eb) of that Act applies.

Schedule 3**47 Application of amendments of section 102M**

The amendments made by items 45 and 46 apply for the purpose of determining whether a trust is a public trading trust or a public unit trust in relation to the 1997-98 income year or a later income year.

52 Application of amendment of paragraph 128B(3)(a)

The amendment made by item 51 applies to income derived on or after 1 July 1997.

**56 Application of amendment of subsection 159ZR(1)
(paragraph (e) of the definition of *eligible income*)**

The amendment made by item 55 applies for the purpose of determining whether a lump sum payment is eligible income in the 1997-98 income year or a later income year.

**59 Application of amendment of subsection 221A(1)
(definition of *salary or wages*)**

Section 4 of this Act does not apply to the amendment made by item 58.

Schedule 4**78 Application of amendment of subsection 51AG(1)**

Section 4 of this Act does not apply to the amendment made by item 77.

Table A

Taxation Laws Amendment Act (No. 1) 1997 (No. 122, 1997)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

16 Application

- (1) The amendments made by this Part, other than items 14 and 15, apply to amounts received on or after 1 July 1996.
- (2) The amendments made by items 14 and 15 apply to payments made after the 28th day after the day on which this Part commences.

21 Application

Item 20 applies in respect of statutory accounting periods of a controlled foreign company that began or begin on or after 1 July 1990.

Schedule 3

22 Application

- (1) Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* applies in the same way to the amendments made by items 1, 7, 8, 9, 11, 12, 13, 14, 16, 17 and 19 of this Schedule as it applied to the amendments made by Schedule 2 to that Act.
- (2) The amendments made by items 2 and 15 apply to shares acquired on or after the day that this Act receives the Royal Assent.
- (3) The amendments made by items 3, 4 and 5 apply in relation to shares acquired on or after 20 September 1985.
- (4) The amendments made by items 6, 10 and 18 apply to shares or rights acquired on or after 1 July 1996.
- (5) The amendments made by items 20 and 21 apply in relation to options exercised on or after 20 September 1985.

23 Transitional—market value of shares and rights

For the purposes of Division 13A of Part III of the *Income Tax Assessment Act 1936*, the market value of a share or right on a particular day on or after 28 March 1995 and before 12 December 1996 where the share or right is quoted on a share market of an approved stock exchange on that day may be determined under whichever of the following is chosen by the relevant taxpayer:

- (a) section 139FA of the *Income Tax Assessment Act 1936* as amended by this Schedule;
- (b) section 139FA of the *Income Tax Assessment Act 1936* before being amended by this Schedule.

Schedule 5**5 Application**

The Division inserted in the *Income Tax Assessment Act 1936* by item 1 applies to disposals of assets on or after 1 July 1997.

Schedule 8**6 Application**

The amendments made by this Part apply where the taxpayer acquired a threshold interest in an SME on or after 1 July 1996.

Franchise Fees Windfall Tax (Consequential Amendments) Act 1997
(No. 134, 1997)

4 Application of amendments

- (1) The amendments of the *Income Tax Assessment Act 1936* apply to the 1996-97 year of income.
 - (2) The amendments of the *Income Tax Assessment Act 1997* apply to the 1997-98 year of income and to all later years of income.
-

Table A

Taxation Laws Amendment Act (No. 3) 1997 (No. 147, 1997)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

45 Application

The amendments made by this Schedule apply to disposals of assets on or after 1 July 1997.

Schedule 3

5 Application

The amendments made by this Schedule apply in relation to the 1996-97 year of income and to all later years of income.

Schedule 4

3 Application

The amendments made by Part 1 apply if the transition time is after 2 July 1995.

Schedule 5

34 Application

- (1) The amendments made by Divisions 1 and 2 of Part 1 apply to disposals of dwellings after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.
- (2) The amendments made by Division 3 of Part 1 apply to assets that pass to the legal personal representative of a deceased person, to a beneficiary in the estate of a deceased person or to a trustee of the estate of a deceased person, after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.
- (3) The amendments made by Division 4 of Part 1 apply to a dwelling owned by a taxpayer if:

Table A

- (a) for the first time since the taxpayer acquired the dwelling, it is used for the purpose of gaining or producing assessable income; and
- (b) that time is after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

Schedule 6

9 Application

The amendments made by this Part apply in respect of years of income in which proceeds are derived as a result of firearms surrender arrangements.

Note: *Firearms surrender arrangements* has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

Schedule 8

3 Application

The amendments made by this Schedule apply in relation to units of property first used on or after 1 July 1996 for the purposes of producing assessable income of the lessor of the property.

Schedule 10

6 Application

- (1) The amendments made by items 1, 2, 4 and 5 of this Schedule apply to contributions made on or after 1 July 1997.
- (2) The amendment made by item 3 of this Schedule applies to provisional tax (including instalments) payable in respect of income of the 1997-98 year of income and all later years of income.

Schedule 11

12 Application

The amendments made by items 1 to 11 are taken to have come into effect at 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996.

Table A

Schedule 13

2 Application

The amendments made by this Schedule apply if the cancellation of the transferee's total shares took place after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

Schedule 14

17 Application

- (1) The amendments made by this Part apply to the 1996-97 year of income.
- (2) However, the amendments made by items 5 to 15 have effect only in respect of acts, omissions or events happening after 26 March 1997.

41 Application

- (1) Subject to this item, the amendments made by the items in this Part apply to the 1996-97 year of income and to any later years of income to which the provisions respectively amended by those items apply.
- (2) The amendments made by items 18 to 24 apply to the 1996-97 year of income and to any later years of income to which the provisions respectively amended by those items apply, but have effect only in respect of acts, omissions or events happening after 26 March 1997.
- (3) The references in subsection 160ZNS(3) of the *Income Tax Assessment Act 1936* to a company starting to carry on a business or entering into a transaction are references to the company starting to carry on a business or entering into a transaction after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.
- (4) The reference in subsection 160ZNS(4) of the *Income Tax Assessment Act 1936* to a company incurring expenditure is a reference to the company incurring expenditure after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.
- (5) The amendment made by item 35 does not permit the Commissioner to amend an assessment made before 26 March 1997 unless the Commissioner could have made the amendment on that date.

Schedule 17**3 Application**

- (1) Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* applies in the same way to the amendment made by item 1 of this Schedule as it applied to the amendments made by Schedule 2 to that Act.
- (2) The amendment made by item 2 of this Schedule applies to shares or rights acquired on or after 1 July 1996.

Taxation Laws Amendment (Foreign Income Measures) Act 1997
(No. 155, 1997)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**120 Application of amendments—section 23AH of the *Income Tax Assessment Act 1936***

- (1) The amendment of subsection 23AH(1) of the *Income Tax Assessment Act 1936* made by this Schedule applies to foreign income derived on or after 1 July 1997.
- (2) The amendments of subsections 23AH(6) and (7) of the *Income Tax Assessment Act 1936* made by this Schedule apply to disposals of assets on or after 1 July 1997.
- (3) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to subsections 23AH(1) and (5) of that Act, apply to foreign income derived on or after 1 July 1997.
- (4) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to subsections 23AH(6) and (7) of that Act, apply to disposals of assets on or after 1 July 1997.

Table A

121 Application of amendments—section 23AJ of the *Income Tax Assessment Act 1936*

The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to section 23AJ of that Act, apply to dividends paid on or after 1 July 1997.

122 Application of amendments—sections 47A and 108 of the *Income Tax Assessment Act 1936*

The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to sections 47A and 108 of that Act, apply to a distribution time that occurs on or after 1 July 1997.

123 Application of amendments—Division 6AAA of Part III of the *Income Tax Assessment Act 1936*

- (1) The amendments of Subdivision B of Division 6AAA of Part III of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a distributed amount of a trust estate's non-resident year of income beginning on or after 1 July 1997.
 - (2) The amendments of Subdivision A of Division 6AAA of Part III and Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to Subdivision B of Division 6AAA of Part III of that Act, apply in relation to a distributed amount of a trust estate's non-resident year of income beginning on or after 1 July 1997.
 - (3) The amendments of Subdivision D of Division 6AAA of Part III of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to the calculation of the attributable income of a non-resident trust estate of a year of income beginning on or after 1 July 1997.
 - (4) The amendments of Subdivision A of Division 6AAA of Part III and Division 1 of Part X of the *Income Tax Assessment Act 1936*, in so far as they are relevant to Subdivision D of Division 6AAA of Part III of that Act, apply in relation to the calculation of the attributable income of a non-resident trust estate of a year of income beginning on or after 1 July 1997.
 - (5) For the purposes of this item, in determining the beginning of a year of income of a trust estate, subsection 6(2) of the *Income Tax Assessment Act 1936* is to be disregarded.
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124 Application of amendments—Division 18 of Part III of the *Income Tax Assessment Act 1936*

- (1) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to sections 160AFC and 160AFCC of that Act, apply in relation to dividends paid on or after 1 July 1997.
- (2) The amendment of section 160AFCA of the *Income Tax Assessment Act 1936* made by this Schedule applies in relation to statutory accounting periods beginning on or after 1 July 1997.

125 Application of amendments—Part IIIA of the *Income Tax Assessment Act 1936*

- (1) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to subsections 160M(12A), (12AA) and (12AB) of that Act, apply in relation to a residence-change time that occurs on or after 1 July 1997.
- (2) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to section 160ZFB of that Act, apply in relation to a residence-change time that occurs on or after 1 July 1997.

126 Application of amendments—Part X of the *Income Tax Assessment Act 1936*

- (1) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to the calculation of the attributable income of a CFC, apply in relation to the calculation of attributable income for eligible periods beginning on or after 1 July 1997.
- (2) The amendments of section 377 of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to an accounting period that began on or after 1 July 1997.
- (3) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to sections 377 and 378 of that Act, apply in relation to an accounting period that began on or after 1 July 1997.

Table A

- (4) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Part, in so far as they are relevant to section 380 of that Act, apply to dividends paid on or after 1 July 1997.
- (5) The amendments of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to determining whether a company passes the active income test in relation to a statutory accounting period, apply in relation to statutory accounting periods beginning on or after 1 July 1997.
- (6) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to subsection 456(2) of that Act, apply in relation to a change of residence that occurs on or after 1 July 1997.
- (7) The amendments of section 456A of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a statutory accounting period beginning on or after 1 July 1997.
- (8) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to section 456A of that Act, apply in relation to a statutory accounting period beginning on or after 1 July 1997.
- (9) The amendment of section 457 of the *Income Tax Assessment Act 1936* made by this Schedule applies in relation to a residence-change time that occurs on or after 1 July 1997.
- (10) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to section 457 of that Act, apply in relation to a residence-change time that occurs on or after 1 July 1997.
- (11) The amendments of Division 1 of Part X of the *Income Tax Assessment Act 1936* made by this Schedule, in so far as they are relevant to sections 458 and 459 of that Act, apply in relation to dividends paid on or after 1 July 1997.

127 Transitional—when regulations may take effect

- (1) If the first regulations made for the purposes of a provision of the *Income Tax Assessment Act 1936* inserted by this Schedule are made before the commencement of the *Legislative Instruments Act 1997*, those regulations may be expressed:

Table A

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- (a) to have been in effect at all relevant times before the date of notification of the regulations; or
 - (b) to apply in relation to a period any part of which occurred before the date of notification of the regulations; or
 - (c) to take effect from:
 - (i) a specified date; or
 - (ii) a specified time on a specified date; before the date of notification of the regulations.
- (2) Subitem (1) has effect despite anything in the *Acts Interpretation Act 1901*.
 - (3) If the first regulations made for the purposes of a provision of the *Income Tax Assessment Act 1936* inserted by this Schedule are made after the commencement of the *Legislative Instruments Act 1997*, those regulations may be expressed:
 - (a) to have been in effect at all relevant times before the day on which the regulations were entered in the Federal Register of Legislative Instruments; or
 - (b) to apply in relation to a period any part of which occurred before the day on which the regulations were entered in the Federal Register of Legislative Instruments; or
 - (c) to take effect from:
 - (i) a specified date; or
 - (ii) a specified time on a specified date; before the day on which the regulations were entered in the Federal Register of Legislative Instruments.
 - (4) Subitem (3) has effect despite anything in the *Legislative Instruments Act 1997*.

128 Transitional—Vietnam and the Czech Republic

- (1) For the purposes of this item, the *transitional period* is the period:
 - (a) beginning on 24 December 1996; and
 - (b) ending at the end of 30 June 1997.
 - (2) For the purposes of sections 47A, 458 and 459 of the *Income Tax Assessment Act 1936*, Vietnam and the Czech Republic are taken to have been listed countries throughout the transitional period.
-

Table A

- (3) For the purposes of sections 23AH, 23AJ and 380 of the *Income Tax Assessment Act 1936*, the Czech Republic is taken to have been a listed country throughout the transitional period.
- (4) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this item.

129 Transitional—countries that emerged on the dissolution of Czechoslovakia, the USSR or Yugoslavia

- (1) For the purposes of this item, each of the following is a *designated country*:
 - (a) Armenia;
 - (b) Azerbaijan;
 - (c) Belarus;
 - (d) Bosnia and Herzegovina;
 - (e) Croatia;
 - (f) Czech Republic;
 - (g) Estonia;
 - (h) Federal Republic of Yugoslavia;
 - (i) Former Yugoslav Republic of Macedonia;
 - (j) Georgia;
 - (k) Kazakstan;
 - (l) Kyrgyzstan;
 - (m) Latvia;
 - (n) Lithuania;
 - (o) Moldova;
 - (p) Russian Federation;
 - (q) Slovak Republic;
 - (r) Slovenia;
 - (s) Tajikistan;
 - (t) Turkmenistan;
 - (u) Ukraine;
 - (v) Uzbekistan.
- (2) An entity may, by writing, elect that this item applies to the entity.

Table A

- (3) If:
- (a) an election is made by a company under subitem (2); and
 - (b) at the time when the election is made, the company is related to one or more other companies that are Part X Australian residents;
- the election has no effect unless that other company, or each of those other companies, as the case requires, also make or makes an election under subitem (2).
- (4) If an election is made by an entity under subitem (2), the amount included in the entity's assessable income under section 456 of the *Income Tax Assessment Act 1936* in relation to a particular CFC is to be determined as if each designated country were a listed country throughout each statutory accounting period of the CFC that began before 24 December 1996.
- (5) If an election is made by an entity under subitem (2), then, for the purposes of the application of the *Income Tax Assessment Act 1936* to a company that, apart from this subitem, is a resident of a designated country (other than the Czech Republic) during the whole or a part of the interim period, the exempting profits, in relation to the entity, of the company during the interim period are to be determined as if the company were a resident of an unlisted country throughout the interim period. For this purpose, the *interim period* is the period:
- (a) beginning on 24 December 1996; and
 - (b) ending at the end of the accounting period of the company in which 24 December 1996 occurs.
- (6) If an election is made by an entity under subitem (2), the assessable income of the entity is to be determined as if each designated country were a listed country for the purposes of sections 23AH, 23AJ, 47A, 380, 457, 458 and 459 of the *Income Tax Assessment Act 1936* at all times before 24 December 1996.
- (7) If an election is made by an entity under subitem (2), the amount included in the entity's assessable income under section 102AAZD of the *Income Tax Assessment Act 1936* in relation to a particular trust estate is to be determined as if each designated country were a listed country throughout each year of income of the trust estate that began before 24 December 1996.
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Table A

- (8) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this item.
- (9) For the purposes of this item, the question whether companies are related to each other is to be determined in accordance with section 160G of the *Income Tax Assessment Act 1936*.
- (10) An election under subitem (2) is irrevocable.
- (11) An expression used in this item and in Part X of the *Income Tax Assessment Act 1936* has the same meaning in this item as it has in that Part.

Schedule 2

5 Application

The amendments made by this Schedule apply in relation to notional accounting periods beginning on or after 1 January 1997.

Taxation Laws Amendment Act (No.1) 1998 (No. 16, 1998)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

26 Application of amendments

The amendments made by this Part apply to disposals of assets on or after 1 July 1997.

58 Application of amendments

- (1) The amendments made by items 32, 35 and 44 to 51 and 53 to 55 apply to disposals of assets after 23 October 1997.
- (2) The amendment made by item 40 applies in respect of roll-over assets acquired after 23 October 1997.
- (3) The amendments made by items 31, 33, 34, 36 to 39, 41 to 43, 52, 56 and 57 apply to disposals of assets on or after 1 July 1997.

Schedule 6**17 Application**

The amendments made by this Schedule (except items 2, 3 and 4) apply to assessments for the 1997-98 year of income and later years of income.

Schedule 10**57 Application**

- (1) The amendments made by items 52 to 56 (inclusive) apply to a transition year that is the 1997-98 income year, or a later income year, of the transition taxpayer.
- (2) The other amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998
(No. 17, 1998)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**13 Definitions**

In this Division:

current year loss provisions means sections 266-30, 266-80, 266-115, 266-155 and 267-60 of the trust loss etc. Schedule.

debt deduction provisions means sections 266-35, 266-85, 266-120, 266-160, 267-25 and 267-65 of the trust loss etc. Schedule.

earlier year loss provisions means sections 266-25, 266-75, 266-110, 266-150 and 267-20 of the trust loss etc. Schedule.

Table A

foreign deduction scheme provision means subsection 160AFD(6B) of the *Income Tax Assessment Act 1936* as amended by this Schedule.

foreign loss provision means subsection 160AFD(6A) of the *Income Tax Assessment Act 1936* as amended by this Schedule.

loss provisions means the earlier year loss provisions and the current year loss provisions.

trust loss etc. Schedule means Schedule 2F to the *Income Tax Assessment Act 1936* as amended by this Schedule.

1995 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995.

1996 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

1997 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

14 Application of loss provisions from 1994-95 year of income

- (1) Subject to this item, the loss provisions, together with any other provisions of the trust loss etc. Schedule in so far as they relate to the loss provisions, apply where the income year mentioned in the loss provisions is the 1994-95 year of income or any later year of income.

Modified application of earlier year loss provisions: test period

- (2) If the test period mentioned in any of the earlier year loss provisions would begin before 1995 Budget time, it is taken instead to begin at 1995 Budget time.

Modified application of earlier year loss provisions: non-fixed trust distribution

- (3) For the purposes of section 267-20:
- (a) if the income year mentioned in that section is the 1994-95 year of income—the condition in subsection 267-30(2) is to be disregarded; and

Table A

- (b) if the income year mentioned in that section is the 1995-96 year of income—the condition in subsection 267-30(2) applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 28 September 1995.

Modified application of earlier year loss provisions: non-fixed trust distribution

- (4) For the purposes of section 267-20, if:
- (a) the whole or part of a test year distribution of income or capital of a trust that took place before 1995 Budget time is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and
 - (b) apart from this subitem, the trust would not meet the condition; and
 - (c) before the end of:
 - (i) if subitem (5) applies—the income year; or
 - (ii) in any other case—2 months after the end of the income year;
 mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before or after 1995 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made directly or indirectly to an individual, for his or her own benefit; and
 - (d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before or after 1995 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);
- the trust meets the condition.

Table A

Modified application of earlier year loss provisions: non-fixed trust distribution

- (5) For the purposes of section 267-20, if:
- (a) the income year mentioned in that section is the 1995-96 year of income; or
 - (b) the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997;

the following modifications of other provisions apply:

- (c) section 267-30 has effect as if “or within 2 months after its end” were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and
- (d) sections 269-60 and 269-75 have effect as if “2 months after the end of” were omitted (wherever occurring); and
- (e) section 269-65 has effect as if “until 2 months after” were omitted from paragraph (1)(a) of that section.

Case where current year loss provisions do not apply

- (6) If:
- (a) the income year mentioned in the current year loss provisions is the 1994-95 year of income; and
 - (b) the income year ends before 1995 Budget time:

the current year loss provisions do not apply to the income year.

Modified application of current year loss provisions

- (7) If the current year loss provisions apply where the income year mentioned in those provisions is the 1994-95 year of income, they apply as if:
- (a) no abnormal trading in a trust’s units had occurred, in the 1994-95 year of income, before 1995 Budget time; and
 - (b) fixed entitlements of individuals directly or indirectly to receive income or capital of the trust that existed immediately before the 1995 Budget time had existed at all times, in the 1994-95 year of income, before 1995 Budget time; and
 - (c) control of the trust that existed at 1995 Budget time had existed at all times, in the 1994-95 year of income, before 1995 Budget time; and

- (d) at all times in the 1994-95 year of income, before 1995 Budget time, the trust were the same kind of trust as it was at 1995 Budget time.

15 Application of debt deduction provisions from 1996-97 year of income

- (1) Subject to this item, the debt deduction provisions, together with any other provisions of the trust loss etc. Schedule in so far as they relate to the debt deduction provisions, apply where the income year mentioned in the debt deduction provisions is the 1996-97 year of income or any later year of income.

Modified application: test period

- (2) If the test period mentioned in any of the debt deduction provisions would begin before 1996 Budget time, it is taken instead to begin at 1996 Budget time.

Modified application: non-fixed trust distribution

- (3) For the purposes of section 267-25, if the income year mentioned in that section is the 1996-97 year of income, the condition in subsection 267-30(2) applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 1996 Budget time.

Modified application: non-fixed trust distribution

- (4) For the purpose of section 267-25, if:
- (a) the whole or part of a test year distribution of income or capital of a trust that took place before 1996 Budget time is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and
 - (b) apart from this subitem, the trust would not meet the condition; and
 - (c) before the end of:
 - (i) if subitem (5) applies—the income year; or
 - (ii) in any other case—2 months after the end of the income year;

Table A

mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before or after 1996 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made, directly or indirectly to an individual, for his or her own benefit; and

- (d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before or after 1996 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);

the trust meets the condition.

Modified application: non-fixed trust distribution

- (5) For the purposes of section 267-25, if the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997, the following modifications of other provisions apply:
- (a) section 267-30 has effect as if “or within 2 months after its end” were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and
 - (b) sections 269-60 and 269-75 have effect as if “2 months after the end of” were omitted (wherever occurring); and
 - (c) section 269-65 has effect as if “until 2 months after” were omitted from paragraph (1)(a) of that section.

16 Application of scheme provisions from 1994-95 year of income

Division 270 of the trust loss etc. Schedule applies where the income year mentioned in that Division is the 1994-95 year of income or any later year of income, but only if:

- (a) the assessable income mentioned in subparagraph 270-10(1)(b)(i) was derived after 1995 Budget time; and
- (b) the benefit mentioned in subparagraph 270-10(1)(b)(ii) was provided after 1995 Budget time.

17 Application of expanded definition of *distribution*

Section 272-60 of the trust loss etc. Schedule applies to things done after 1 October 1997.

18 Application of new section 63G

The amendment made by item 2 applies to assessments for the 1996-97 year of income and all later years of income.

19 Application of foreign loss provision from 1996-97 year of income

- (1) Subject to this item, the foreign loss provision applies where the particular year of income mentioned in that provision is the 1996-97 year of income or any later year of income.

Modified application: test period

- (2) If, for the purposes of the foreign loss provision, the test period mentioned in any of the earlier year loss provisions would begin on or before 1 October 1997, it is taken for that purpose to begin on 2 October 1997

Modified application: non-fixed trust distribution

- (3) If, for the purposes of the foreign loss provision, the income year mentioned in subsection 267-30(2) is the 1996-97 year of income, the condition in that subsection applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 1 October 1997.

Modified application: non-fixed trust distribution

- (4) If, for the purposes of the foreign loss provision:
- (a) the whole or part of a test year distribution of income or capital of a trust that took place on or before 1 October 1997 is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and
 - (b) apart from this subitem, the trust would not meet the condition; and
 - (c) before the end of:
 - (i) if subitem (5) applies—the income year; or

Table A

(ii) in any other case—2 months after the end of the income year;

mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before, on or after 1 October 1997), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made directly or indirectly to an individual, for his or her own benefit; and

(d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before, on or after 1 October 1997), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);

the trust meets the condition.

Modified application: non-fixed trust distribution

(5) For the purposes of the foreign loss provision, if the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997, the following modifications of other provisions apply:

(c) section 267-30 has effect as if “or within 2 months after its end” were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and

(d) sections 269-60 and 269-75 have effect as if “2 months after the end of” were omitted (wherever occurring); and

(e) section 269-65 has effect as if “until 2 months after” were omitted from paragraph (1)(a) of that section.

20 Application of foreign deduction scheme provision from 1996-97 year of income

The foreign deduction scheme provision applies where the particular year of income mentioned in that provision is the 1996-97 year of income or any later year of income, but only if:

(a) the assessable income mentioned in subparagraph 270-10(1)(b)(i) was derived after 1 October 1997; and

- (b) the benefit mentioned in subparagraph 270-10(1)(b)(ii) was provided after 1 October 1997.

21 Application of amendments of subsections 170(10) and 170(13)

The amendments made by items 10 and 11 apply to assessments made either before or after the commencement of those items.

22 Transitional—family trust elections

- (1) Subject to this item and item 22A, a family trust election that is proposed to be made cannot specify a year of income under subsection 272-80(1) of the trust loss etc. Schedule that is before the 1997-98 year of income.
- (2) If:
- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1998-99 year of income; and
 - (b) assuming that the family trust election could instead specify the 1996-97 year of income or the 1997-98 year of income (the *qualifying year of income*):
 - (i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or
 - (ii) a company that would otherwise be prevented by subsection 160ZC(5) of the *Income Tax Assessment Act 1936* from applying a net capital loss in the qualifying year of income would not be so prevented; or
 - (iii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or
 - (iv) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or
 - (v) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of

Table A

income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or

- (vi) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
 - (i) if the qualifying year of income is the 1996-97 year of income—at all times from the beginning of that year of income until the end of the 1997-98 year of income; or
 - (ii) if the qualifying year of income is the 1997-98 year of income—at the end of the 1997-98 year of income; and
- (d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:
 - (i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(2A) If:

- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1998-99 year of income; and
- (b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income (the *qualifying year of income*); and
- (c) the trust passes the family control test at the end of the 1997-98 year of income; and

Table A

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- (d) the *Taxation Laws Amendment Act (No. 2) 1999* and the *Taxation Laws Amendment Act (No. 2) 2000* receive the Royal Assent:
- (i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;
- the election can instead specify the qualifying year of income.
- (3) A family trust election specifying the qualifying year of income in accordance with subitem (2) or (2A) must:
- (a) be in writing in a form and manner approved by the Commissioner; and
 - (b) be made:
 - (i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.
- (4) If a family trust election is made in accordance with subitem (3) specifying the qualifying year of income:
- (a) if the trustee is required to furnish a return for the 1998-99 year of income—such information about the election as is required by the return must be included in the return; and
 - (b) if the trustee is not required to furnish a return for that year of income—the trustee must, before the end of 2 months after the end of the 1998-99 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.
- (5) If:
- (a) a family trust election does specify the qualifying year of income in accordance with this item; and
 - (b) the trust concerned is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect
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Table A

of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in:

- (i) if the qualifying year is the 1996-97 year of income—that year of income, the 1997-98 year of income or both (the *excluded period*); or
- (ii) if the qualifying year mentioned in that subitem is the 1997-98 year of income—that year of income (also the *excluded period*);

no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place in the excluded period.

- (6) If the revocation of a family trust election is proposed to specify a time under subsection 272-80(8) that is before the beginning of the 1998-99 year of income, then:
 - (a) subsection 272-80(7) of the trust loss etc. Schedule does not apply to the revocation; and
 - (b) if the trustee is required to furnish a return for the 1998-99 year of income—the revocation must be made in the trust’s return of income for that year of income; and
 - (c) if the trustee is not required to furnish a return for that year of income—the revocation must:
 - (i) be in writing in a form approved by the Commissioner; and
 - (ii) be given to the Commissioner by the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

22A Transitional—family trust elections

- (1) If:
 - (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1999-2000 year of income; and
 - (b) assuming that a family trust election could specify the 1996-97 year of income, the 1997-98 year of income or the 1998-1999 year of income (the *qualifying year of income*):
 - (i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* or by Subdivision 165-C or 175-C of the *Income*

Table A

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- Tax Assessment Act 1997*, from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or
- (ii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or
 - (iii) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or
 - (iv) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or
 - (v) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; or
 - (vi) a company that would otherwise be prevented by Subdivision 165-CA or 175-CA of the *Income Tax Assessment Act 1997* from applying in the qualifying year a net capital loss from an earlier year of income would not be so prevented; or
 - (vii) a company that would otherwise be required to calculate its net capital gain and net capital loss for the qualifying year under Subdivision 165-CB or 175-CB of the *Income Tax Assessment Act 1997* would not be so required; and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
- (i) if the qualifying year of income is the 1996-97 year of income or the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or
 - (ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and
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Table A

(d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:

- (i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or
- (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(2) If:

- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1999-2000 year of income; and
- (b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income or the 1998-99 year of income (the *qualifying year of income*); and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
 - (i) if the qualifying year of income is the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or
 - (ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and
- (d) either the *Taxation Laws Amendment Act (No. 2) 1999* or the *Taxation Laws Amendment Act (No. 2) 2000*, or both, receive the Royal Assent:
 - (i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

Table A

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- (3) The election must:
- (a) be in a form and manner approved by the Commissioner; and
 - (b) be made:
 - (i) if the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1999-2000 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.
- (4) If a family trust election is made in accordance with subitem (3) specifying the qualifying year:
- (a) if the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and
 - (b) if the trustee is not required to furnish a return for that year of income—the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.
- (5) If:
- (a) a family trust election does specify the qualifying year of income in accordance with this item; and
 - (b) the trust is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in the qualifying year or any later year of income that occurs before the 1999-2000 year of income;
- no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place during the qualifying year or the later year of income.

23 Transitional—interposed entity elections

- (1) Subject to this item and item 23A, an interposed entity election cannot specify a year of income under subsection 272-85(1) of the trust loss etc. Schedule that is before the 1997-98 year of income.
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Table A

- (2) If:
- (a) a trustee makes a family trust election under subitem 22(3) (as inserted by the *Taxation Laws Amendment Act (No. 2) 2000*); and
 - (b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1998-99 year of income; and
 - (c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
 - (i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income—at all times from a day in that year of income until the end of the 1997-98 year of income; or
 - (ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1997-98 year of income—at the end of the 1997-98 year of income;
- the interposed entity election can instead specify:
- (d) if subparagraph (c)(i) of this subitem applies—the day mentioned in that subparagraph or a later day in the qualifying year of income; or
 - (e) if subparagraph (c)(ii) applies—a day in the qualifying year of income;
- provided the day specified is not before the day on which the family trust election came into force.
- (3) The election must:
- (a) be in writing in a form and manner approved by the Commissioner; and
 - (b) be made:
 - (i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or
 - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.
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Table A

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- (4) If an interposed entity election is made in accordance with subitem (3) specifying a day in the qualifying year of income:
- (a) if the company, the partners or the trustee is required to furnish a return for the 1998-99 year of income—such information about the election as is required by the return must be included in the return; and
 - (b) if the company, the partners or the trustee is not required to furnish a return for that year of income—the company, the partners or the trustee must, before the end of 2 months after the end of the 1998-99 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

23A Transitional—interposed entity elections

- (1) If:
- (a) a trustee makes a family trust election under subitem 22A(3); and
 - (b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1999-2000 year of income; and
 - (c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
 - (i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income or the 1997-98 year of income—at all times from a day in that year of income until the end of the 1998-99 year of income; or
 - (ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1998-99 year of income—at the end of the 1998-99 year of income;
- the interposed entity election can instead specify:
- (d) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1996-1997 year of income—the day mentioned in that subparagraph, a later day in the 1996-97 year of income or a day in the 1997-1998 year of income; or
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Table A

- (e) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1997-1998 year of income—the day mentioned in that subparagraph or a later day in the 1997-98 year of income; or
- (f) if subparagraph (c)(ii) applies—a day in the 1998-99 year of income;

provided the day specified is not before the day on which the family trust election came into force.

- (2) The election must:
 - (a) be in a form and manner approved by the Commissioner; and
 - (b) be made:
 - (i) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the company, partners or trustee furnishes the return; or
 - (ii) if not—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.
- (3) If an interposed entity election is made in accordance with subitem (2) specifying the qualifying year:
 - (a) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and
 - (b) if the company, partners or the trustee is not required to furnish a return for that year of income—the company, the partners or the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

24 Transitional—jointly held trusts

- (1) This item applies if, apart from the item, the condition in section 266-40 of the trust loss etc. Schedule would not be met by a trust.
- (2) If:
 - (a) the test period mentioned in section 266-40 is:

Table A

- (i) if that section is being applied for the purposes of section 266-25—the test period resulting from the application of subitem 14(2) or the test period starting at the beginning of the 1995-96 or 1996-97 year of income; or
 - (ii) if that section is being applied for the purposes of section 266-30—the test period starting at the beginning of the 1994-95, 1995-96 or 1996-97 year of income; or
 - (iii) if that section is being applied for the purposes of section 266-35—the test period resulting from the application of subitem 15(2); and
- (b) either:
- (i) 2 individuals each had, directly or indirectly, and for their own benefit, a 50% share of the income and a 50% share of the capital of the trust; or
 - (ii) an individual had, directly or indirectly, and for his or her own benefit, a 50% share of the income and a 50% share of the capital of the trust and a non-fixed trust (other than a family trust) also had, directly or indirectly, a 50% share of the income and a 50% share of the capital of the trust;
at the start of the following period (the *qualifying period*):
 - (iii) if section 266-40 is being applied for the purposes of section 266-30 and the test period mentioned in section 266-40 started at the beginning of the 1994-95 year of income—the part of the test period that begins at 1995 Budget time and ends at the end of the test period; or
 - (iv) in any other case—the test period; and
- (c) at all later times during the qualifying period, the same individual (being one of the 2 individuals mentioned in subparagraph (b)(i) or the individual mentioned in subparagraph (b)(ii)) had, directly or indirectly, and for the individual's own benefit, fixed entitlements to at least a 50% share of the income and a 50% share of the capital of the trust;

the condition in section 266-40 is met.

- (3) If:
- (a) the test period mentioned in section 266-40 began after 1996 Budget time; and

Table A

- (b) at all times during the period from immediately before 1996 Budget time until the start of the test period:
 - (i) 2 individuals each had, directly or indirectly, and for their own benefit, a 50% share of the income and a 50% share of the capital of the trust; or
 - (ii) an individual had, directly or indirectly, and for his or her own benefit, a 50% share of the income and a 50% share of the capital of the trust and a non-fixed trust (other than a family trust) also had, directly or indirectly, a 50% share of the income and a 50% share of the capital of the trust; and
- (c) at all times during the test period, the same individual (being one of the 2 individuals mentioned in subparagraph (b)(i) or the individual mentioned in subparagraph (b)(ii)) had, directly or indirectly, and for the individual's own benefit, fixed entitlements to at least a 50% share of the income and a 50% share of the capital of the trust;

the condition in section 266-40 is met.

25 Transitional—schemes to take advantage of deductions

- (1) This item modifies the effect of Division 270 of the trust loss etc. Schedule where the trust mentioned in paragraph 270-10(1)(a) of that Schedule is a family trust.
- (2) If:
 - (a) a person was at any time before 1995 Budget time an outsider to a family trust; and
 - (b) the person ceased to be an outsider to the trust at 1995 Budget time because the person has made an interposed entity election;

the person is taken for the purposes of Division 270 not to have been an outsider to the trust at any time before 1995 Budget time.

26 Transitional—definition of *family*

The trust loss etc. Schedule and subitems 14(4), 15(4) and 19(4) have effect in relation to things done before 1997 Budget time as if the definition of *family* in section 272-95 of that Schedule were replaced by the following definition:

The *family* of an individual (the test individual) consists of all of the following (if applicable):

Table A

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- (a) the test individual's spouse or former spouse;
 - (b) a parent, brother, sister, child, nephew or niece of:
 - (i) the test individual; or
 - (ii) the test individual's spouse; or
 - (iii) a former spouse of the test individual;
 - (c) a child of any individual covered by paragraph (a) or (b) who, under the trust, is capable of benefiting on the death of the test individual;
 - (d) a grandparent, great-grandparent, aunt or uncle of the test individual;
 - (e) a child of a child of the test individual;
 - (f) the spouse or a former spouse of any individual covered by any of paragraphs (a) to (e).
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Commonwealth Places (Consequential Amendments) Act 1998 (No. 23, 1998)

4 Application of amendments

- (1) The amendments of the *Income Tax Assessment Act 1936* apply to the 1996-97 year of income.
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Taxation Laws (Technical Amendments) Act 1998 (No. 41, 1998)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**26 Application**

- (1) The amendments made by items 4, 5, 6, 7, 22, 23, 24 and 25 apply to elections made after the commencement of this item.
 - (2) The amendments made by items 8, 9, 10, 11, 12, 19, 20 and 21 apply to assessments for the 1997-98 year of income and later years of income.
 - (3) The amendment made by item 15 applies to applications made on or after 1 July 1992.
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Table A

Schedule 2

4 Application

The amendment made by item 1 applies to payments made after the commencement of this item.

Schedule 3

7 Application

- (1) The amendments made by Part 1 apply to gifts made on or after 2 July 1996.

Schedule 4

5 Application

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

Schedule 6

27 Application

- (1) The amendment made by item 1 applies to the calculation of the undeducted purchase price of an annuity or superannuation pension if the first day of the period to which the first payment of the annuity or pension relates is on or after the commencement of this item.
- (2) The amendment made by item 2 applies to assessments for the 1996-97 year of income and later years of income.
- (3) The amendment made by item 4 applies to mutual insurance companies and mutual affiliate companies that existed at 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995.
- (4) The amendments made by items 5, 13, 14 and 15 apply to assessments of income for the first year of income that begins after the commencement of this item, and later years of income.
- (5) The amendment made by item 7 applies in relation to dividends paid on or after 1 July 1988.

Table A

- (6) The amendment made by item 8 applies to disposals of assets on or after 1 July 1997.

Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998 (No. 45, 1998)

Schedule 12**23 Application—payments of AUSTUDY**

The amendments to the *Income Tax Assessment Act 1936* made by this Part do not apply to payments of benefits under the AUSTUDY scheme under Part 2 of the *Student Assistance Act 1973* (as in force before 1 July 1998).

Note: This Act repeals Part 2 of the *Student Assistance Act 1973* (as in force before 1 July 1998), and payments of benefits under the AUSTUDY scheme will cease to be made under that Part.

24 Application—payments of youth training allowance

The amendments to the *Income Tax Assessment Act 1936* made by this Part do not apply to payments of youth training allowance under Part 8 of the *Student Assistance Act 1973* (as in force before 1 July 1998).

Note: This Act repeals Part 8 of the *Student Assistance Act 1973* (as in force before 1 July 1998), and payments of youth training allowance will cease to be made under that Part.

Tax Law Improvement Act (No. 1) 1998 (No. 46, 1998)

4 Application of amendments

An amendment made by an item in a Schedule (except an item in Schedule 1 or in Part 1 of any of Schedules 2 to 8) applies to assessments for the 1998-99 income year and later income years, unless otherwise indicated in the Schedule in which the item appears.

Schedule 5**10 Application**

Section 4 of this Act does not apply to the amendments made by items 6 and 7.

Table A

Schedule 6

30 Application of amendments made by items 24 to 29

The amendments made by items 24 to 29 (inclusive) of this Schedule apply for the purposes of working out amounts of provisional tax payable for the 1999-2000 year of income and later years of income.

Schedule 8

9 Application of amendments made by items 4 to 8

The amendments made by items 4 to 8 apply for the purposes of working out amounts of provisional tax payable for the 1999-2000 year of income and later years of income.

Schedule 9

8 Application

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

Taxation Laws Amendment Act (No. 3) 1998 (No. 47, 1998)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

20 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to income derived on or after 1 July 1997.

Schedule 4

69 Application of amendments

The amendments made by this Schedule apply to amounts deducted on or after 1 July 1998.

Schedule 6**6 Application of amendments**

The amendments made by this Schedule apply in relation to any asset (whether acquired before or after the commencement of the Schedule) if the information in a register entry for the asset is certified under paragraph 160ZZU(9)(c) of the *Income Tax Assessment Act 1936* (as amended by this Schedule) on or after 1 January 1998.

Schedule 7**9 Application**

- (1) Subject to subitem (3), the amendments made by items 1, 2 and 4 to 8 apply to dividends paid or other benefits given after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 (including dividends paid, or other benefits given, pursuant to a dividend streaming arrangement entered into before that time).
- (2) Subject to subitem (3), the amendment made by item 3 applies to franking years beginning after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.
- (3) However, the amendments made by this Part do not apply to:
 - (a) dividends paid by a listed public company after the time referred to in subitem (1) if the dividends were declared before that time; or
 - (b) any other benefits given after that time that related to such dividends.
- (4) In subitem (3):

listed public company has the same meaning as in the *Income Tax Assessment Act 1997*.

26 Application

- (1) The amendments made by items 11, 12 and 15 take effect immediately after the commencement of Part 1.
- (2) Subject to subitem (3), the amendments made by this Part apply to dividends paid or distributions made after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 (including dividends paid,

Table A

or distributions made, pursuant to a scheme entered into before that time).

- (3) However, the amendments made by this Part do not apply to:
- (a) dividends paid by a listed public company after the time referred to in subitem (2) if the dividends were declared before that time; or
 - (b) any distributions made after that time that related to:
 - (i) dividends paid by a listed public company; or
 - (ii) dividends declared by a listed public company before that time.

- (4) In subitem (3):

listed public company has the same meaning as in the *Income Tax Assessment Act 1997*.

Schedule 8

7 Application of amendment made by item 2

- (1) The amendment made by item 2 applies to:
- (a) loans and payments made on or after 4 December 1997 (the *introduction day*); and
 - (b) debts forgiven on or after the introduction day (regardless of when the debts arose).
- (2) However, subsection 109D(5) of the *Income Tax Assessment Act 1936* extends to loans made before the introduction day.
- Note: That subsection applies Division 7A of Part III of that Act to loans made before the introduction day, but varied after that day, as if the loans had been made when they were varied.
- (3) However, sections 109U, 109UA and 109UB of the *Income Tax Assessment Act 1936* only apply to payments or loans made after 4.00 pm, by legal time in the Australian Capital Territory, on 27 March 1998.

8 Application of amendments made by items 3, 4 and 5

The amendments made by items 3, 4 and 5 apply for the year of income containing 4 December 1997, and later years of income.

9 Application of amendment made by item 6

The amendment made by item 6 applies to dividends taken to be paid under Division 7A of Part III of the *Income Tax Assessment Act 1936* on or after 4 December 1997.

10 Transitional—written loan agreements

Division 7A of Part III of the *Income Tax Assessment Act 1936* applies in relation to the 1997-98 year of income as if paragraph 109N(1)(a) of that Act were repealed and the following paragraph were substituted:

- (a) the loan is covered by a written agreement that was made before 1 July 1998; and

Schedule 9**14 Application**

The amendments made by this Schedule apply to assessments for the 1998-99 income year and later income years.

15 Transitional—lower tax offset for the 1998-99 income year

- (3) In working out your provisional tax for the 1999-2000 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, work out your tax offset under Subdivision 61-A of the *Income Tax Assessment Act 1997* for the 1998-99 income year disregarding subitems (1) and (2) of this item.

16 Transitional—provisional tax for the 1998-99 income year

In working out your provisional tax for the 1998-99 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, it is to be assumed that:

- (a) Subdivision 61-A of the *Income Tax Assessment Act 1997* had applied to your assessment for the 1997-98 income year; and
- (b) subitems 15(1) and (2) had applied for that income year (as well as the 1998-99 income year); and
- (c) any tax offset under that Subdivision were worked out for the 1998-99 income year disregarding Steps 2 and 4 of the method statement in subsection 61-55(2) of that Act (which deal with certain superannuation contributions).

Table A

Taxation Laws Amendment (Company Law Review) Act 1998 (No. 63, 1998)

Schedule 1

3 Application

The amendments made by this Schedule apply to the provision of bonus shares or capital benefits on or after 1 July 1998 unless the provision was pursuant to a legally binding commitment entered into before 13 November 1997.

Schedule 2

8 Application

The amendments made by this Schedule apply where, after the commencement of this item, an amount is transferred to the share capital account of a company with shares with no par value.

9 Transitional—merging of share capital account and share premium account

A company's share capital account does not become tainted under Division 7B of Part IIIAA of the *Income Tax Assessment Act 1936* merely because an amount standing to the credit of the company's share premium account (within the meaning of that Act) or capital redemption reserve becomes part of the company's share capital under Schedule 5 to the *Company Law Review Act 1998*.

9 Transitional—merging tainted share premium accounts

- (1) This item applies if, apart from this item, a company's share capital account would become tainted under Division 7B of Part IIIAA of the *Income Tax Assessment Act 1936* because the amount (the ***tainted amount***) standing to the credit of a tainted share premium account becomes part of the company's share capital under Schedule 5 to the *Company Law Review Act 1998*.
- (2) The share capital account is only tainted as a result of the tainted amount becoming part of the share capital account when the balance of the share capital account is equal to the net tainted amount.

Note: This does not prevent the share capital account from becoming tainted under section 160ARDM of the *Income Tax Assessment Act 1936* as a result of other amounts being transferred to it.

Table A

- (3) No franking debit arises under section 160ARDQ of the *Income Tax Assessment Act 1936* as a result of the share capital account becoming tainted under subitem (2).
- (4) Where:
- (a) before a distribution that consists of one or more amounts the share capital account is not tainted; but
 - (b) after the distribution the share capital account is tainted;
- the following proportion of each of the amounts is taken to have been paid from a tainted share account:
- $$\frac{\text{Tainted amount of distribution}}{\text{Total amount of distribution}}$$
- where:
- tainted amount of distribution*** is the difference between the net tainted amount immediately before the distribution and the net tainted amount immediately after the distribution.
- Note: Certain distributions from tainted share capital accounts will be unfranked dividends for which no section 46 or 46A rebate is available.
- (5) In this item:
- net tainted amount***, in relation to an account, means the lesser of:
- (a) the tainted amount;
 - (b) the lowest balance of the share capital account at any time after the commencement of this item.
- tainted share premium account***, in relation to a company, means an account, whether or not called a share premium account:
- (a) to which the company has, in respect of premiums received by the company on shares issued by it, credited amounts, being the respective amounts of the premiums; and
 - (b) for which either of the following conditions is satisfied:
 - (i) any other amount is standing to the credit of the account;
 - (ii) an amount has been credited to the account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) which could not at all times be identified in the books of the company as such a premium.

Table A

Schedule 3

8 Application

The amendments made by this Schedule apply to dividends paid after the commencement of this item by a company with shares with no par value.

Schedule 4

5 Application

The amendment made by this Schedule applies in relation to bonus shares provided after the commencement of this item by a company with shares with no par value.

Schedule 5

67 Application

The amendments made by this Schedule apply to things done after the commencement of this item where the relevant company has shares with no par value.

Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998
(No. 91, 1998)

Schedule 1

19 Application

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

Table A*Taxation Laws Amendment (Private Health Insurance) Act 1998*
(No. 128, 1998)**Schedule 1****6 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments in respect of income for the 1998-99 year of income and all later years of income.

Taxation Laws Amendment Act (No. 3) 1999 (No. 11, 1999)**398 Application**

- (1) This item applies to amendments made by items 1 to 3, 11, 12, 14, 18 to 27, 29, 37 to 42, 69 to 75, 77 to 80, 88 to 101, 107, 111, 113, 118, 120, 121, 127, 128, 130, 140, 148, 149, 153, 156, 158, 161 to 169, 175, 178, 179, 185, 187 to 189, 191, 192, 195, 200 to 204, 212, 214 to 217, 221, 223, 225, 226 to 228, 234, 236 to 242, 245, 252, 254 to 278, 280, 281, 296 to 298, 301, 304, 306, 309, 310, 314, 315 to 320, 322 to 328, 331, 332 to 335, 337 to 341, 344, 345, 346, 348, 352, 355 to 360, 373, 375 to 377, 379 to 385, 387 to 394, 396 and 397.
- (2) The amendments apply in relation to amounts that are due to be paid on or after 1 July 1999.
- (3) The amendments, other than the amendments referred to in subitem (5), also apply in relation to amounts that are due to be paid before 1 July 1999 if:
 - (a) some or all of the amount remains unpaid on 1 July 1999; and
 - (b) the amendments would have applied to the unpaid amount if the day by which the amount is due to be paid had been on or after 1 July 1999.
- (4) In applying the amendments in that case:
 - (a) the unpaid amount is taken to be the sum of the unpaid amount and any unpaid penalty or interest that had accrued before 1 July 1999; and
 - (b) the day by which the unpaid amount is due to be paid is taken to be 1 July 1999; and

Table A

(c) the unpaid amount and the unpaid penalty or interest that had accrued before 1 July 1999 continues to be payable.

- (5) In addition to applying in relation to amounts that are due to be paid on or after 1 July 1999, the amendments made by items 101, 107, 111, 118, 140, 185, 195, 201, 214, 225, 226, 238, 240, 255, 301, 304, 306 and 355 to 359 also apply in relation to amounts that are due to be paid before 1 July 1999, if some or all of the amount remains unpaid on that day, from the day by which the amount is due to be paid.

399 Application

- (1) This item applies to amendments made by items 6, 7, 8 to 10, 43 to 51, 53 to 68, 102, 103, 114, 115, 119, 131 to 139, 141, 151, 152, 170 to 174, 186, 196, 247 to 251, 282 to 295, 305, 311 to 313, 329, 330, 354, 361 to 363, 369 and 378.
- (2) The amendments apply where the period for which the person is liable to pay the general interest charge starts on or after 1 July 1999.

400 Application

- (1) This item applies to amendments made by items 13, 104, 108, 112, 197 to 199, 211, 222, 232, 233, 235, 303, 307, 308 and 347.
- (2) The amendments apply in relation to notifications that must be given to the Commissioner on or after 1 July 1999.

401 Application

- (1) This item applies to amendments made by items 15, 117, 142, 143, 180, 193, 194, 213, 224, 246 and 349.
- (2) The amendments apply in relation to reconciliation statements, reports or forms that must be given to the Commissioner on or after 1 July 1999.

402 Application

- (1) This item applies to amendments made by items 16, 17, 81 to 87, 275, 276, 364, 366, 368 and 371.
- (2) The amendments apply in relation to calculating interest for 1 July 1999 or a later day.

403 Application

- (1) This item applies to amendments made by items 105, 106, 109 and 110.
- (2) The amendments apply in relation to amounts deducted on or after 1 July 1999.

404 Application

- (1) This item applies to amendments made by items 4, 5, 28, 30, 31, 32, 33, 34, 35, 36, 52, 76, 116, 122, 123, 124, 125, 126, 129, 144, 145, 146, 147, 150, 155, 157, 159, 160, 176, 177, 181, 182, 183, 184, 190, 205, 206, 207, 208, 209, 210, 218, 219, 220, 229, 230, 231, 243, 244, 253, 279, 299, 300, 302, 321, 336, 342, 343, 365, 367, 370, 374, 386 and 395.
- (2) The amendments apply in relation to credits and payments to which section 8AAZL of the *Taxation Administration Act 1953* applies.

Assistance for Carers Legislation Amendment Act 1999 (No. 13, 1999)

Schedule 1**128 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later years.

Schedule 2**63 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

64 Continuation of references to old allowance and benefit

- (2) The *Income Tax Assessment Act 1936* has effect after the commencement of this Part as if:
 - (a) the references in paragraphs (a) and (b) of the definition of *separate net income* in subsection 159J(6) of that Act to carer allowance included a reference to child disability allowance within the meaning of the *Social Security Act 1991* as previously in force; and

Table A

- (b) the reference in paragraph (a) of the definition of *separate net income* in subsection 159J(6) of the *Income Tax Assessment Act 1936* to domiciliary nursing care benefit paid under Part VB of the *National Health Act 1953* had not been omitted by this Act and referred to the *National Health Act 1953* as previously in force; and
- (c) subsection 159P(2) of the *Income Tax Assessment Act 1936* had not been repealed by this Act.

Taxation Laws Amendment Act (No. 1) 1999 (No. 16, 1999)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

14 Application

The amendments made by this Part apply in relation to schemes entered into after 3 pm, by legal time in the Australian Capital Territory, on 29 April 1997.

Schedule 3

12 Application

- (3) The repeals made by items 9, 10 and 11 apply in relation to expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day on or after 1 July 1997.

Schedule 5

16 Application

- (1) The amendments made by items 2, 3, 4 and 6 have the same application as they would have had if they had been included in Division 1C of Part VI of the *Income Tax Assessment Act 1936* as originally inserted by section 54 of the *Taxation Laws Amendment Act (No. 2) 1993*.
- (2) The amendments made by the remaining items of this Schedule apply for the 1996-97 year of income and all later years of income.

Schedule 6**28 Application**

The amendments made by this Schedule apply to any franking credits or franking debits arising after the day on which the Bill that became the *Taxation Laws Amendment Act (No. 1) 1999* was introduced into the House of Representatives.

Schedule 7**8 Application**

- (1) The amendments made by this Part apply to assets acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.
- (2) However, the amendments made by this Part do not apply to expenditure incurred before 1 July 1999 in respect of an asset (the *deemed asset*) where:
 - (a) the deemed asset is taken to be a separate asset from another asset (the *underlying asset*) for the purposes of Part IIIA of the *Income Tax Assessment Act 1936* under section 160P of that Act; and
 - (b) the underlying asset is land or a building that was acquired by the taxpayer at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997; and
 - (c) the deemed asset is acquired by the taxpayer after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997 but before 1 July 1999.
- (3) Subparagraphs 160ZJA(1)(d)(i) to (iii) and (3)(d)(i) to (iii) and 160ZJB(1)(d)(i) to (iii) and (3)(d)(i) to (iii) of the *Income Tax Assessment Act 1936* (which relate to eligible heritage conservation expenditure and landcare and water facility expenditure) do not apply to expenditure incurred before the day on which the Bill that became the *Taxation Laws Amendment Act (No. 1) 1999* was introduced into the House of Representatives.
- (4) For the purposes of a taxpayer's assessment for the year of income in which 13 May 1997 occurred, a reference in the amendments made by this Schedule to a deduction does not include a reference to a deduction to the extent that it could reasonably be regarded as arising, or relating to a period, before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

Table A

Schedule 8

2 Application

The amendment made by this Schedule applies in calculating passive income that is derived on or after 1 July 1997.

Schedule 9

10 Application

- (1) The amendments made by this Schedule apply to a life assurance company in respect of the first year of income starting on or after 29 April 1997 and all later years of income.
- (2) The amendments made by this Schedule also apply to a life assurance company in respect of the year of income that immediately preceded the first year of income referred to in subsection (1) if, and only if:
 - (a) that immediately preceding year of income ended on or after 29 April 1997; and
 - (b) a significant event in relation to any of the insurance funds maintained by the company occurred during the part of that year of income occurring on and after that date.

Schedule 10

3 Application

The amendments made by this Schedule are taken to have applied where the transition time was earlier than 3 July 1995 but not earlier than the start of the year of income in which 1 July 1988 occurred.

4 Saving

Section 61A of the *Income Tax Assessment Act 1936* does not apply to a transition taxpayer referred to in that section to the extent (if any) that, under a private ruling made before 14 May 1997 under Part IVAA of the *Taxation Administration Act 1953*, the Commissioner of Taxation has ruled that the *Income Tax Assessment Act 1936* applies to the transition taxpayer in a different way from the way in which it would apply under that section.

Schedule 11

2 Application

The amendment made by this Schedule applies in relation to the 1995-96 year of income and all later years of income.

A New Tax System (Fringe Benefits Reporting) Act) 1999 (No. 17, 1999)

Schedule 2

17 Application of amendments of sections 221F and 221H

The amendments of sections 221F and 221H of the *Income Tax Assessment Act 1936* made by this Division apply in relation to group certificate forms and group certificates setting out (or required to set out) information relating to the 1999-2000 year of income or a later year of income.

20 Application of amendments

The amendments made by this Division apply in relation to reportable fringe benefits totals for the 1999-2000 year of income and later years of income.

26 Application of amendments

The amendments made by this Part apply to assessments for the 1999-2000 year of income and later years of income.

29 Application of amendments

The amendments made by this Part apply to assessments for the 1999-2000 year of income and later years of income.

32 Application of amendments

The amendments made by this Part apply to assessments for the 1999-2000 year of income and later years of income.

39 Application

The amendments made by this Part apply in relation to levy and surcharge payable in respect of the 1999-2000 year of income and later years of income.

Table A

40 Saving provision

The amendment of subsection 251W(1) of the *Income Tax Assessment Act 1936* made by this Schedule does not affect the validity of any regulations made for the purposes of that subsection that were in force immediately before the amendment.

Taxation Laws Amendment (Software Depreciation) Act 1999 (No. 39, 1999)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

21 Application

The amendments made by this Schedule apply to expenditure on software after 10 am by legal time in the Australian Capital Territory on 11 May 1998.

Taxation Laws Amendment Act (No. 6) 1999 (No. 54, 1999)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

36 Application

The amendments made by this Schedule apply to spectrum licences obtained on or after 11 March 1998.

Schedule 3

11 Application

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

Table A

Schedule 5

15 Application

The amendment made by item 13 applies for the purpose of determining whether a lump sum payment is eligible income in the 1998-99 year of income or a later year of income.

Schedule 6

2 Application

The amendment made by item 1 applies in relation to provisional tax (including instalments) payable for the 1999-2000 year of income and all later years of income.

Schedule 7

3 Application of amendments

The amendments made by this Schedule apply to assessments for the 1998-99 income year and later income years.

A New Tax System (Income Tax Laws Amendment) Act 1999 (No. 60, 1999)

Schedule 2

12 Application

The amendments made by this Part apply for the purposes of working out amounts of provisional tax (including instalments) payable for the 1999-2000 income year and later income years.

A New Tax System (Personal Income Tax Cuts) Act 1999 (No. 69, 1999)

Schedule 3

1 Application

- (1) Subject to subitem (2), the amendments made by this Act (except items 1, 2, 4, 6, 7 and 9 of Schedule 1) apply to assessments for the 2000-2001 income year and later income years.

Table A

- (2) The amendments of paragraph 221YDA(1)(g) and subparagraph 221YDA(2)(a)(iv) of the *Income Tax Assessment Act 1936* made by item 1 of Schedule 2 to this Act apply for the purposes of working out amounts of provisional tax (including instalments) payable for the 2000-2001 income year and later income years.

A New Tax System (Closely Held Trusts) Act 1999 (No. 70, 1999)

Schedule 1

3 Application

- (1) This item affects the following references in provisions of Division 6D of Part III of the *Income Tax Assessment Act 1936* as amended by this Schedule:
- (a) references in sections 102UK, 102UM, 102UU and 102UV to a share of the net income of a closely held trust being included in the assessable income of the trustee beneficiary of the trust under section 97 of the *Income Tax Assessment Act 1936*;
 - (b) references in sections 102UT, 102UU and 102UV to a trustee beneficiary of a closely held trust being presently entitled to a share of a tax-preferred amount of the trust.
- Note: Because the references concerned are in the operative provisions of the new Division, this item determines when the amendments made by this Schedule will commence to apply.
- (2) In the case of the references in paragraph (1)(a) of this item, the references only apply where the present entitlement to the share of income, mentioned in section 97 of the *Income Tax Assessment Act 1936* in relation to the share of the net income concerned, arose after 4 pm, by legal time in the Australian Capital Territory, on 13 August 1998.
- (3) In the case of the references in paragraph (1)(b) of this item, the references only apply where the present entitlement to the share of the tax-preferred amount concerned arose after 4 pm, by legal time in the Australian Capital Territory, on 13 August 1998.

4 Transitional—extension of statement deadline

If the end of the UB statement period mentioned in Division 6D of Part III of the *Income Tax Assessment Act 1936* as amended by this Schedule occurs before the commencement of this Schedule, the end of the UB statement period is taken instead to occur when 90 days have elapsed after the commencement of this Schedule.

Schedule 2

12 Application

- (1) The amendments made by items 1 to 7 and 9 apply to ultimate beneficiary non-disclosure tax that becomes payable at any time after the commencement of this Part.
- (2) The amendment made by item 8 applies to net income of a trust estate of the year of income in which 13 August 1998 occurred, and all later years of income.
- (3) The amendment made by item 10 applies to income derived either before or after the commencement of this Part.

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999 (No. 82, 1999)

Schedule 8

29 Application

The amendments made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.

Table A

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999 (No. 83, 1999)

Schedule 10

68 Application

- (1) Subject to this item, the amendments made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.
- (2) The amendment made by item 7 of this Schedule applies to information sought in relation to a registered carer after 8 December 1997.

Taxation Laws Amendment Act (No. 2) 1999 (No. 93, 1999)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

39 Application

- (1) Subject to this item, the amendments made by this Schedule apply in relation to transactions entered into after 2 July 1998.
 - (2) The amendment made by item 20 applies to foreign tax paid after 2 July 1998.
 - (3) Subsection 121ELA(2) and section 121ELB of the *Income Tax Assessment Act 1936* apply to disposals after 2 July 1998.
 - (4) The amendments made by items 24 and 25 apply to declarations made by the Treasurer after 2 July 1998.
 - (5) The amendments made by items 27 to 32 apply to debentures issued after 2 July 1998.
 - (6) The amendment made by item 33 applies to interest paid by an OBU after 2 July 1998.
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Table A

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- (7) The amendment made by item 33 applies in relation to amounts lent to the Australian branch after 2 July 1998.
 - (8) The amendment made by item 35 applies to the year of income before the year of income in which 2 July 1998 occurs and to all later years of income.
 - (9) The amendment made by item 38 applies to penalties imposed after 2 July 1998.

46 Application

- (1) The amendment made by item 42 of this Schedule applies to notional accounting periods of FIFs ending on or after 2 July 1998.
- (2) The other amendments made by this Part of this Schedule apply in relation to assessments for years of income ending on or after 2 July 1998.

48 Application

The amendment made by item 47 applies to statutory accounting periods of CFCs ending on or after 2 July 1998.

Schedule 2**3 Application of amendments**

The amendments made by this Schedule apply in relation to debts forgiven after the day on which the Bill that became the *Taxation Laws Amendment Act (No. 2) 1999* was introduced into the House of Representatives.

Schedule 3**33 Application**

- (1) The amendments made by this Schedule other than items 8, 9, 10 and 11 apply where the transition time or acquisition time, as the case may be, referred to in Division 58 inserted in the *Income Tax Assessment Act 1997* by item 7 is a time on or after 4 August 1997.
 - (2) The amendments made by items 8, 9, 10 and 11 apply to assessments for the 1998-99 income year and later income years.
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Table A

Schedule 4

25 Application of amendments

(1) Subject to this item, the amendments made by this Schedule apply in respect of shares, or interests in shares, where the shares or interests were acquired by the taxpayer on or after 1 July 1997, except where the shares or interests were acquired under a contract made before 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

(2) If:

- (a) a taxpayer has acquired, or acquires, shares or an interest in shares on or after 1 July 1997; and
- (b) the acquisition constituted, or constitutes, an acquisition or reacquisition of replacement securities for the purposes of subparagraph 26BC(3)(a)(ii) of the *Income Tax Assessment Act 1936*;

the acquisition is taken for the purposes of subitem (1) to have occurred before 1 July 1997.

(3) If:

- (a) a taxpayer acquired, or is taken for the purposes of subitem (1) to have acquired, before 1 July 1997 an interest in shares:
 - (i) under a trust; or
 - (ii) as a partner in a partnership; and
- (b) the shares, or an interest in the shares, was or is distributed to the taxpayer on or after that date in satisfaction of the interest referred to in paragraph (a);

the acquisition of the shares or interest so distributed, to the extent to which the shares or interest distributed satisfied the interest referred to in paragraph (a), is taken for the purposes of subitem (1) to have occurred before that date.

(4) If:

- (a) shares (the *bonus shares*) have been issued to a taxpayer in respect of existing shares; and
- (b) the existing shares were acquired, or are taken for the purposes of subitem (1) to have been acquired, by the taxpayer before 1 July 1997; and
- (c) no part of the bonus shares has been, or is taken to have been, a dividend included in the taxpayer's assessable income;

Table A

the acquisition of the bonus shares is taken for the purposes of subitem (1) to have occurred before that date.

- (5) Despite subitem (1):
- (a) references to shares, or interests in shares, in Subdivisions BA and BB of Division 7 of Part IIIAA of the *Income Tax Assessment Act 1936* include references to shares, or interests in shares, acquired by the taxpayer before 1 July 1997; and
 - (b) in calculating the net position of a taxpayer or fund in relation to shares, or an interest in shares, for the purposes of section 160APHJ of the *Income Tax Assessment Act 1936*, regard is to be had to the long positions and the short positions of the taxpayer or fund in relation to shares, or interests in shares, acquired before 1 July 1997.
- (6) Section 160APHL of the *Income Tax Assessment Act 1936* is taken to have come into effect at 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997 and applies to:
- (a) all trusts (other than widely held public share-trading trusts) that receive dividends from shares, or distributions in respect of interests in shares, but only in relation to shares or interests in shares acquired after that time (other than shares or interests acquired under an obligation contained in a contract made before that time); and
 - (b) widely held public share-trading trusts established after that date.
- (7) If:
- (a) the trustee of a trust (other than a widely held public share-trading trust) acquired an interest in shares before 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997; and
 - (b) the shares, or an interest in the shares, was distributed to the trustee after that time in satisfaction of the interest referred to in paragraph (a);
- the acquisition of the shares or interest so distributed, to the extent to which the shares or interest distributed satisfied the interest referred to in paragraph (a), is taken for the purposes of paragraph (a) of subitem (6) to have occurred before that time.

Table A

- (8) If:
- (a) shares (the *bonus shares*) have been issued to the trustee of a trust in respect of existing shares; and
 - (b) the existing shares were acquired by the trustee before 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997; and
 - (c) no part of the bonus shares has been, or is taken to have been, a dividend included in the net income of the trust estate;
- the acquisition of the bonus shares is taken for the purposes of paragraph (a) of subitem (6) to have occurred before that time.
- (9) A reference in a provision inserted in the *Income Tax Assessment Act 1936* by this Schedule to a related payment in respect of a dividend or distribution:
- (a) is a reference to a related payment under an arrangement entered into after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997, whether or not the shares or interests in shares in respect of which the dividend was paid or the distribution was made were acquired by the taxpayer before or after that time; but
 - (b) does not include a reference to a related payment made under a contract for the sale of derivatives known as Share Price Index Futures that was made before 2 July 1998.
- (10) Section 160APHN of the *Income Tax Assessment Act 1936* has effect for the purposes of subitem (9) of this item in the same way as it has effect for the purposes of Division 1A of Part IIIAA of that Act.
- (11) In this item:
- arrangement* has the same meaning as in Division 1 of Part IIIAA of the *Income Tax Assessment Act 1936*.
- widely held public share-trading trust* means a widely held trust that:
- (a) is open to investment by members of the public; and
 - (b) buys and sells shares with a view to profit.
- widely held trust* has the same meaning as in Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*.

Schedule 5**80 Statements given by company to shareholders before 2 April 1998**

A company is not liable to a penalty under section 160ARY merely because:

- (a) the company gave to a shareholder before 2 April 1998 a dividend statement that complied with section 160AQH of the *Income Tax Assessment Act 1936* as in force at the time when the statement was given; or
- (b) the company gave to a shareholder before that date a dividend statement that the Commissioner is satisfied reasonably complied with section 160AQH of the *Income Tax Assessment Act 1936* as amended by this Schedule.

81 Application

The amendments made by this Schedule apply to dividends paid at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 other than:

- (a) dividends declared before that time by a listed public company (within the meaning of the *Income Tax Assessment Act 1997*); or
- (b) dividends paid after that time that related to dividends referred to in paragraph (a).

Taxation Laws Amendment Act (No. 4) 1999 (No. 94, 1999)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3**3 Application**

The repeals made by items 1 and 2 apply to a public entity if the test time (within the meaning of Division 20 of Part IIIA of the *Income Tax Assessment Act 1936*) was on or after 20 January 1997.

Table A

Schedule 4

2 Application

The amendment made by item 1 applies to payments made on or after 1 July 1998.

Schedule 5

35 Application of amendments

Subject to item 37, the amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

Schedule 6

73 Application

The amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

Superannuation Legislation Amendment Act (No. 2) 1999 (No. 96, 1999)

Schedule 2

3 Application

Subject to item 4, the amendments made by this Schedule apply to income derived after 2 pm by standard time in the Australian Capital Territory on 25 November 1997 (the *commencement time*).

4 Transitional—income of unit holders

- (1) Income derived during the period from the commencement time until the end of 2 July 1998 by the entity in the capacity of holder of a unit in a trust estate is special income of the entity for the purposes of Part IX of the *Income Tax Assessment Act 1936* if, and only if:
 - (a) the entity acquired the unit under an arrangement, or the income was derived under an arrangement, some or all of the parties to which were not dealing with each other at arm's length in relation to the arrangement; and
 - (b) the amount of the income is greater than might have been expected to have been derived by the entity if those parties

Table A

had been dealing with each other at arm's length in relation to the arrangement.

- (2) In subitem (1), **arrangement** has the meaning given by subsection 273(8) as inserted in the *Income Tax Assessment Act 1936* by item 2.

Taxation Laws Amendment (CPI Indexation) Act 1999 (No. 102, 1999)

Schedule 2

2 Application

The amendment of section 159HA of the *Income Tax Assessment Act 1936* made by this Schedule applies to assessments for the 1998-99 year of income and later years of income.

Taxation Laws Amendment (Demutualisation of Non-insurance Mutual Entities) Act 1999 (No. 103, 1999)

Schedule 1

4 Application

Subsections 160ARDM(4) and 160ARDQ(4) apply only to a demutualising entity in respect of which the demutualisation resolution day was earlier than 11 August 1998.

Taxation Laws Amendment Act (No. 7) 1999 (No. 117, 1999)

Schedule 1

8 Application of amendments

- (1) The amendments made by items 1 and 2 of this Schedule apply to things done after the commencement of this item where the relevant company has shares with no par value.

Table A

- (2) The amendments made by items 3 and 4 of this Schedule apply where, after the commencement of this item, an amount is transferred to the share capital account of a company with shares with no par value.

Statute Stocktake Act 1999 (No. 118, 1999)

Schedule 2

51 Application

The amendments made by items 49 and 50 apply to assessments for years of income starting after the year of income containing the day on which this item commences.

Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999 (No. 128, 1999)

8 Application of certain items of Schedule 1

Items 8, 10, 12, 13, 14, 34, 35, 39, 44, 45, 46, 47, 48, 49 and 73 of Schedule 1 do not apply in respect of the half-year in which the New Act receives the Royal Assent.

New Business Tax System (Capital Allowances) Act 1999 (No. 164, 1999)

Schedule 3

14 Application of amendments

The amendments made by this Schedule apply to plant if:

- (a) you became its owner or quasi-owner under a contract entered into after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; or
- (b) you constructed it and the construction started after that time; or
- (c) you acquired it in some other way after that time.

Table A

New Business Tax System (Capital Gains Tax) Act 1999 (No. 165, 1999)

Schedule 1**61 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: The 15-year exemption in Subdivision 152-B of the *Income Tax Assessment Act 1997*, as inserted by this Division, will effectively only apply to CGT events that happen on or after 20 September 2000, since the 15-year exemption is only relevant to CGT assets acquired on or after 20 September 1985.

62 Transitional—old CGT retirement exemption limit carries over

If an individual's CGT retirement exemption limit was reduced by one or more amounts under:

- (a) section 118-435 of the *Income Tax Assessment Act 1997*; or
- (b) section 160ZZPZN of the *Income Tax Assessment Act 1936*;

or both, then the individual's CGT retirement exemption limit under Subdivision 152-D of that Act (as inserted by this Schedule) is taken to have been reduced by the total of all those amounts at 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: This could result in the individual's new limit being reduced to nil at that time, if he or she has already used it up under those old provisions.

New Business Tax System (Integrity and Other Measures) Act 1999
(No. 169, 1999)

Schedule 2**5 Application of amendments**

The amendments made by this Schedule apply to trigger events that happen on or after 22 February 1999.

Table A

Schedule 3

7 Application of amendments

The amendments made by this Schedule apply to assessments for the 1999-2000 income year and later income years.

Schedule 4

19 Application

- (1) The amendments made by this Schedule apply to CGT events happening on or after 21 October 1999.
- (2) The amendment made by item 2 is to be disregarded for the purposes of any application of section 110-55 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(1) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.
- (3) The amendment made by item 3 is to be disregarded for the purposes of any application of section 110-60 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(3) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.

Schedule 7

12 Application

- (1) The amendments made by Division 1 of Part 1 and by Part 2 apply in relation to:
 - (a) expenditure incurred by a taxpayer after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
 - (b) the taxpayer's assessments for the year of income including that day and for later years of income.
- (2) The amendments made by Division 2 of Part 1 apply in relation to expenditure incurred by a taxpayer in a year of income after the taxpayer's year of income mentioned in item 4 of the table in subsection 82KZMB(5) of the *Income Tax Assessment Act 1936*.

Schedule 9**22 Application**

- (1) The amendment of section 6AD of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income commencing on or after 1 July 2000.
- (2) The other amendments made by this Division apply to assessments for the year of income including 21 September 1999 and later years of income.

A New Tax System (Pay As You Go) Act 1999 (No. 178, 1999)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**49A Application**

The amendment of the *Income Tax Assessment Act 1936* made by item 39 of this Schedule applies to an income year that *ends after* 30 June 2000.

Schedule 2**35 Application**

- (1) The amendments made by this Part, so far as they relate to the establishment, operation and effect of RBAs, apply to all tax debts owing on or after 1 July 2000, regardless of when the debts arose.
- (2) The amendments made by this Part, so far as they relate to the treatment of payments and credits by the Commissioner, apply to the treatment of payments or credits by the Commissioner on or after 1 July 2000, regardless of when the payments were made or when the credits arose.

Table A

A New Tax System (Tax Administration) Act 1999 (No. 179, 1999)

Schedule 5

74 Transitional rules for TFN declarations

- (1) Any employment declaration that is effective under Part VA of the *Income Tax Assessment Act 1936* immediately before 1 July 2000 continues to have effect as if it were a TFN declaration given on 1 July 2000 under that Part (as amended by this Act).
- (2) For such a declaration, subsection 202CD(1) of the *Income Tax Assessment Act 1936* applies as if that subsection specified 28 days instead of 14 days.

Schedule 6

24 Application

- (1) The amendment made by item 2 applies in respect of the year of income commencing on 1 July 2000 or a later year of income.
- (2) The amendment made by item 3 applies to declarations made on or after 1 July 2000 in respect of returns given or applications for amendments made in respect of the year of income commencing on that day or a later year of income.
- (3) The amendments made by items 4 to 9 and 11 apply to amendments made on or after 1 July 2000 in respect of assessments for the year of income commencing on that day or a later year of income.
- (4) The amendments made by items 12 and 13 apply to family agreements entered into on or after 1 July 2000 in respect of the year of income commencing on that day or a later year of income.

Schedule 10

24 Application

The amendment of the *Income Tax Assessment Act 1936* made by item 23 of this Schedule applies to an income year that *ends after* 30 June 2000.

Schedule 11

79 Application

The amendment made by item 78 applies in relation to contributions (within the meaning of section 274 of the *Income Tax Assessment Act 1936*) made in relation to the year of income commencing on 1 July 2000 and later years of income.

Schedule 16

37 Application

The amendments made by this Schedule apply to the 2000-2001 year of income and later years of income.

Schedule 17

2 Application

The amendment made by this Schedule applies for the purposes of working out amounts of provisional tax (including instalments) payable for the 1999-2000 income year and later income years.

Taxation Laws Amendment Act (No. 5) 2000 (No. 43, 2000)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 2

6 Application

The amendments made by this Schedule apply to shares and rights acquired on or after 2 September 1999.

Table A

Schedule 3

9 Application

- (1) The amendments made by this Schedule have the same application as they would if they had been part of Division 6D of Part III of the *Income Tax Assessment Act 1936* when that Division was originally inserted in that Act by item 2 of Schedule 1 to the *A New Tax System (Closely Held Trusts) Act 1999*.
- (2) To avoid doubt, the Commissioner may, at any time after the commencement of this Schedule, under paragraph 102UH(b) of the *Income Tax Assessment Act 1936* as amended by this Schedule, allow a further period in respect of a year of income that ended before the commencement of this Schedule.

10 Transitional

The references in paragraphs 102USA(2)(c) and 254(3)(b) of the *Income Tax Assessment Act 1936* as inserted by this Schedule to general interest charge under section 102UP include a reference to:

- (a) general interest charge under item 93 of Schedule 2 to the *A New Tax System (Pay As You Go) Act 1999*; and

Note: Item 93 applied a general interest charge to amounts that became payable before 1 July 1999.

- (b) additional tax under section 102UP of the *Income Tax Assessment Act 1936* as in force before the commencement of item 92 of Schedule 2 to the *A New Tax System (Pay As You Go) Act 1999*.

Note: Item 92 had the effect that additional tax under section 102UP continued to apply to amounts that became payable before 1 July 1999.

A New Tax System (Tax Administration) Act (No. 1) 2000 (No. 44, 2000)

Schedule 4

5 Application

The amendment made by item 4 applies to a person who quotes his or her tax file number before, at or after the item's commencement.

Table A**7 Application**

The amendment made by item 6 applies to a person who quotes his or her tax file number before, at or after the item's commencement.

9 Saving

The amendment made by item 8 applies to a person who, immediately before that item's commencement, is taken to have quoted his or her tax file number to a trustee or an RSA provider because of subsection 202DJ(1) of the *Income Tax Assessment Act 1936*, as if that person had made a TFN declaration in relation to the trustee or the RSA provider as mentioned in that subsection as amended by that item.

A New Tax System (Family Assistance and Related Measures) Act 2000
(No. 45, 2000)

Schedule 4**9 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.

Taxation Laws Amendment Act (No. 2) 2000 (No. 58, 2000)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**10 Application of amendments**

The amendments made by this Part apply in determining the attributable income of a CFC if a disposal was taken to have occurred, under section 160ZZOA of the *Income Tax Assessment Act 1936*, after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

Table A

11 Transitional—group roll-over disposals before 13 May 1997

- (1) This item applies if a group roll-over disposal (within the meaning of section 160ZZOA of the *Income Tax Assessment Act 1936*) happened at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997 and during a particular statutory accounting period of an attributable taxpayer.
- (2) In applying section 460A of that Act (as amended by this Schedule), the taxpayer may elect to disregard so much of any change to the attribution percentage of the taxpayer in relation to the relevant CFC as happened before the end of the statutory accounting period.

27 Application of amendments

The amendments made by this Part apply in determining the attributable income of a CFC if CGT event J1 is taken to have happened at any time, whether before or after the Part commences.

Schedule 2

4 Application

- (1) The amendment made by item 1 applies to the 1992-93 year of income and to later years of income up to, and including, the 1996-97 year of income.

Schedule 3

3 Application of item 2

Despite the amendment made by item 2, a taxpayer who was entitled to a franking credit or a franking rebate in respect of a dividend paid, or a distribution made, before the day on which this Act receives the Royal Assent continues to be entitled to the franking credit or franking rebate.

Schedule 6

34 Application

The amendments made by this Schedule apply to gifts made on or after 1 July 1999.

Schedule 8**21 Application**

The amendments made by items 4 to 9 apply to the provision of bonus shares or capital benefits on or after 30 June 1999.

Schedule 10**17 Application**

- (1) The amendments made by items 1 to 4 apply in relation to the 1996-97 year of income.
- (2) The amendments made by items 5 to 10 apply:
 - (a) to allowable deductions for the 1996-97 year of income for amounts in respect of debts incurred in that year of income; or
 - (b) to allowable deductions for the 1997-98 year of income for amounts in respect of debts incurred in that year of income or in the 1996-97 year of income.

21 Application

The amendments made by this Part apply to the making of determinations under section 271-60 of Schedule 2F to the *Income Tax Assessment Act 1936* after the commencement of this Part, in relation to tax under section 271-15 of that Schedule that:

- (a) has become due and payable before the commencement of this Part; or
- (b) becomes due and payable after the commencement of this Part.

38 Application

- (1) The amendments made by items 22 to 24 apply for the 1996-97 year of income.
- (2) The amendments made by items 25 to 29 apply:
 - (a) to allowable deductions for the 1996-97 year of income for amounts in respect of debts incurred in that year of income; or

Table A

- (b) to allowable deductions for the 1997-98 year of income for amounts in respect of debts incurred in that year of income or in the 1996-97 year of income.

Schedule 11

11 Continuation of previous transitional election provisions

In addition to the effect that items 22 and 23 of Schedule 1 to the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* have as a result of the amendments made by this Schedule, those items continue to have the effect that they would have had if the amendments had not been made.

Taxation Laws Amendment Act (No. 6) 2000 (No. 76, 2000)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

8 Application of amendments

- (1) The amendments made by items 1, 2 and 6 apply to assessments for the 1999-2000 year of income and all later years of income.
 - (2) The amendments made by items 3 and 4 apply in relation to the quotation of TFNs on or after 11 November 1999.
 - (3) The amendment made by item 5 applies to payments made on or after 11 November 1999.
-

Table A

New Business Tax System (Miscellaneous) Act (No. 1) 2000 (No. 79, 2000)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1**4 Application of amendments**

- (1) The amendment made by item 1 applies to dividends paid on or after 1 July 2000.
- (2) The amendments made by items 2 and 3 apply to unfranked non-portfolio dividends paid to the resident company on or after 1 July 2000.

Schedule 2**7 Application of amendments**

The amendments made by this Schedule that relate to tax offsets under Part IIIAA of the *Income Tax Assessment Act 1936* apply to offsets that relate to dividends paid on or after 1 July 2000.

Schedule 3**14 Application of amendments**

- (1) The amendment made by item 1 applies to:
 - (a) franking deficit tax for franking years ending on or after 1 July 2000; and
 - (b) deficit deferral tax in relation to instalments under section 221AZK paid during a franking year ending on or after 1 July 2000.
- (2) The amendment made by item 2 applies to:
 - (a) the payment of a class C franked dividend to a shareholder in a company on or after 1 July 2000; and

Table A

- (b) a trust amount or partnership amount that relates, directly or indirectly, to the payment of a class C franked dividend to a shareholder in a company on or after 1 July 2000.
- (3) The amendment made by item 4 applies to dividends paid on or after 1 July 2000.
- (4) The amendment made by item 5 applies to deficit deferral tax in relation to instalments under section 221AZK paid during a franking year ending on or after 1 July 2000.
- (5) The amendments made by items 7 and 8 apply to dividends paid on or after 1 July 2000.
- (6) The amendments made by items 9 to 12 apply to dividends that are current dividends for the purposes of section 160ASL of the *Income Tax Assessment Act 1936* and are paid on or after 1 July 2000.

Schedule 4

5 Application of amendments

The amendments made by this Part apply to assessments for the 2000-01 year of income and later years of income.

10 Application of amendments

The amendments made by this Part apply to assessments for the 2001-02 year of income and later years of income.

Schedule 5

45 Application of amendments

The amendments made by this Schedule apply to CGT events in relation to a qualifying SME investment of a PDF that happen on or after the day on which Schedule 3 to the *New Business Tax System (Capital Gains Tax) Act 1999* commences.

Schedule 6

15 Application of amendments

- (1) The amendments made by this Schedule, to the extent that they relate to:
- (a) plant whose cost does not exceed \$300; or

Table A

(b) low-cost plant (plant whose cost is less than \$1,000);
apply to assessments for the income year in which 1 July 2000 occurs
and later income years.

- (2) The amendments made by this Schedule, to the extent that they relate to plant that you can allocate to a low-value pool under subsection 42-455(3) of the *Income Tax Assessment Act 1997*, apply to assessments for the 2000-01 income year and later income years.

New Business Tax System (Miscellaneous) Act (No. 2) 2000 (No. 89, 2000)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 2**62 Application of amendments made by this Part**

- (1) The amendments made by items 4, 5, 25 and 26 apply to amounts received (within the meaning of section 26AH of the *Income Tax Assessment Act 1936*) on or after 1 July 2000.
- (2) The amendments made by items 6 and 7 apply to losses arising on or after 1 July 2000.
- (3) The amendments made by items 8 to 22 apply to assessments for the year of income in which 21 September 1999 occurs and later years of income.
- (4) The amendments made by items 23, 24, 35, 36 and 53 apply to income derived on or after 1 July 2000.
- (6) The amendments made by items 58 to 61 apply in calculating passive income that is derived on or after 1 July 2000.

Table A

Schedule 3

29 Application of amendments

The amendments made by this Part (other than item 16) apply to the 2000-01 year of income and later years of income.

84 Application of amendments

- (1) The amendments made by items 33 to 44 (inclusive), 60, 61, 62, 69, 76, 77 and 83 apply to dividends paid on or after 1 July 2000.
- (2) The amendments made by items 78 to 82 (inclusive) apply to income derived on or after 1 July 2000.

100 Application of amendments

The amendments made by this Part apply to assessments for the 1999-2000 year of income and later years of income.

Schedule 5

34 Application of amendments

- (1) Subject to subitem (2), the amendments made by this Schedule apply to CGT events happening on or after 10 December 1999.

Schedule 8

11 Application of amendments

The amendments made by this Schedule apply to:

- (a) expenditure incurred by a taxpayer after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
- (b) the taxpayer's assessments for the year of income including that day and for later years of income.

Table A

New Business Tax System (Integrity Measures) Act 2000 (No. 90, 2000)

Schedule 2**11 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply to:
 - (a) expenditure incurred by a taxpayer after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999; and
 - (b) the taxpayer's assessments for the year of income including that day and for later years of income.
- (2) The amendments made by Part 2 of this Schedule apply to expenditure incurred by a taxpayer in a year of income after the taxpayer's year of income that includes 21 September 2002.

A New Tax System (Tax Administration) Act (No. 2) 2000 (No. 91, 2000)

Schedule 2**144 Application of amendments**

- (1) Subject to this item, the amendments made by this Part apply to:
 - (a) for income tax—returns, statements, notices and other documents given for the 2000-01 income year and later years; and
 - (b) for fringe benefits tax—returns, statements, notices and other documents for the year of tax starting on 1 April 2001 and later years; and
 - (c) for other taxes—returns, statements, notices and other documents for the period starting on 1 July 2000 and later periods.

147 Application of amendments

The amendments made by this Part apply to income tax payable for the 2000-01 year of income and later years.

Table A

Taxation Laws Amendment Act (No. 4) 2000 (No. 114, 2000)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

3 Application

The amendments made by this Schedule apply to income derived after 30 June 2000.

Schedule 4

82 Application

- (1) The amendments made by this Schedule (other than by item 45) apply to assessments for the 1998-99 income year and later income years.
- (2) The amendment made by item 45 of this Schedule applies to CGT events happening on or after the day on which this Act receives the Royal Assent.

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
 - (a) an offence committed before the commencement of this item;
or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or

- (c) any matter connected with, or arising out of, such proceedings;
as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
- (b) any or all of those other provisions are repealed by this Schedule; and
- (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Farm Household Support Amendment Act 2000 (No. 144, 2000)

Schedule 3

7 Transitional provisions

- (3) The *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* continue to have effect, after the farm help scheme payment commencement day, in relation to payments of restart income support made in respect of periods before that day, as if the repeals and amendments made by Schedule 2 had not happened.

8 Definitions

In this Schedule:

amended FHS Act means the *Farm Household Support Act 1992* as amended and in force from time to time after the commencement of item 2 of Schedule 1 to the *Farm Household Support Amendment Act 2000*.

Table A

restart income support has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

restart re-establishment grant has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

Taxation Laws Amendment Act (No. 7) 2000 (No. 173, 2000)

Schedule 4

65 Application of amendments

- (1) The amendments made by this Schedule (except those made by items 2, 6 and 30) apply to assessments for the 1998-99 income year and later income years.
- (2) The amendment made by item 2 applies to schemes entered into after 3 pm, by legal time in the Australian Capital Territory, on 29 April 1997.

Taxation Laws Amendment (Changes for Senior Australians) Act 2001
(No. 44, 2001)

Schedule 1

11 Application

The amendments made by this Schedule apply to assessments for the 2000-2001 year of income and later years of income.

12 Transitional—regulations

- (1) Regulations made under subsection 160AAAA(3) of the *Income Tax Assessment Act 1936* that are in force immediately before the commencement of this item are taken, from that time, to have been made under that subsection as amended by this Act.

Table A

- (2) Regulations made under subsection 160AAAB(3) of the *Income Tax Assessment Act 1936* that are in force immediately before the commencement of this item are taken, from that time, to have been made under that subsection as amended by this Act.

Governor-General Legislation Amendment Act 2001 (No. 57, 2001)

Schedule 2

4 Application

- (1) The repeal and amendments made by this Schedule apply in relation to income derived on or after 29 June 2001 (the *commencing day*).
- (2) However, the repeal and amendments do not apply in relation to income derived on or after the commencing day by a State Governor who held that office immediately before the commencing day.

Taxation Laws Amendment Act (No. 1) 2001 (No. 72, 2001)

Schedule 2

108 Amendments related to arrangements treated as sale and loan

- (2) The amendments made by Part 2 of this Schedule (other than by item 35) apply to arrangements entered into after 27 February 1998.

109 Amendments related to limited recourse debt

- (2) The amendments made by Part 3 of this Schedule (other than by items 83 and 90) apply to debts that are terminated after 27 February 1998.

110 Amendments related to property transferred as security

The amendments made by Part 4 of this Schedule apply to transfers of property where the transaction under which the property was provided, or redeemed, as security was entered into after 27 February 1998.

Table A

Taxation Laws Amendment Act (No. 3) 2001 (No. 73, 2001)

Schedule 2

95 Application

- (1) The amendments made by this Part of this Schedule apply in respect of the 2001-2002 year of income and later years of income.
- (2) In addition, the amendments of the *Income Tax Assessment Act 1936* made by this Part of this Schedule apply in respect of an instalment quarter that is a transitional quarter within the meaning of item 49 of this Schedule.

Schedule 3

17 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Part apply, and are taken to have applied, in respect of instalments or payments that are due on or after 1 April 2001.

Schedule 4

10 Application

The amendments made by this Schedule apply to each day of each quarter mentioned in subsection 8AAD(2) of the *Taxation Administration Act 1953* (as amended) where the quarter begins on or after the day on which this Act receives the Royal Assent.

New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001 (No. 77, 2001)

Schedule 2

488 Application

- (1) Subject to this item, the amendments made by this Schedule apply to:
 - (a) depreciating assets:
 - (i) you start to hold under a contract entered into after 30 June 2001; or

Table A

- (ii) you constructed where the construction started after that day; or
- (iii) you start to hold in some other way after that day; and
- (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

New Business Tax System (Simplified Tax System) Act 2001 (No. 78, 2001)

15 Application

- (1) Subject to this item, the amendments made by this Schedule apply to assessments for the first year of income starting after 30 June 2001 and later years of income.
- (2) The amendments made by items 5 and 14 apply to expenditure incurred by a taxpayer in a year of income after the taxpayer's year of income that includes 21 September 2002.

Taxation Laws Amendment (Superannuation Contributions) Act 2001
(No. 89, 2001)

Schedule 1**11 Application of amendments**

- (1) The amendments made by Parts 1 and 2 of this Schedule apply to contributions made after 4 pm (by legal time in the Australian Capital Territory) on 30 June 2000.

12 Transitional—interpretation of section 82AAA

The amendment of section 82AAA of the *Income Tax Assessment Act 1936* made by item 3:

- (a) is for the avoidance of doubt; and
- (b) is not to be taken to affect by implication the interpretation of that section as in force at any time before the commencement of that item.

Table A

New Business Tax System (Thin Capitalisation) Act 2001 (No. 162, 2001)

Schedule 1

23 Application—section 128F of the *Income Tax Assessment Act 1936*

The amendment of section 128F of the *Income Tax Assessment Act 1936* made by this Schedule applies only in relation to a debenture that is issued on or after 1 July 2001.

23A Application—section 160AF of the *Income Tax Assessment Act 1936*

The amendments of section 160AF of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to assessable income of a year of income that begins on or after 1 July 2001.

24 Application—section 160AFD of the *Income Tax Assessment Act 1936*

The amendment of section 160AFD of the *Income Tax Assessment Act 1936* made by this Schedule applies to a class of assessable foreign income of a year of income that begins on or after 1 July 2001.

25 Application—section 160ZZZJ and related provisions of the *Income Tax Assessment Act 1936*

- (1) The amendments of sections 160ZZW and 160ZZZJ of the *Income Tax Assessment Act 1936* made by this Schedule applies only to an amount of interest taken under section 160ZZZA of that Act to be paid to, and derived by, a foreign bank during an income year that begins on or after 1 July 2001.
- (2) Despite the repeals of sections 160ZZZB and 160ZZZD of the *Income Tax Assessment Act 1936* by this Schedule, those sections continue to apply in relation to an amount of interest taken under section 160ZZZA of that Act to be paid to, and derived by, a foreign bank during an income year that began before 1 July 2001.

26 Application—section 262A of the *Income Tax Assessment Act 1936*

The amendment of section 262A of the *Income Tax Assessment Act 1936* made by this Schedule applies:

Table A

- (a) for records required to be kept under section 820-960—in relation to an income year that begins on or after 1 July 2002; and
- (b) for records required to be kept under section 820-980—in relation to an income year that begins on or after 1 July 2001.

New Business Tax System (Debt and Equity) Act 2001 (No. 163, 2001)

Schedule 1**118 Application of amendments***Definitions*

- (1) In this item:

CGT amendments means the amendments made by items 7 to 32 of this Schedule.

debt and equity test amendments means the amendments made by this Schedule (other than the CGT amendments).

Application of debt and equity test amendments

- (2) The debt and equity test amendments apply to transactions that take place on or after 1 July 2001. This is so whether the interest in relation to which the transaction takes place was issued before, or is issued on or after, that date. This subitem has effect subject to subitem (6).

Application of debt and equity test amendments to interests issued before 1 July 2001

- (6) If an interest was issued before 1 July 2001, the debt and equity test amendments:
- (a) apply only to transactions that take place in relation to the interest on or after 1 July 2004 if the issuer of the interest does not make an election under paragraph (b); and
 - (b) apply to transactions that take place in relation to the interest on or after 1 July 2001 if the issuer elects to have this paragraph apply to the interest.
- (7) For the purposes of subitem (6), an interest is taken to be issued on or after 1 July 2001 if:

Table A

- (a) the interest is issued on or after that date; or
- (b) the interest is issued before that date; and:
 - (i) the terms of the interest are altered on or after that date; or
 - (ii) the interest is rolled over on or after that date; or
 - (iii) the original term of the interest is extended on or after that date.

In applying subparagraph (b)(i), disregard minor alterations that do not affect rights and obligations in relation to the interest.

- (9) If paragraph (6)(a) applies to an interest:
 - (a) paragraph 164-10(1)(b) of the *Income Tax Assessment Act 1997* applies to the interest as if the second reference in that paragraph to “1 July 2001” were instead a reference to “1 July 2004”; and
 - (b) section 164-15 of the *Income Tax Assessment Act 1997* applies to the interest as if the following references were instead references to “1 July 2004”:
 - (i) the first reference in subsection 164-15(3) to “1 July 2001”;
 - (ii) the reference in subsection 164-15(3) to “that day”;
 - (iii) the references in paragraph 164-15(3)(b) and subsection 164-15(4) to “1 July 2001”.
- (10) An election in relation to an interest is effective for the purposes of paragraph (6)(b) only if:
 - (a) the election is lodged with the Commissioner within:
 - (i) 90 days after the day on which this Act receives the Royal Assent; or
 - (ii) such further time as the Commissioner allows; and
 - (b) an election under paragraph (6)(b) is made in relation to all other interests that:
 - (i) were issued by the issuer before 1 July 2001; and
 - (ii) are substantially similar to that interest and in relation to which an election under that subitem can be made; and
 - (c) the election contains the following information:
 - (i) the name of the issuer;
 - (ii) the tax file number of the issuer;
 - (iii) the legal form of the interest;

Table A

- (iv) ASX code or other stock exchange listing code allotted to the issue (if applicable);
- (v) the date of the issue;
- (vi) the face value of the issue;
- (vii) the number of interests of that kind on issue when the election is made;
- (viii) coupon/dividend rates and terms including contingencies;
- (ix) maturity details;
- (x) redemption details and terms including contingencies;
- (xi) conversion/exercise details.

An election under paragraph (6)(b) cannot be revoked.

- (11) The Commissioner may allow further time under subparagraph (10)(a)(ii) if he or she:
- (a) is satisfied that the issuer would otherwise not have sufficient opportunity to make the election; or
 - (b) otherwise considers it reasonable to do so.

- (12) If:
- (a) paragraph (6)(a) applies to an interest; and
 - (b) on or after 1 July 2001 and before 1 July 2004:
 - (i) the terms of the interest are altered; or
 - (ii) the interest is rolled over; or
 - (iii) the original term of the interest is extended;

then:

- (c) the debt and equity test amendments apply to the transactions in relation to the interest that take place after the event referred to in paragraph (b) occurs; and
- (d) subitem (9) applies to the interest as if references in that subitem to 1 July 2004 were references to the time when that event occurs.

In applying subparagraph (b)(i), disregard minor alterations that do not affect rights and obligations in relation to the interest.

- (13) A reference in this item to a **transaction** includes a reference to:
- (a) making a return; and
 - (b) paying a dividend or unit trust dividend; and
 - (c) making a distribution in relation to a unit trust; and

Table A

- (d) paying, crediting or lending an amount; and
- (e) making a non-share distribution; and
- (f) forgiving a debt; and
- (g) redeeming, cancelling or buying back an interest; and
- (h) converting an interest.

Taxation Laws Amendment Act (No. 2) 2001 (No. 167, 2001)

Schedule 2

3 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to transfers on or after 1 July 1998.

Schedule 4

7 Application

The amendments of the *Income Tax Assessment Act 1936* made by items 5 and 6 of this Schedule apply to gifts made in the 1996-97 income year and earlier income years.

Schedule 5

4 Application

The amendments of the *Income Tax Assessment Tax 1936* made by this Schedule apply to income derived on or after 1 July 2000.

Schedule 6

3 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments for the 1999-2000 income year and all later income years.

Table A

Taxation Laws Amendment Act (No. 5) 2001 (No. 168, 2001)

Schedule 2**3 Exclusion of subsection 48(2) of Acts Interpretation Act**

Subsection 12(2) of the *Legislative Instruments Act 2003* does not apply, and is taken never to have applied, to a regulation, or a provision of regulations, amending Schedule 14 to the Income Tax Regulations, so as to omit items 501, 502 and 509 of that Schedule, with effect on and from 1 July 2000.

Taxation Laws Amendment Act (No. 6) 2001 (No. 169, 2001)

Schedule 2**3 Application**

The amendments made by this Schedule apply in relation to income derived after 30 June 2000.

Schedule 6**19 Application**

- (1) The amendments made by this Schedule (other than items 4A, 4B, 16C to 16J, 16L, 18 and 18A) apply, and are taken to have applied, to assessments for the 2000-2001 income year and later income years.
 - (2) However, a declaration made under subitem 26(2) of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000* has effect, and is taken to have had effect, in relation to the amendments made by this Schedule in the same way that it has, and had, effect in relation to the amendments made by Part 1 of that Schedule.
 - (2B) The amendments made by items 16C to 16K apply on and after the day on which this Act receives the Royal Assent.
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Table A

Taxation Laws Amendment (Research and Development) Act 2001
(No. 170, 2001)

Schedule 1

6 Application

The amendment made by item 5 applies to activities that commence to be carried on after 12 am, by legal time in the Australian Capital Territory, at the start of 1 July 2002.

Schedule 2

2 Application

The amendment made by this Part applies to expenditure incurred by an eligible company on:

- (a) the acquisition, or the construction, under a contract entered into on or after 1 July 1985, of a unit of plant; or
- (b) the construction by the company, being construction that commenced on or after 1 July 1985, of a unit of plant.

51 Application

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 29 January 2001 occurs and for later income years.

Schedule 3

19 Application

- (1) Subject to subitem (2), the amendments made by this Schedule apply to assessments for the first year of income starting after 30 June 2001 and for later years.

Schedule 4

11 Application

The amendments made by this Schedule apply to expenditure incurred in the first year of income starting after 30 June 2001.

Schedule 2

92 Application

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 1 July 2001 occurs and for later income years.

Taxation Laws Amendment (Superannuation) Act (No. 1) 2002 (No. 15, 2002)

Schedule 1

21 Application

The amendments made by this Schedule apply to payments made on or after 1 July 2002.

Taxation Laws Amendment Act (No. 1) 2002 (No. 26, 2002)

9 Application of amendments

- (1) The amendments made by Part 1 of this Schedule apply to expenditure incurred on or after 2 October 2001 and on or before 30 June 2006.
- (3) The amendments made by Part 3 of this Schedule apply to expenditure incurred by a taxpayer in an income year after the taxpayer's income year that includes 21 September 2002 and before the taxpayer's income year that includes 1 July 2006.

Taxation Laws Amendment (Film Incentives) Act 2002 (No. 27, 2002)

Schedule 1

12 Application

The amendments made by this Schedule apply to expenditure incurred at any time (whether before or after the commencement of this Schedule).

Table A

Taxation Laws Amendment (Baby Bonus) Act 2002 (No. 32, 2002)

4 Application

The amendments made by this Act apply to assessments for the 2001-02 income year and later income years.

Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002 (No. 39, 2002)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 2

3 Application of amendments

The amendments made by items 1 and 2 apply to assessments for the 1997-98 year of income and later years of income.

Taxation Laws Amendment (Superannuation) Act (No. 2) 2002 (No. 51, 2002)

4 Amendment of assessments

Section 37 of the *Superannuation Guarantee (Administration) Act 1992* and section 170 of the *Income Tax Assessment Act 1936* do not prevent the amendment of an assessment for the purposes of giving effect to this Act.

Schedule 1

202 Application of amendments made by Part 2

- (2) The amendments made by items 170 to 186 apply in relation to assessments under the *Income Tax Assessment Act 1936* for the 2003-2004 year of income and later years of income.

Schedule 3

4 Application of amendments made by Part 1

The amendments made by Part 1 apply in relation to assessments for the 2002-2003 year of income and later years of income.

Schedule 4

3 Application of amendments

The amendments made by items 1 and 2 apply in relation to assessments for the 2002-2003 year of income and later years of income.

Schedule 5

2 Application of amendment

The amendment made by item 1 applies in relation to assessments for the 2002-2003 year of income and later years of income.

Taxation Laws Amendment Act (No. 4) 2002 (No. 53, 2002)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

47 Application—amendment of section 160AF of the *Income Tax Assessment Act 1936*

The amendment of section 160AF of the *Income Tax Assessment Act 1936* made by this Schedule applies in relation to assessable income of a year of income that begins on or after 1 July 2001.

Table A

48 Application—amendment of section 262A of the *Income Tax Assessment Act 1936*

The amendment of section 262A of the *Income Tax Assessment Act 1936* made by this Schedule applies in relation to a year of income that begins on or after 1 July 2001.

Taxation Laws Amendment Act (No. 2) 2002 (No. 57, 2002)

Schedule 1

11 Application

- (1) The amendment made by item 1 of this Schedule applies to:
 - (a) franking deficit tax for franking years ending on or after 1 July 2001; and
 - (b) deficit deferral tax in relation to PAYG instalments paid during a franking year ending on or after 1 July 2001.
- (2) The amendment made by item 2 of this Schedule applies to:
 - (a) the payment of a class C franked dividend to a shareholder of a company on or after 1 July 2001; and
 - (b) a trust amount or partnership amount that relates, directly or indirectly, to payment of a class C franked dividend to a shareholder in a company on or after 1 July 2001.
- (3) The amendment made by item 4 of this Schedule applies to dividends paid on or after 1 July 2001.
- (4) The amendment made by item 5 of this Schedule applies to deficit deferral tax in relation to PAYG instalments paid during a franking year ending on or after 1 July 2001.

Schedule 3

4 Application

The amendments made by this Schedule apply to dividends paid on or after 1 July 2000.

Schedule 4

4 Application

- (1) The amendments made by items 1 and 2 of this Schedule apply to assessments for years of income that begin on or after 1 July 2000.

Schedule 5

2 Application

The amendment made by this Schedule applies to trust amounts that are attributable to dividends paid on or after 1 July 2000.

Schedule 6

3 Application

The amendments made by this Schedule apply to assessments for the 2000-2001 year of income and later years of income.

Schedule 9

41 Application

The amendments made by items 1 and 6 apply to gifts made after 30 June 1985 and before 1 July 1997.

42 Application

The amendments made by items 2, 3 and 5 apply to gifts made after 22 July 1994 and before 1 July 1997.

43 Application

The amendments made by items 4 and 7 apply to gifts made after 14 September 1993 and before 1 July 1997.

44 Application

The amendment made by item 8 applies to gifts made after 18 March 1985 and before 1 July 1997.

Table A

Schedule 11

5 Application

The amendments made by this Schedule apply to CGT events happening on or after 10 December 1999.

Schedule 12

6 Application

The amendment made by item 5 applies to assessments in respect of income for the 1998-99 year of income and all later years of income.

9 Application

The amendment made by item 8 applies to assessments for the 1998-99 income year and later income years.

13 Application

The amendment made by item 12 applies in relation to income derived on or after 1 July 1997.

86 Application

An item in a Schedule to an Act that is repealed by an item in this Part is taken never to have had any effect.

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 (No. 90, 2002)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 10

2 Basic rule about application of section 160AFE

- (1) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies in relation to a taxpayer for each of its:
-

Table A

- (a) income years starting after 30 June 2003; and
 - (b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting after 30 June 2003.
- (2) This item does not apply in relation to a taxpayer to which item 3 applies.
- Note: If you have a substituted accounting period, item 5 or 7 may apply instead of this item.

3 Different application for members of certain groups

- (1) This item applies to a taxpayer if:
- (a) the taxpayer becomes a member of a consolidated group or MEC group on the day (the *consolidation day*) the group comes into existence; and
 - (b) the consolidation day either is before 1 July 2003 or is both:
 - (i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and
 - (ii) before 1 July 2004; and
 - (c) the taxpayer was not a member of a consolidated group or MEC group before the consolidation day.
- (2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies in relation to the taxpayer for each of its:
- (a) income years starting on or after the consolidation day; and
 - (b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting on or after the consolidation day.
- Note: If you become the head company of a consolidated group on or after 1 July 2002 and before 1 July 2003 on a day that is not the start of your income year, item 6 will apply instead of this item.

4 Transitional provision for section 160AFE

For the purposes of paragraph 160AFE(3)(d) of the *Income Tax Assessment Act 1936* as in force immediately after the commencement of this Schedule, take account of an amount utilised or applied under section 160AFE of that Act as in force either before or after that commencement for a year of income ending before or after that commencement.

Table A

5 Modification of basic rule

- (1) This item applies to a taxpayer instead of item 2 if the taxpayer:
 - (a) has a substituted accounting period; and
 - (b) is not a member of a consolidated group or a MEC group.
- (2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from 1 July 2003. That section applies from 1 July 2003 until the start of the taxpayer's next income year as if that period were an income year.
- (3) Section 160AFE of the *Income Tax Assessment Act 1936* as in force just before the commencement of this Schedule (the *old section 160AFE*) applies to the taxpayer from the start of the taxpayer's income year in which 1 July 2003 occurs until the end of 30 June 2003 as if that period were an income year.

6 Consolidation day on or after 1 July 2002 and before 1 July 2003

- (1) This item applies to a taxpayer instead of item 3 if:
 - (a) the taxpayer becomes the head company of a consolidated group or MEC group on the day (also the *consolidation day*) the group comes into existence; and
 - (b) the consolidation day is on or after 1 July 2002 and before 1 July 2003 and is not the start of an income year (whether or not the taxpayer has a substituted accounting period).
 - (2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from the consolidation day. That section applies from the consolidation day until the end of the taxpayer's income year in which that day occurs as if that period were an income year.
 - (3) If:
 - (a) the consolidation day is after 1 July 2002; and
 - (b) the taxpayer does not have a substituted accounting period;the old section 160AFE applies to the taxpayer from 1 July 2002 until just before the consolidation day. If the taxpayer so chooses, it applies as if that period were an income year.
 - (4) If the taxpayer has a substituted accounting period, the old section 160AFE applies to the taxpayer from the start of the taxpayer's income
-

year in which the consolidation day occurred until just before the consolidation day. If the taxpayer so chooses, it applies as if that period were an income year.

7 Consolidation day on or after 1 July 2003

- (1) This item applies to a taxpayer instead of item 2 if:
 - (a) the taxpayer has a substituted accounting period; and
 - (b) the taxpayer becomes the head company of a consolidated group or MEC group on the day (also the *consolidation day*) the group comes into existence; and
 - (c) the consolidation day is on or after 1 July 2003 and is not the start of the taxpayer's next income year.
- (2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from 1 July 2003. That section applies from 1 July 2003 until the start of the taxpayer's next income year as if that period were an income year.
- (3) The old section 160AFE applies to the taxpayer from the start of the taxpayer's income year in which 1 July 2003 occurs until the end of 30 June 2003. If the taxpayer so chooses, it applies as if that period were an income year.

8 Applying old section 160AFE to part years

- (1) Subitem (2) has effect for the purposes of applying the old section 160AFE:
 - (a) to a taxpayer as mentioned in item 5, 6 or 7; and
 - (b) for a period that is shorter than an income year.
- (2) The requirement in paragraph (1D)(b) of that section that the income company be a group company in relation to the credit company in relation to the current year of income has effect as if it were a requirement that the income company be a group company in relation to the credit company:
 - (a) continuously for a period of at least 12 months ending on the day before the day on which section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule starts to apply to the taxpayer; or
 - (b) from the time when the income company and the credit company were both in existence, if that period is shorter.

Table A

9 Applying old section 160AFE to non-membership periods

- (1) Subitem (2) has effect for the purposes of applying the old section 160AFE to a taxpayer that:
 - (a) becomes a subsidiary member of a consolidated group or MEC group; and
 - (b) has a period referred to in section 701-30 as a non-membership period.
- (2) The requirement in paragraph (1D)(b) of the old section 160AFE that the income company be a group company in relation to the credit company in relation to the current year of income has effect as if it were a requirement that the income company be a group company in relation to the credit company:
 - (a) continuously for a period of at least 12 months ending on the last day of the non-membership period; or
 - (b) from the time when the income company and the credit company were both in existence, if that period is shorter.

10 Parts of income years not earlier income years

Any period that is shorter than an income year and that is treated as if it were an income year for the purposes of item 5, 6 or 7 of this Schedule is taken not to be an earlier income year for the purposes of section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule.

11 Transitional provision for section 160AF

- (1) This item applies if:
 - (a) because of item 5, 6 or 7, old section 160AFE applies to a taxpayer as if a period were an income year (the *notional income year*); and
 - (b) the taxpayer has an initial excess credit (within the meaning of old section 160AFE) in relation to the notional income year; and
 - (c) the taxpayer transfers all or part (the extent of the transfer being the *transfer amount*) of that initial excess credit under old section 160AFE for utilisation by another company in the notional income year.
 - (2) Section 160AF of the *Income Tax Assessment Act 1936* applies to the taxpayer for the year of income in which the notional income year ends
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Table A

as if the amount of foreign tax paid by the taxpayer mentioned in paragraph 160AF(1)(b) of that Act were reduced by the transfer amount.

- (3) This item operates separately in relation to each class of foreign income identified in subsection 160AF(7) of the *Income Tax Assessment Act 1936*, as if the taxpayer's foreign income of that class for a year of income were the whole of the taxpayer's foreign income for that year.

Schedule 16**54 Transitional**

A company that makes payments in respect of shares in the company under a demerger that happens on or after 1 July 2002 and before this Act receives the Royal Assent can choose to apply section 45B of the *Income Tax Assessment Act 1936* as that section existed before the amendments made by this Act to the demerger rather than that section as amended by this Act if:

- (a) the head entity of the demerger group is a listed public company; and
- (b) the only CGT events (if any) that happen under the demerger to all original interests in that head entity are CGT event A1, CGT event C2 or CGT event G1.

55 Application

The amendments made by this Schedule apply to demergers happening on or after 1 July 2002.

Taxation Laws Amendment Act (No. 3) 2002 (No. 97, 2002)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Table A

Schedule 3

2 Application

The amendment made by this Schedule applies to dividends paid on or after 1 July 2000.

New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002 (No. 117, 2002)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 16

3 Application of item 2

The amendment of the *Income Tax Assessment Act 1936* made by item 2 of this Schedule applies to dividends paid after 30 June 2002.

Taxation Laws Amendment Act (No. 5) 2002 (No. 119, 2002)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

100 Application of amendments

- (1) The amendments made by items 1 to 39 (inclusive), 50 to 58 (inclusive) and 76 of this Schedule apply to:
- (a) depreciating assets:

Table A

- (i) you start to hold under a contract entered into after 30 June 2001; or
 - (ii) you constructed where the construction started after that day; or
 - (iii) you start to hold in some other way after that day; and
- (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

Schedule 4

19 Application

The amendments made by Part 1 of this Schedule apply to:

- (a) an amount withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* during a financial year beginning on or after 1 July 2001; and
- (b) a payment received during a financial year beginning on or after 1 July 2001 that gives rise to a liability under Division 13 of that Schedule; and
- (c) a non-cash benefit provided during a financial year beginning on or after 1 July 2001 that gives rise to a liability under Division 14 of that Schedule.

Taxation Laws Amendment (Venture Capital) Act 2002 (No. 136, 2002)

Schedule 2

28 Application

The amendments made by this Schedule apply, and are taken to have applied, to the 2002-2003 income year and later income years.

Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Act 2002 (No. 138, 2002)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the

Table A

commencement of this section for the purpose of giving effect to this Act.

Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003
(No. 10, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

81 Application—items 34 to 52

The amendments made by items 34 to 52 of this Schedule apply in relation to events that occur, and circumstances that arise, on or after 20 May 2002.

Taxation Laws Amendment Act (No. 1) 2003 (No. 12, 2003)

Schedule 1

10 Application

- (1) The amendment made by item 4 applies to income that consists of interest derived on or after 29 August 2001.
- (2) The amendment made by item 5 applies to an amount of the transfer price of a debenture that is, on or after 29 August 2001, deemed by section 128AA to be income that consists of interest.
- (3) The amendment made by item 6 applies to the issue of a debenture by a company on or after 29 August 2001.
- (4) The amendment made by item 7 applies to interest paid on or after 29 August 2001 by a company in respect of a debenture.

Schedule 3**11 Application**

The amendments made by this Part apply to an assessment for the income year including 1 January 2003 or a later income year.

New Business Tax System (Consolidation and Other Measures) Act 2003
(No. 16, 2003)

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 9**12 Application of amendments**

- (1) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a dividend or non-share dividend paid after 30 June 2003 by a company, except a company to which subitem (2) applies.
- (2) This subitem and subitem (3) apply to a company if:
 - (a) the company becomes a member of a consolidated group or MEC group on the day (the *consolidation day*) the group comes into existence; and
 - (b) the consolidation day either is before 1 July 2003 or is both:
 - (i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and
 - (ii) before 1 July 2004; and
 - (c) the company was not a member of a consolidated group or MEC group before the consolidation day.
- (3) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a dividend or non-share dividend paid by a company on or after the consolidation day.

Table A

- (4) A term used in subitem (2) and defined in the *Income Tax Assessment Act 1997* has the same meaning in that subitem as it has in that Act.
- (5) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to a dividend or a non-share dividend that:
 - (a) is paid by a company (the *paying company*) after 30 June 2002; and
 - (b) is paid to a company that:
 - (i) is related (within the meaning of subsection 51AE(16) of that Act) to the paying company; and
 - (ii) is a member of a consolidated group or MEC group.
- (6) A term used in paragraph (5)(a) or (b) and defined in the *Income Tax Assessment Act 1997* has the same meaning in that paragraph as it has in that Act.
- (7) To avoid doubt, the amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to a dividend or a non-share dividend if they apply to it under subitem (5), even if they would not apply to it under subitem (1) or (3).

Schedule 29

14 Application

- (1) The amendments made by items 8 to 10 of this Schedule apply to income derived after 30 June 2002.
- (2) The amendment made by item 11 of this Schedule applies to distributions that are made or that flow indirectly after 30 June 2002.

Taxation Laws Amendment (Personal Income Tax Reduction) Act 2003
(No. 45, 2003)

4 Application

The amendments made by Schedule 1 apply to assessments for the 2003-2004 income year and later income years.

Table A

Taxation Laws Amendment Act (No. 2) 2003 (No. 65, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

2 Application

The amendment of the *Income Tax Assessment Act 1936* made by this Schedule applies to assessments made after the commencement of section 4 of this Act.

Note: Section 4 of this Act allows the amendment of an assessment, made before the commencement of that section, for the purposes of giving effect to this Act.

Schedule 4

2 Application

The amendment made by this Schedule applies to assessments in respect of the 2002-03 year of income and for all later years of income.

Schedule 5

4 Application

The amendment made by item 2 of this Schedule applies in relation to income derived on or after 1 January 2000.

Taxation Laws Amendment Act (No. 4) 2003 (No. 66, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Table A

Schedule 1

18 Application

The amendments made by this Schedule apply to commutations occurring, and residual capital values becoming payable, on or after 1 July 2001.

Schedule 3

140 Application

- (1) Subject to this item, the amendments made by this Schedule apply to assessments for the 2003-04 income year and later income years.
- (5) The amendments made by items 41, 42, 43, 44, 45, 126, 127 and 128 apply to amounts derived on or after 1 July 2000.
- (7) The amendment made by item 46A applies to distributions that are made or that flow indirectly after 30 June 2002.

Taxation Laws Amendment Act (No. 6) 2003 (No. 67, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 9

18 Transitional provision

- (1) This item applies to an application made under:
 - (b) section 265 of the *Income Tax Assessment Act 1936* before its repeal by item 15 of this Schedule.
- (2) If the application has not been finally determined before the commencement of this Schedule, Division 340 in Schedule 1 to the *Taxation Administration Act 1953* applies as if the application had been made under section 340-5 in Schedule 1 to that Act.

19 Application provision

A person may be released, under Division 340 in Schedule 1 to the *Taxation Administration Act 1953*, from a liability that the person has incurred even if the liability was incurred before the commencement of this Schedule.

Taxation Laws Amendment Act (No. 3) 2003 (No. 101, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

5 No tax consequences result from AGL's corporate conversion etc.

- (1) The object of this section is to ensure that no taxation consequences (other than those arising under subsections (9) and (10)) arise in relation to any person as a result of:
 - (a) AGL's corporate conversion; or
 - (b) AGL's registration; or
 - (c) the operation of any provision of the Conversion Act; or
 - (d) any action taken under any provision of the Conversion Act.
- (2) In resolving any ambiguity as to the meaning of this section, an interpretation that is consistent with the object of this section is to be preferred to an interpretation that is not consistent with that object.
- (3) This section only has effect for the purposes of any Commonwealth laws relating to taxation, including, but not limited to:
 - (a) the income tax law; and
 - (b) the GST law; and
 - (c) the fringe benefits tax law; and
 - (d) the *A New Tax System (Australian Business Number) Act 1999*; and
 - (e) the *Taxation Administration Act 1953*; and
 - (f) the *International Tax Agreements Act 1953*; and

Table A

- (g) the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
 - (h) the *Superannuation Guarantee (Administration) Act 1992*; and
 - (i) the *Superannuation Guarantee Charge Act 1992*.
- (4) AGL, corporatised AGL and registered AGL are taken to be, and to have always been, the same company and the same entity.
- (5) Subsections (6) to (8) do not limit, by implication, any other effects of this section.
- (6) No taxation consequences (other than those arising under subsections (9) and (10)) are taken to have arisen in relation to any person as a result of:
 - (a) AGL's corporate conversion; or
 - (b) AGL's registration; or
 - (c) the operation of any provision of the Conversion Act; or
 - (d) any action taken under any provision of the Conversion Act.
- (7) The legal and beneficial ownership of:
 - (a) shares in AGL; and
 - (b) interests in shares in AGL;are taken not to have altered as a result of AGL's corporate conversion or AGL's registration. However, this subsection does not imply that those shares are not shares in corporatised AGL or registered AGL.
- (8) Anything done by or to:
 - (a) AGL's Secretary; or
 - (b) the estate of AGL's Secretary; or
 - (c) a replacement trustee in respect of the trust created by subclause 4(1)(c) of Schedule 3 to the Conversion Act;as a result of the operation of clause 4 of Schedule 3 to the Conversion Act is taken to have been done by or to corporatised AGL or registered AGL, as the case may be.
- (9) Despite any other provision of this section:
 - (a) the item 9 of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* that was included in that Act as originally enacted; and

Table A

(b) the item of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* that was inserted in that Act by item 7 of Schedule 1 to the *Taxation Laws Amendment Act (No. 7) 1999*;

apply to AGL as if the reference in each of those items of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* to “Schedule 5 to the *Company Law Review Act 1998*” were a reference to “Schedule 4 to the Conversion Act”.

Note: Item 7 of Schedule 1 to the *Taxation Laws Amendment Act (No. 7) 1999* inserted a second item 9 of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* into that Act.

- (10) Despite any other provision of this section, any Commonwealth law that:
- (a) relates to taxation; and
 - (b) has a substantially similar effect to an item of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* mentioned in paragraph (9)(a) or (9)(b); and
 - (c) commences after the commencement of this section;
- is taken to be modified in such a way as to enable it to apply to AGL and to apply to AGL in that modified form.

- (11) In this section:

AGL has the same meaning as in the Conversion Act.

AGL’s corporate conversion means AGL being constituted as a body corporate under the Conversion Act.

AGL’s registration means corporatised AGL’s registration as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* in accordance with the Conversion Act.

AGL’s Secretary means a person who was the Secretary of AGL under AGL’s constitution immediately before AGL’s corporate conversion.

Conversion Act means the *AGL Corporate Conversion Act 2002* of New South Wales.

corporatised AGL has the same meaning as in the Conversion Act.

registered AGL has the same meaning as in the Conversion Act.

Table A

taxation means any taxation imposed under a Commonwealth law.

- (12) Other expressions mean the same in this section as in the *Income Tax Assessment Act 1997*.

Schedule 1

21 Application

The amendment made by item 1 applies to gifts made after 8 January 1992 and before 1 July 1997.

Schedule 3

6 Application

The amendments made by this Schedule apply to distributions made on or after 1 July 2002.

Schedule 4

2 Application

The amendment made by this Schedule applies, and is taken to have applied, in relation to the 1999-2000 income year and later income years.

Taxation Laws Amendment Act (No. 8) 2003 (No. 107, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

9 Application

- (2) The amendments made by Part 2 of this Schedule apply to non-share dividends paid after 30 June 2001 and before 1 July 2002.

Schedule 6**3 Application**

The amendment of the *Income Tax Assessment Act 1936* made by item 2 of this Schedule applies to deposits and transfers made on or after 1 July 2003.

Schedule 7**12 Application**

The amendment made by item 11 applies in relation to an entity's assessments for the first income year (within the meaning of section 205-75 of the *Income Tax (Transitional Provisions) Act 1997*) and later income years.

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003 (No. 111, 2003)

Schedule 1**25 Application of amendments**

The amendments made by Part 1 of this Schedule apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2003.

Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003 (No. 122, 2003)

Schedule 2**18 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to information acquired before, on or after the commencement of this Schedule by the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner.

Table A

New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003 (No. 133, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

17 Application of amendments

- (1) The amendments of sections 26BB and 70B of the *Income Tax Assessment Act 1936* made by this Schedule apply to the disposal or redemption of a traditional security if the traditional security was issued after 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2002.

Schedule 4

77 Transitional—Division 3B of Part III of the *Income Tax Assessment Act 1936*

- (1) Despite the repeal of Division 3B of Part III of the *Income Tax Assessment Act 1936* by this Schedule, that Division continues to apply:
 - (a) in relation to an eligible contract entered into before the applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*); or
 - (b) for the purposes of working out the assessable income or allowable deductions of an ADI or a non-ADI financial institution (within the meaning of the *Income Tax Assessment Act 1997*);

as if that repeal had not happened.

Note: For **applicable commencement date**, see section 775-155 of the *Income Tax Assessment Act 1997*.

- (2) Despite the following amendments:
 - (a) the amendment of subsection 20-30(2) of the *Income Tax Assessment Act 1997* by this Schedule;

Table A

- (b) the amendment of subsection 170(10) of the *Income Tax Assessment Act 1936* by this Schedule;

subsection 20-30(2) of the *Income Tax Assessment Act 1997* and subsection 170(10) of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former Division 3B of Part III of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

- (3) Despite the amendments made by this Schedule that omit references to sections 82Y and 82Z of the *Income Tax Assessment Act 1936* from sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*, sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* continue to apply, in relation to the former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

78 Transitional—sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997*

- (1) Despite the repeals of sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997* by this Schedule, those sections continue to apply, in relation to a transaction, event or thing:
- (a) that involves an amount in a foreign currency; and
 - (b) to which section 960-50 of the *Income Tax Assessment Act 1997* does not apply;
- as if those repeals had not happened.
- (2) Despite the following amendments:
- (a) the amendment of section 102AAW of the *Income Tax Assessment Act 1936* by this Schedule;
 - (b) the amendment of section 389 of the *Income Tax Assessment Act 1936* by this Schedule;
- sections 102AAW and 389 of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former section 20 of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

Table A

Taxation Laws Amendment Act (No. 5) 2003 (No. 142, 2003)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

1 Application

The amendments made by this Schedule apply in relation to an income year that begins on or after 1 July 2001.

Schedule 2

1 Application

The amendments made by this Schedule (except Part 5) apply in relation to an income year that begins on or after 1 July 2002.

Schedule 4

2 Application

The amendment made by this Schedule applies to expenditure incurred on or after 1 July 2002.

Schedule 8

24 Application of amendments

- (1) The amendments made by items 1, 2 and 3 apply in relation to the deduction of a tax loss in the year of income including 1 July 2002 and each later year of income.
-

Table A

Taxation Laws Amendment Act (No. 2) 2004 (No. 20, 2004)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 4

9 Application

The amendments made by this Schedule apply to sugar industry exit grants received on or after 1 February 2003.

Schedule 8

14 Application of amendments made by this Schedule

The amendments made by this Schedule apply on and after 1 July 2002.

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (No. 52, 2004)

Schedule 4

14 Application of amendments

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 2004-05 year of income and later years of income.

15 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this item for the purposes of giving effect to subsections 51-32(1) and (4) and 51-33(1) of the *Income Tax Assessment Act 1997* substituted by item 10 of this Schedule.

Table A

Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004 (No. 59, 2004)

Schedule 2

35 Application

The amendment of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for the 2004-05 year of income and later years of income.

Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004 (No. 60, 2004)

Schedule 3

1 Administrative scheme for one-off payments to families and carers

- (1) Subject to this item, the Minister may, in writing, determine a scheme under which one-off payments may be made to families and carers in particular circumstances. The Minister may, in writing, vary or revoke the scheme.
- (2) The circumstances in which the scheme provides for payments must be circumstances:
 - (a) in which the Minister considers that Part 5 of the *A New Tax System (Family Assistance) Act 1999*, and Parts 2.5A and 2.19A of the *Social Security Act 1991*, do not produce appropriate results; and
 - (b) occurring in the financial year starting on 1 July 2003.
- (3) The scheme must not provide for payments to be made at a time that is after 30 June 2007.
- (4) Without limiting the generality of subitem (1), the scheme may deal with the following:
 - (a) the circumstances in which payments are to be made;
 - (b) the amount of the payments;
 - (c) what a person has to do to get a payment;

Table A

- (d) administrative matters, such as determination of entitlement and how and when payments will be made.
- (5) An instrument determining, varying or revoking the scheme is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Payments under the scheme are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

New International Tax Arrangements Act 2004 (No. 73, 2004)

Schedule 1

13 Application

- (1) The amendments made by items 1 to 11 apply to assessments for years of income beginning on or after 1 July 2003.
- (2) The amendment made by item 12 applies in relation to notional accounting periods beginning on or after 1 July 2003.

Schedule 2

6 Application

The amendments made by this Schedule apply to debentures issued on or after the day on which this Act commences.

Schedule 3

2 Application

The amendments made by this Schedule apply in relation to statutory accounting periods beginning on or after 1 July 2004.

Schedule 4

2 Application

The amendment made by this Schedule applies to an application of section 136AD of the *Income Tax Assessment Act 1936* that occurs on or after the day on which this Act receives the Royal Assent.

Table A

Tax Laws Amendment (2004 Measures No. 2) Act 2004 (No. 83, 2004)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

126 Application

- (7) The amendments made by items 108 to 115 apply in relation to amounts received or derived by a taxpayer under or in relation to a life assurance policy after the day on which this Act receives the Royal Assent.

Schedule 2

1 Application

Except as provided otherwise, the amendments made by this Schedule apply on and after 1 July 2002.

37 Application

The amendments made by this Part apply for assessments for the year of income including 1 July 2002 and later years of income.

Schedule 3

6 Application

The amendments made by this Schedule apply to things done on or after 2 December 2003.

7 Transitional

- (1) This item applies to a limited partnership:
- (a) that was formed as a legal entity on or after 2 December 2003 and before the day on which this Act received the Royal Assent; and

Table A

-
- (b) in respect of which an application has been made to the PDF Board for registration as a VCLP or an AFOF under the *Venture Capital Act 2002*; and
 - (c) that could not be registered or conditionally registered as a VCLP or an AFOF before the day on which this Act received the Royal Assent only because it has a legal personality separate from that of its members.
- (2) If the PDF Board decided, before the day on which this Act received the Royal Assent, that it would have registered or conditionally registered a limited partnership to which this item applies as a VCLP or an AFOF under the *Venture Capital Act 2002* had this Act received the Royal Assent before that decision was made:
- (a) the PDF Board is taken to have granted registration or conditional registration of the limited partnership as a VCLP or an AFOF under that Act on the day on which that decision was made; and
 - (b) that registration is taken to have been in force for the purposes of section 13-10 of that Act from that day.

Schedule 9**7 Application**

The amendments made by this Schedule apply to payments made on or after 1 July 2004.

Schedule 10**43 Application provisions**

- (1) The amendments made by items 1 and 2 of this Schedule apply in relation to an exempt institution whose exempt status is disregarded under section 160ARDAB of the *Income Tax Assessment Act 1936* on or after 1 July 2000.

Schedule 11**5 Application of amendments of section 160AFE**

The application of the amendments of section 160AFE of the *Income Tax Assessment Act 1936* made by this Schedule is the same as the application of that section.

Table A

Note: For the application of that section, see items 2, 3, 5, 6 and 7 of Schedule 10 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*.

Tax Laws Amendment (2004 Measures No. 1) Act 2004 (No. 95, 2004)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

2 Application

The amendment made by this Schedule applies, and is taken to have applied, in relation to the 2002-03 income year and later income years.

Schedule 7

13 Application of amendments

The amendments made by this Schedule apply in relation to contributions made on or after 1 July 2004.

Schedule 8

8 Application of items 1, 2 and 3

The amendments made by items 1, 2 and 3 of this Schedule apply to payments or loans made, or debts forgiven, on or after 12 December 2002.

9 Application of items 4, 5, 6 and 7

The amendments made by items 4, 5, 6 and 7 of this Schedule apply to payments or loans made, or debts forgiven, on or after the day on which the Bill for this Act was introduced into the House of Representatives.

Schedule 9**9 Application**

- (1) Subject to subitem (2), the amendment made by item 2 of this Schedule applies to dividends paid after 30 June 2003.
- (2) For a taxpayer to which section 46AC of the *Income Tax Assessment Act 1936* applies, the amendment made by item 2 of this Schedule applies to dividends paid on or after the consolidation day referred to in that section.
- (3) The amendments made by items 1, 3, 4, 5, 6, 7 and 8 of this Schedule apply to dividends paid on or after 1 July 2002.

New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004 (No. 96, 2004)

Schedule 2**140 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply to income years starting on or after 1 July 2004.
- (2) Subject to subitem (2A), the amendments made by Parts 2 and 3 of this Schedule apply to things happening after 30 June 2004.
- (2A) The amendments made by items 7, 58 and 59 of this Schedule apply to statutory accounting periods starting on or after 1 July 2004.
- (3) The amendments made by Parts 4 and 5 of this Schedule apply to income years and statutory accounting periods starting on or after 1 July 2004.

141 Transitional

From 1 July 2004 until regulations are made after the commencement of this item declaring foreign countries or parts of foreign countries to be listed countries or section 404 countries for the purposes of Part X of the *Income Tax Assessment Act 1936*, that Act has effect as if:

- (a) each foreign country or part of a foreign country that, immediately before the commencement of this item, was a

Table A

broad-exemption listed country for the purposes of that Part of that Act were a ***listed country*** for the purposes of that Part of that Act; and

- (b) each foreign country or part of a foreign country that, immediately before the commencement of this item, was a limited-exemption listed country for the purposes of that Part of that Act were a ***section 404 country*** for the purposes of that Part of that Act.

Schedule 3

10 Application

- (1) The amendments made by this Schedule apply in relation to statutory accounting periods beginning on or after 1 July 2004.
- (2) To avoid doubt, the statutory accounting periods mentioned in subitem (1) include years of income that are assumed to be statutory accounting periods for the purposes of section 23AH of the *Income Tax Assessment Act 1936*.

Taxation Laws Amendment Act (No. 1) 2004 (No. 101, 2004)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act (other than item 38 of Schedule 10, so far as that item provides for the insertion of sections 830-15 and 830-20 into the *Income Tax (Transitional Provisions) Act 1997*).

Schedule 1

4 Application of amendments

The amendments made by this Schedule apply to assessments for the 2001-2002 income year and later income years.

Schedule 8**3 Application**

The amendments made by this Schedule apply in respect of service performed on or after 1 July 2001.

Schedule 10**6 Application**

The amendments made by this Part have the same application to assessments of a taxpayer, and for working out the attributable income of a CFC, as does Division 830 of the *Income Tax Assessment Act 1997*.

Note: Division 830 of the *Income Tax Assessment Act 1997* is inserted by Part 2 of this Schedule. Its application is given by Division 830 of the *Income Tax (Transitional Provisions) Act 1997*, which is inserted by Part 3 of this Schedule.

Schedule 11**2 Application**

Section 160AQCND of the *Income Tax Assessment Act 1936* applies in relation to franking years ending after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

18 Application

The amendment of section 6H of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

20 Application

The amendment of section 102M of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

22 Application

The amendment of section 128B of the *Income Tax Assessment Act 1936* made by this Division applies in relation to dividends paid after 30 June 2000.

Table A

24 Application

The amendment of paragraph (a) of the definition of *eligible 26AH amount* in subsection 160AAB(1) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

26 Application

The repeal of paragraph (b) of the definition of *eligible 26AH amount* in subsection 160AAB(1) of the *Income Tax Assessment Act 1936* by this Division applies in relation to policies issued on or after 1 July 2000.

28 Application

The amendment of section 279D of the *Income Tax Assessment Act 1936* made by this Division applies to payments made on or after 1 July 2000.

30 Application

The amendment of section 279E of the *Income Tax Assessment Act 1936* made by this Division applies to policies issued on or after 1 July 2000.

32 Application

The amendment of section 289A of the *Income Tax Assessment Act 1936* made by this Division applies to policies issued on or after 1 July 2000.

34 Application

The amendment of section 272-125 in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

40 Application

The amendments of section 51AAA of the *Income Tax Assessment Act 1936* made by this Division apply in relation to income derived on or after 1 July 2000.

Table A**43 Application**

The amendments of section 67AAA of the *Income Tax Assessment Act 1936* made by this Division apply in relation to financing costs incurred on or after 1 July 2000.

50 Application

The amendment of section 204 of the *Income Tax Assessment Act 1936* made by this Division applies in relation to income tax for the 2000-01 year of income and later years of income.

63 Application

The amendments of section 24AN of the *Income Tax Assessment Act 1936* made by this Division apply to income derived on and after 1 July 2000.

65 Application

The amendment of section 6H of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

68 Application

The amendments of section 27A of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

70 Application

The amendment of section 103A of the *Income Tax Assessment Act 1936* made by this Division applies to years of income starting on or after 1 July 2000.

72 Application

The amendment of section 140C of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

74 Application

The amendment of section 140ZI of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

Table A

76 Application

The amendment of section 159GP of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

79 Application

The amendment of subsection 275(1) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income starting on or after 1 July 2000.

81 Application

The amendment of subsection 275(5) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to policies issued on or after 1 July 2000.

83 Application

The amendment of section 299B of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

85 Application

The amendment of section 299D of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

87 Application

The amendment of section 272-125 in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Division applies on and after 1 July 2000.

104 Application

The amendments of section 27A of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

106 Application

The amendment of section 67AAA of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

Table A**109 Application**

The amendments of section 102M of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

114 Application

The amendments of section 159SJ of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

116 Application

The amendment of section 279D of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

119 Application

The amendments of section 290A of the *Income Tax Assessment Act 1936* made by this Division apply to years of income starting on or after 1 July 2000.

121 Application

The amendment of section 482 of the *Income Tax Assessment Act 1936* made by this Division applies in relation to notional accounting periods starting on or after 1 July 2000.

123 Application

The amendment of section 27A of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

125 Application

The amendment of section 140C of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

127 Application

The amendment of section 159GP of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

Table A

133 Application

The amendment of section 102M of the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

135 Application

The amendment of section 121F of the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

137 Application

The amendment of section 128B of the *Income Tax Assessment Act 1936* made by this Part applies in relation to income derived on or after 1 July 2001.

140 Application

The amendment of paragraph 272-90(7)(b) in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

162 Application

The amendment of section 121F of the *Income Tax Assessment Act 1936* applies in relation to amounts derived on or after 1 July 2000.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004 (No. 102, 2004)

Schedule 2

10 Application

- (1) The amendments made by items 1 to 3 of this Schedule apply to eligible termination payments made after the commencement of those items.
-

Table A

Tax Laws Amendment (2004 Measures No. 3) Act 2004 (No. 105, 2004)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1

19 Application

The amendments made by this Schedule apply, and are taken to have applied, to CGT events relating to investments made on or after 1 July 2002.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
- (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;
- then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.
- (2) In this section:
- Part 2 Act** means an Act that is amended by an item in Part 2 of Schedule 1.

Table A

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

New International Tax Arrangements (Managed Funds and Other Measures) Act 2005 (No. 21, 2005)

Schedule 3

47 Application

- (1) The amendments made by Part 1 of this Schedule apply to interest paid on debentures or debt interests issued on or after the day on which this Act receives the Royal Assent (the *Assent day*).
- (2) The amendment made by Part 2 of this Schedule applies to payments made on instruments referred to in paragraph (e) of the definition of *interest* in subsection 128A(1AB) of the *Income Tax Assessment Act 1936* issued on or after the Assent day.

Tax Laws Amendment (2004 Measures No. 6) Act 2005 (No. 23, 2005)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

111 Application of amendments

- (3) The amendments made by Part 2 of this Schedule, other than items 26 and 110, apply in relation to events that occur on or after 1 July 2002.

Table A

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- (4) Subject to subitem (5), the amendment made by item 26 of this Schedule applies to dividends paid on or after 1 July 2003.
- (5) For a taxpayer to which section 46AC of the *Income Tax Assessment Act 1936* applies, the amendment made by item 26 of this Schedule applies to dividends paid on or after the consolidation day referred to in that section.

112 Modified application of section 109ZC in 2002-03

Section 109ZC of the *Income Tax Assessment Act 1936*, as it applies in relation to assessments for the 2002-03 income year, has effect as if subsection 109ZC(3) were replaced by the following subsection:

- (3) Subsection (2) does not cause the amount taken not to be a dividend to be exempt income for the purposes of Part 3-6 of the *Income Tax Assessment Act 1997*.

113 Modified application of section 128TB in 2002-03 and 2003-04

Section 128TB of the *Income Tax Assessment Act 1936*, as it applies in relation to dividends paid in the period starting on 1 July 2002 and ending on 30 June 2004, has effect as if the definition of *Co. tax rate* in subsection 128TB(2) were amended by omitting “general company tax rate, within the meaning of section 160APA,” and substituting “corporate tax rate”.

114 Modified application of section 377 in 2002-03 and 2003-04

Section 377 of the *Income Tax Assessment Act 1936*, as it applies in relation to dividends paid in the period starting on 1 July 2002 and ending on 30 June 2004, has effect as if paragraph 377(1)(e) were replaced by the following paragraph:

- (e) so much of a frankable distribution, paid to the company in the qualifying period, as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;
-

Table A

Tax Laws Amendment (2004 Measures No. 7) Act 2005 (No. 41, 2005)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 3

22 Application

- (1) The amendments made by this Schedule apply, and are taken to have applied, to acquisitions of shares or rights on or after 1 July 2004.
- (2) In this item:
acquisition, of a share or right, has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Schedule 6

1 Application

The amendments made by this Schedule apply on and after 1 July 2002.

Schedule 8

5 Application

The amendments made by this Schedule apply to elections specifying the income year in which this Act receives the Royal Assent or a later income year.

Schedule 9

2 Application of item 1

The amendment made by item 1 of this Schedule applies to loans made on or after 12 December 2002.

13 Application

The amendments made by items 3 to 12 of this Schedule apply in relation to loans made in the 2004-2005 year of income or a later year of income.

Schedule 10**30 Application**

The amendment made by item 29 applies to assessments for the 2000-2001 year of income and later years of income.

Schedule 11**5 Application**

The amendments made by this Schedule apply to any expenditure incurred in respect of a film (whether before or after this Schedule commences).

Social Security Legislation Amendment (One-off Payments for Carers) Act 2005
(No. 55, 2005)

The proposed amendment made by Schedule 3 (item 70) of the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008* (No. 19, 2008) was misdescribed and is not incorporated in this compilation.

Schedule 2**1 Administrative scheme for 2005 one-off payments to carers**

- (1) Subject to this item, the Minister may, by legislative instrument, determine a scheme under which one-off payments may be made to carers in particular circumstances. The Minister may, by legislative instrument, vary or revoke the scheme.
- (2) The circumstances in which the scheme provides for payments must be circumstances:
 - (a) in which the Minister considers that Parts 2.5B, 2.5C and 2.19B of the *Social Security Act 1991* do not produce appropriate results; and

Table A

- (b) occurring in the financial year starting on 1 July 2004.
- (3) Without limiting the generality of subitem (1), the scheme may deal with the following:
- (a) the circumstances in which payments are to be made;
 - (b) the amount of the payments;
 - (c) what a person has to do to get a payment;
 - (d) administrative matters, such as determination of entitlement and how and when payments will be made.
- (4) Payments under the scheme are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Tax Laws Amendment (2005 Measures No. 3) Act 2005 (No. 63, 2005)

Schedule 1

23 Application

The amendments made by this Schedule apply to the income year after the income year in which this Act receives the Royal Assent and each later income year.

Schedule 2

3 Application

The amendments made by this Schedule apply to income years starting on or after 1 July 2004.

Schedule 5

4 Application

The amendments made by this Schedule apply to assessments for the 2005-2006 income year and later income years.

Table A*New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005* (No. 64, 2005)**Schedule 2****11 Application**

- (1) The amendment made by item 5 applies:
 - (a) for the purposes of section 408A—to statutory accounting periods that begin on or after the day on which this Act receives the Royal Assent; and
 - (b) in any other case—to CGT events that occur on or after the first 1 July that occurs after the day on which this Act receives the Royal Assent.
- (2) The amendments made by items 6, 7, 8 and 10 apply to things happening on or after 1 July 2004.

Schedule 3**4 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Part apply to years of income starting on or after the commencement of this Part.

Schedule 4**38 Application—amendments of the *Income Tax Assessment Act 1936***

- (1) The amendments made by items 2 to 24 of this Schedule apply in relation to shares or rights that a person acquires, or has acquired, under an employee share scheme only in accordance with subitem (2) or (3).
- (2) The amendments apply, on and from the time of the acquisition, if the person acquired the shares or rights on or after the day on which this Act received the Royal Assent.
- (3) If:
 - (a) immediately before that day, the person was not an employee in respect of employment that affects the acquisition or holding of the share or right; and

Table A

- (b) the person becomes an employee in respect of that employment on or after that day; and
- (c) at the time of becoming an employee in respect of that employment, the person holds shares or rights that the person acquired under an employee share scheme; and
- (d) this subitem has not previously applied in relation to the person;

the amendments apply, on and from the time when the person becomes an employee in respect of that employment, to any shares or rights the person holds that the person acquired under an employee share scheme (whether or not the shares or rights were acquired before, on or after that day).

- (4) Subitem (3) does not limit the operation of subitem (2).
- (5) Expressions used in this item have the same meaning as they have for the purposes of Division 13A of Part III of the *Income Tax Assessment Act 1936*. However, paragraph 139GA(1)(b) of that Act does not apply in relation to subitem (3).

39 Application—amendments of section 530A of the *Income Tax Assessment Act 1936*

The amendments made by items 25 to 27 of this Schedule apply to assessments for the first year of income ending on or after the day on which this Act receives the Royal Assent and later years of income.

Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005
(No. 75, 2005)

Schedule 1

31 Application

The amendments made by this Schedule apply to amendments of assessments for the 2004-05 income year and later income years.

Table A

Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005
(No. 147, 2005)

Schedule 1**169 Application of items relating to companies in liquidation**

- (1) The amendments made by items 1, 2 and 3 of this Schedule apply to assessments, made on or after 1 July 1997, for any year of income.

Schedule 2**27 Income years starting on 1 July 2005 or after that day and before Royal Assent**

- (1) This item applies to an entity for whom an income year (the *first year*) starts:
 - (a) on 1 July 2005; or
 - (b) after that day and before the day on which this Act receives the Royal Assent.
- (2) The entity can only declare an amount to be conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997* on or after the day on which this Act receives the Royal Assent.
- (3) An FDA surplus that exists for the entity under Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* at the end of the day before the day on which this Act receives the Royal Assent has effect as if it were the entity's conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997*.
- (4) Any FDA credit under section 128TA of the *Income Tax Assessment Act 1936* that arises during the period starting on 1 July 2005 and ending on the day before the day on which this Act receives the Royal Assent cannot also be conduit foreign income.

28 Later starting income years

- (1) This item applies to an entity for whom an income year (also the *first year*) starts on or after the day on which this Act receives the Royal Assent and before 1 July 2006.

Table A

- (2) The amendments made by items 7, 8, 9, 13 and 16, and 19 to 24, of this Schedule apply from the start of the first year.
- (3) An FDA surplus that exists for the entity under Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* at the start of the first year has effect as if it were the entity's conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997*.

Schedule 4

12 Application

The amendments made by this Schedule apply to copyright in a film acquired on or after 1 July 2004.

Schedule 5

20 Application

- (1) The amendments made by this Schedule apply, and are taken to have applied, to acquisitions of shares or rights on or after 1 July 2004.
- (2) In this item:
acquisition, of a share or right:
 - (a) in relation to the application of items 1 to 3, 15, 17 and 18 of this Schedule, has the same meaning as in section 26AAC of the *Income Tax Assessment Act 1936*; or
 - (b) in relation to the application of items 4 to 14, 16 and 19 of this Schedule, has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Schedule 7

19 Previous interpretation preserved

The amendments made by this Schedule are not to be taken to affect by implication the interpretation of a provision amended by this Schedule at a time before the commencement of this Schedule.

Table A

20 Application

The amendments made by this Schedule apply to payments made on or after the first day of the first quarter after the quarter in which this Act receives the Royal Assent.

Tax Laws Amendment (2005 Measures No. 4) Act 2005 (No. 148, 2005)

Schedule 3

3 Application

The amendments made by this Schedule apply to communications of information after the day on which this item commences (regardless of whether the information was acquired before or after that commencement).

Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005
(No. 161, 2005)

Schedule 1

15 Application

The amendments made by this Part apply in relation to assessments for the 2004-05 year of income and later years of income.

19 Application

The amendments made by this Part apply in relation to the 2004-05 year of income and later years of income.

25 Application

The amendments made by items 23 and 24 apply in relation to the 2004-05 year of income and later years of income.

68 Application

The amendments made by items 64 to 67 apply in relation to assessments for the 2004-05 year of income and later years of income.

Table A

73 Application

The amendments made by items 69 to 72 apply in relation to assessments for the 2004-05 year of income and later years of income.

Schedule 2

32 Application

The amendments made by this Schedule apply to things done on or after the later of:

- (a) the day on which this Act receives the Royal Assent; and
- (b) 1 January 2006.

Tax Laws Amendment (2005 Measures No. 5) Act 2005 (No. 162, 2005)

Schedule 1

5 Application

- (1) The amendment made by item 1 is taken to have applied in relation to deaths that occurred on or after 1 July 2004.
- (2) The amendment made by item 2 is taken to have applied to assessments for the 2002-03 year of income and each subsequent year of income.
- (3) The amendments made by items 3 and 4 apply in relation to foreign service performed on or after the day on which this Act received the Royal Assent.
- (4) If, immediately before the day on which this Act received the Royal Assent (the *commencement day*):
 - (a) a person had an absentee credit balance within the meaning of subsection 23AG(6A) of the *Income Tax Assessment Act 1936*; or
 - (b) would have had such a balance if that subsection allowed for an absentee credit balance to be a part of a day;on the commencement day the person's total period of foreign service, under subsections 23AG(6A) and (6B) of that Act as amended by this Act, is increased by a number of days equivalent to:

Table A

- (c) if, immediately before the commencement day, the person was engaged in foreign service—the number of days, before that day, in that continuous period of foreign service; or
- (d) if paragraph (c) does not apply—the number of days in the last continuous period of foreign service in which the person was engaged before that day.

Schedule 3

33 Application

The amendments made by this Schedule apply on and after 1 July 2002.

Tax Laws Amendment (2005 Measures No. 6) Act 2006 (No. 13, 2006)

Schedule 4

9 Application

The amendments made by this Schedule apply to assessments for the 2005-06 year of income and later years of income.

Offshore Petroleum (Repeals and Consequential Amendments) Act 2006
(No. 17, 2006)

Schedule 2

40 Application—section 6AA of the *Income Tax Assessment Act 1936*

The amendments of section 6AA of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to events that occur, and circumstances that arise, after the commencement of this item.

Table A

Tax Laws Amendment (2006 Measures No. 1) Act 2006 (No. 32, 2006)

Schedule 1

40 Application

- (8) The amendments made by items 13, 14 and 15 of this Schedule apply for an income year that begins on or after the start-up day.
- (9) In this item:
start-up day means the 1 July next following the day on which this Act receives the Royal Assent.

Tax Laws Amendment (Personal Tax Reduction and Improved Depreciation Arrangements) Act 2006 (No. 55, 2006)

Schedule 3

4 Application

The amendments made by this Schedule apply in relation to assessments for the 2006-07 year of income and later years of income.

Tax Laws Amendment (2006 Measures No. 2) Act 2006 (No. 58, 2006)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 4.

Table A

Schedule 7

38 Application

The amendment made by item 37 applies to assessments for the 2001-02 income year and later income years.

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (No. 65, 2006)

Schedule 4

12 Application

The amendments made by this Schedule apply to contributions or gifts made on or after the day on which this Act receives the Royal Assent.

Tax Laws Amendment (2006 Measures No. 3) Act 2006 (No. 80, 2006)

Schedule 1

4 Application

The amendments made by this Schedule apply to the 2005-06, 2006-07 and 2007-08 income years.

Schedule 2

1 Certain Commonwealth payments relating to Cyclones Larry and Monica are non-assessable, non-exempt income

- (1) Each of the following payments that you receive from the Commonwealth in your 2005-06 or 2006-07 income year is not assessable income and is not exempt income:
- (a) a payment associated with what is known as the Cyclone Larry Business Assistance Fund and made because your business was adversely affected by Cyclone Larry;
 - (b) a payment known as fuel excise relief and connected with your use of fuel to generate electricity for your business

Table A

while supply of electricity through the grid to your business was disrupted as a result of Cyclone Larry;

- (c) a payment associated with what is known as the Cyclone Larry Business Assistance Fund, or with what is known as the Cyclones Monica and Larry Business Assistance Fund, and made because your business was adversely affected by flooding due to the combined impacts of Cyclones Monica and Larry.

Note: This item does not deal with payments of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica that are rebatable benefits under section 160AAA of the *Income Tax Assessment Act 1936*.

- (2) A term used in this item and in the *Income Tax Assessment Act 1997* has the same meaning in this item as it has in that Act.

Schedule 3

5 Application

The amendments made by this Schedule apply to payments received in the 2005-06 income year and later income years.

Schedule 4

14 Application of amendments

The amendments made by Division 1 apply in relation to transfers made into a company's share capital account after the day on which the Bill for this Act was introduced into the Parliament.

19 Application of amendments

The amendments made by Division 1 apply in relation to transfers of amounts made during the period starting on 1 July 1998 and ending immediately before 1 July 2002.

30 Application of amendments

The amendments made by Divisions 1 and 2 apply for the purpose of determining whether an account is a share capital account when applying a provision of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* in relation to a time that is after the commencement of the amendments, even if the account was in existence before that commencement.

Schedule 9**5 Application**

The amendments made by this Schedule apply to the use, on or after 9 May 2006, of pre-1 July 88 funding credits under section 275B of the *Income Tax Assessment Act 1936*, including use on or after that day as a result of:

- (a) an objection or a request for amendment lodged on or after 9 May 2006; or
- (b) an objection or a request for amendment lodged before 9 May 2006 and pending on that day.

Schedule 13**2 Assessments**

An amendment of an assessment made on or after 19 December 2005 and before the day on which this Act receives the Royal Assent under section 170 of the *Income Tax Assessment Act 1936* relying on subsection 177G(1) of that Act (as in force immediately before 19 December 2005) is as valid as it would have been if that subsection were in force on the day the amendment was made.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6**1 Application of Schedule 1 and 2 amendments**

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

2 Application of Schedule 2 withholding tax amendments

The amendments made by items 337, 343 and 344 of Schedule 2 apply to income derived in the 2006-07 income year and later income years.

Table A

3 Application of TFN withholding tax amendments

- (1) The amendment made by item 949 of Schedule 2 applies to payments made on or after the day on which this Act receives the Royal Assent.
- (2) The repeal of Subdivision C of Division 3B of Part VI of the *Income Tax Assessment Act 1936* by item 163 of Schedule 1 to this Act, and the insertion of section 14-55 in Schedule 1 to the *Taxation Administration Act 1953* by item 955 of Schedule 2 to this Act, apply to the 2006-07 income year and later income years.
- (3) The insertion of sections 14-50, 14-60, 14-65, 14-75 and 14-85 in Schedule 1 to the *Taxation Administration Act 1953* by item 955 of Schedule 2 to this Act applies to tax payable in accordance with former section 221YHZR of the *Income Tax Assessment Act 1936* as if:
 - (a) the tax were TFN withholding tax (payable under section 14-55 in that Schedule); and
 - (b) section 14-55 in that Schedule applied to the income year in respect of which the tax is payable.

4 Application of Schedule 3 and 4 amendments

The repeals and amendments made by Schedules 3 and 4 apply:

- (a) so far as they affect assessments—to assessments for the 2007-08 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Table A

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

12 Continued operation of repealed section 215 of the *Income Tax Assessment Act 1936*

If, just before the repeal of section 215 of the *Income Tax Assessment Act 1936* by Schedule 1 to this Act, that section applied to:

- (a) a liquidator of a company that was being wound up; or
- (b) a receiver for debenture holders who had taken possession of assets of a company; or
- (c) an agent for a non-resident who had been required by the agent's principal to wind up the business or realise the assets of the principal;

the section continues so to apply in spite of the repeal.

13 Continued operation of repealed sections 216 and 220 of the *Income Tax Assessment Act 1936*

If, just before the repeal of section 216 or 220 of the *Income Tax Assessment Act 1936* by Schedule 1 to this Act, that section applied to a deceased taxpayer, the section continues so to apply in spite of the repeal.

14 Resolutions to which section 221B of the *Income Tax Assessment Act 1936* applies

If a resolution to which section 221B of the *Income Tax Assessment Act 1936* applied was in force just before the repeal of that section by Schedule 1 to this Act, section 446-5 in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by item 970 of Schedule 2 to this Act) applies to the resolution after the repeal.

Table A

15 Extended operation of subsection 265-45(2) in Schedule 1 to the *Taxation Administration Act 1953*

In addition to the operation that it has apart from this item, subsection 265-45(2) in Schedule 1 to the *Taxation Administration Act 1953* also applies to an amount of a liability (within the meaning of that subsection) that a person pays after the repeal of section 259 of the *Income Tax Assessment Act 1936* by item 166 of Schedule 1 to this Act, if the liability arose before 1 July 2000.

Tax Laws Amendment (2006 Measures No. 4) Act 2006 (No. 168, 2006)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 2.

Schedule 3

5 Application of amendments made by items 3 and 4

The amendments made by items 3 and 4 apply to dividends paid on or after 1 April 2003.

Schedule 4

112 Application of this Schedule

The amendments made by this Schedule apply to CGT events that happen on or after the commencement of this item.

Table A

Tax Laws Amendment (2006 Measures No. 6) Act 2007 (No. 4, 2007)

Schedule 2

2 Transitional

An approval of a form made by the Commissioner before the commencement of this item under the definition of *approved form* in section 102AAB of the *Income Tax Assessment Act 1936* has effect on and after that commencement as if it had been made under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Tax Laws Amendment (Simplified Superannuation) Act 2007 (No. 9, 2007)

Schedule 1

24 Application

- (1) The amendments made by this Part of this Schedule apply to the 2007-2008 income year and later years.

37 Application

The amendments made by this Part of this Schedule apply to the 2007-2008 income year and later years.

Superannuation Legislation Amendment (Simplification) Act 2007
(No. 15, 2007)

Schedule 1

406 Application

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.

Table A

- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
- (a) Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
 - (b) Divisions 301 to 307 of that Act.

Tax Laws Amendment (2006 Measures No. 7) Act 2007 (No. 55, 2007)

Schedule 6

4 Application

The amendments made by this Schedule apply to assessments for the year of income in which this Act receives the Royal Assent and later years of income.

Tax Laws Amendment (2007 Measures No. 1) Act 2007 (No. 56, 2007)

Schedule 3

39 Application

- (1) The amendments made by this Schedule apply to acquisitions of stapled securities, and of rights to acquire stapled securities, on or after 1 July 2006.
- (2) In this item:
- acquisition* has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Tax Laws Amendment (2007 Budget Measures) Act 2007 (No. 75, 2007)

Schedule 1

13 Application of amendments

The amendments made by this Part apply to assessments for the 2007-2008 year of income and later years of income.

Table A

Tax Laws Amendment (Personal Income Tax Reduction) Act 2007
(No. 76, 2007)

Schedule 1

11 Application

The amendments made by this Part apply to assessments for the 2007-08 year of income and later years of income.

Tax Laws Amendment (2007 Measures No. 2) Act 2007 (No. 78, 2007)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 1.

Schedule 3

4 Application

The amendment made by item 3 applies to years of income commencing on or after 1 July 2001.

6 Application

The amendment made by item 5 applies to expenditure incurred in years of income commencing on or after the day on which this Act receives the Royal Assent.

9 Application

The amendment made by item 7 applies to the first year of income commencing after 9 May 2006 and later years.

Table A

11 Application

The amendment made by item 10 applies to payments received on or after 6 May 2004.

14 Application

The amendments made by items 12 and 13 apply to assessments for the year of income following the year of income in which this Act receives the Royal Assent and later years.

16 Application

The amendment made by item 15 applies to payments received on or after 6 May 2004.

18 Application

The amendment made by item 17 applies to years of income commencing on or after 1 July 2001.

20 Application

The amendment made by item 19 applies to assessments for the year of income following the year of income in which this Act receives the Royal Assent and later years.

Schedule 7

15 Transitional

Subsection 73J(2) of the *Income Tax Assessment Act 1936* has effect for an eligible company, as if the amendment made by item 14 of this Schedule had not been made, during the period:

- (a) starting at the start of the year of income of the company in which 1 July 2005 occurred; and
- (b) ending at the end of the company's year of income in which the day on which this Act receives the Royal Assent occurs.

Tax Laws Amendment (2007 Measures No. 3) Act 2007 (No. 79, 2007)

Schedule 1

43 Application

- (1) The amendments made by this Schedule apply to assessments for the income year in which 1 July 2006 occurred and later income years.
- (4) Despite subitem (1), the following rules apply:
 - (a) the amendments made by this Schedule, to the extent that they relate to section 109RB of the *Income Tax Assessment Act 1936*, apply in relation to the 2001-02 income year and later income years;
 - (b) the Commissioner may make decisions under that section on and after the commencement of that section in relation to events that occurred before that commencement;
 - (c) however, the Commissioner cannot make a decision under paragraph 109RB(2)(b) of that Act if the dividend mentioned in subparagraph 109RB(1)(a)(i) of that Act is taken to have been paid before 1 July 2002;
 - (d) the Commissioner may amend a franking assessment made before the commencement of this item for the purpose of giving effect to a decision under section 109RB of that Act, if the amendment is made within 4 years after that commencement.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
 - (a) the assessment was made before the commencement of this item; and
 - (b) the amendment is made within 4 years after that commencement; and
 - (c) the amendment is made for the purpose of giving effect to a decision of the Commissioner under section 109RB of that Act.

Table A

Schedule 6

8 Application

The amendments made by this Schedule apply in relation to distributions made on or after 1 July 2004.

Schedule 7

16 Application

- (1) The amendments made by this Schedule apply to interest paid in respect of debt interests issued on or after 7 December 2006 (the *start day*).
- (2) For the purposes of subitem (1), a debt interest is treated as being issued before the start day if it is issued under or results from a written agreement entered into on or after 21 March 2005 and before the start day.
- (3) However, subitem (2) does not apply to the extent that the agreement referred to in that subitem is altered after the start day to extend its term.

Schedule 8

26 Application

- (1) The amendments made by this Schedule apply to amounts paid by a participant under a forestry managed investment scheme on or after 1 July 2007.
- (2) Despite subitem (1), the amendments do not apply if any other amounts were paid by the participant or any other participant under the scheme before 1 July 2007.
- (4) Despite subitem (1), sections 82KZMGA and 82KZMGB of the *Income Tax Assessment Act 1936* apply to CGT events that happen on or after 1 July 2007.

Schedule 9

30 Application

- (1) Subject to items 31, 32 and 33 of this Schedule, the amendments made by this Schedule, other than items 13 and 23, apply in relation to income years starting on or after 1 July 2006.

Table A

- (2) The amendments made by items 13 and 23 of this Schedule apply in relation to income years starting on or after 1 July 2005.

31 Transitional provision—trusts that ceased to exist before introduction

Subsection 98(4) of the *Income Tax Assessment Act 1936*, as inserted by item 1 of this Schedule, does not apply in relation to a trustee of a trust that ceased to exist before the Bill for this Act was introduced into the House of Representatives.

32 Transitional provision—managed investment trusts

- (1) This item applies in relation to the following income years:
- (a) the first income year starting on or after 1 July 2006;
 - (b) the income year immediately prior to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent;
 - (c) each intervening income year (if any).
- (2) In this item, expressions mean the same as in the *Income Tax Assessment Act 1997*.
- (3) Subsection 98(4) of the *Income Tax Assessment Act 1936*, as inserted by item 1 of this Schedule, does not apply in relation to a trustee of a trust in relation to an income year to which this item applies if the conditions in subitems (4) to (6) are satisfied for the trust for the income year.
- (4) The trust must be a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* for the income year.
- (5) At each of the times in the income year mentioned in subitem (9), the trust must be a managed investment scheme (as defined by section 9 of the *Corporations Act 2001*) and be operated by a financial services licensee (as defined by section 761A of that Act) whose licence covers operating such a managed investment scheme.
- (6) At each of the times in the income year mentioned in subitem (9), one of the following must be satisfied:
- (a) units in the trust must be listed for quotation in the official list of an approved stock exchange in Australia;
 - (b) the trust must have at least 50 members (ignoring objects of a trust);

Table A

- (c) one of the entities covered by subitem (7) must be a member of the trust.
- (7) These are the entities:
- (a) a life insurance company;
 - (b) a complying superannuation fund, a complying approved deposit fund or a foreign superannuation fund, being a fund that has at least 50 members;
 - (c) a trust that satisfies the conditions in subitems (4) and (5) and also satisfies the condition in paragraph (a) or (b) of subitem (6);
 - (d) an entity that is recognised, under a foreign law relating to corporate regulation, as an entity with a similar status to a managed investment scheme and that has at least 50 members;
 - (e) a trust:
 - (i) interests in which are owned directly by an entity covered by an earlier paragraph; or
 - (ii) interests in which are held indirectly by an entity covered by an earlier paragraph through a *chain of trusts;where the conditions in subitems (4) and (5) are satisfied for the trust, or for each trust in the chain.
- (8) The condition in subitem (6) is not satisfied for a trust at a time if, at that time, one foreign resident individual, directly or indirectly:
- (a) held, or had the right to acquire, interests representing 10% or more of the value of the interests in the trust; or
 - (b) had the control of, or the ability to control, 10% or more of the rights attaching to membership interests in the trust; or
 - (c) had the right to receive 10% or more of any distribution of income that the trustee may make.
- (9) The times in an income year are:
- (a) for a trust that was in existence throughout the income year—the first day and the last day of the income year; and
 - (b) for a trust that comes into existence in the income year—the time that is 1 month after the time the trust comes into existence, and the last day of the income year; and

- (c) for a trust that ceases to exist in the income year—the first day of the income year and the time that is 1 month before the time the trust ceases to exist.

33 Transitional provision—intermediaries

- (1) This item applies in relation to the following income years:
 - (a) the first income year starting on or after 1 July 2006;
 - (b) the income year immediately prior to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent;
 - (c) each intervening income year (if any).
- (2) In this item, expressions mean the same as in the *Income Tax Assessment Act 1997*.
- (3) Subsection 98(4) of the *Income Tax Assessment Act 1936*, as inserted by item 1 of this Schedule, does not apply to a trustee of a trust in relation to so much of the net income of the trust of an income year to which this item applies as:
 - (a) represents income applied by the trustee in making a payment covered by subitem (4); and
 - (b) is attributable to a payment made by a trustee of another trust, if the conditions in subitems 32(4) to (6) of this Schedule are satisfied for the other trust for the income year in which the payment made by the trustee of the other trust is made.
- (4) A payment made by a trustee of a trust is covered by this subitem if:
 - (a) the payment is made to an entity that is a foreign resident at the time of the payment; and
 - (b) at the time of the payment, the trust is carrying on a business that consists predominantly of providing a custodial or depository service (as defined by section 766E of the *Corporations Act 2001*) pursuant to an Australian financial services licence (as defined by section 761A of that Act); and
 - (c) the payment is made in the course of the business; and
 - (d) either:
 - (i) the trust is a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* for the income year in which the payment is made;
 - or

Table A

- (b) the business is carried on in Australia through an Australian permanent establishment.

Schedule 10

32 Application

The amendments made by this Schedule apply to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.

Tax Laws Amendment (Small Business Act) Act 2007 (No. 80, 2007)

Schedule 8

9 Application

The amendments made by this Schedule apply in relation to the 2007-08 income year and later income years.

Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007 (No. 82, 2007)

Schedule 9

5 Application

The amendments made by this Schedule apply to the 2008-2009 year of income and later years.

Tax Laws Amendment (2007 Measures No. 4) Act 2007 (No. 143, 2007)

Schedule 1

222 Application

Subject to items 223 and 224, the amendments made by this Schedule apply in relation to income years, statutory accounting periods and notional accounting periods starting on or after the first 1 July that occurs after the day on which this Act receives the Royal Assent.

223 Application and transitional rules for section 802-40 of the 1997 Act

- (1) The amendments made by items 179 to 181 apply in relation to income years starting one year later than the first income year (the *transitional year*) covered by item 222.
- (2) Section 802-40 of the *Income Tax Assessment Act 1997* has effect in relation to the transitional year as if section 160AF of the *Income Tax Assessment Act 1936* had not been repealed.

224 Application rule for credits arising under the *International Tax Agreements Act 1953*

- (1) Despite the repeal of Division 19 of Part III of the *Income Tax Assessment Act 1936*, that Division continues to apply, after the commencement of this item, in relation to:
 - (a) a determination made by a person under the Division before the commencement of this item; or
 - (b) a credit to which the Division applied before the commencement of this item;
 as if the repeal had not happened.
- (2) The Commissioner may make determinations under that Division as it so continues to apply.

225 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or

Table A

- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

226 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example: For the 2006-07 income year, Smart Investor Pty Ltd, an Australian resident private investment company, has assessable foreign income in the passive income class on which it has paid foreign tax for which it wishes to claim a foreign tax credit. The company also has a tax loss for the year from its Australian investments. When it lodges its tax return for the year it does not elect to claim a deduction for any of the tax loss under section 79DA of the ITAA 1936, because the Australian tax payable on its passive foreign income equals the foreign tax it has paid.

In 2009 the amount of foreign tax payable in respect of some foreign rental income it had included in its return for the 2006-07 year is reduced and Smart Investor receives a refund of the difference in foreign tax. Smart Investor Pty Ltd then applies to be able to make an election under section 79DA, that is, after the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* (which repeals section 79DA) receives Royal Assent. The Commissioner allows Smart Investor to submit an election to claim a deduction for so much of its 2006-07 tax loss as to reduce the amount of Australian tax payable on its 2006-07 assessable foreign income to the revised foreign tax paid, by the end of 2009.

Despite the repeal of section 79DA, item 226 allows the Commissioner to permit an election to be lodged after the return for 2006-07 has been lodged, and to amend Smart Investor's assessment

for that year, because these actions relate to a thing done, and periods ending, before the repeal of section 79DA applies.

Schedule 4

51 Application

The amendments made by this Schedule apply to the first income year starting on or after the day on which this Act receives the Royal Assent and later income years.

52 Transitional

- (1) This item applies in relation to income years starting on or after 1 July 2006 and before the first income year to which the amendments made by this Schedule apply in accordance with item 51.
- (2) The trustee of a closely held trust is not liable to pay tax under section 102UK or 102UM of the *Income Tax Assessment Act 1936* in respect of a share of the net income of the trust to the extent to which:
 - (a) the trustee of the closely held trust is assessed and liable to pay tax under subsection 98(4) of that Act in respect of the share; or
 - (b) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and liable to pay tax under that subsection; or
 - (c) the share is represented by or reasonably attributable to an amount from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (d) the share is represented by or reasonably attributable to an amount which was liable to tax under section 255 of the *Income Tax Assessment Act 1936*.

Schedule 7

14 Application

The amendment made by item 13 applies to assessments for the 2006-07 income year and later income years.

Table A

17 Application

The amendment made by item 16 applies to income derived in the 2006-07 income year and later income years.

Schedule 8

14 Application

The amendments made by this Schedule apply to the income year in which this Act receives the Royal Assent and to later income years.

Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007 (No. 154, 2007)

Schedule 1

296 Regulations may prescribe matters

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to the amendments or repeals made by this Schedule.

Tax Laws Amendment (2007 Measures No. 5) Act 2007 (No. 164, 2007)

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 2.

Schedule 1**71 Application**

- (1) Subject to subitems (4), (6) and (8), Division 250 applies in relation to a tax preferred use of an asset if, and only if, the tax preferred use:
 - (a) starts on or after 1 July 2007; and
 - (b) does not occur under a legally enforceable arrangement that was entered into before 1 July 2007.
 - (2) This subitem applies to an asset that is put to a tax preferred use if:
 - (a) the tax preferred use starts on or after 1 July 2007; and
 - (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
 - (c) but for this subitem:
 - (i) section 51AD would apply to the asset in relation to a taxpayer; or
 - (ii) Division 16D would apply to the asset; and
 - (d) you elect to have this subitem apply to the asset.
 - (3) An election under paragraph (2)(d) in relation to an asset that is put to a tax preferred use:
 - (a) must be made by the day you lodge your income tax return for the income year in which the tax preferred use starts; and
 - (b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and
 - (c) must extend to all assets that are, or are to be, put to a tax preferred use under the arrangement under which the asset is put to that use; and
 - (d) is irrevocable.
 - (4) If subitem (2) applies:
 - (a) section 51AD and Division 16D do not apply to the asset; and
 - (b) Division 250 applies to the tax preferred use of the asset.
 - (5) This subitem applies to an asset that is put to a tax preferred use if:
 - (a) the tax preferred use starts on or after 1 July 2007; and
 - (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
 - (c) immediately before 1 July 2007:
-

Table A

- (i) section 51AD did not apply to the asset in relation to a taxpayer; and
- (ii) Division 16D did not apply to the asset; and
- (d) the arrangement referred to in paragraph (b) is materially altered on or after 1 July 2007; and
- (e) but for this subitem and subitem (6):
 - (i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or
 - (ii) Division 16D would apply to the asset immediately after the alteration.

For the purposes of applying paragraph (c), assume that the asset was in existence and was being put to the tax preferred use immediately before 1 July 2007.

- (6) If subitem (5) applies:
 - (a) section 51AD and Division 16D do not apply to the asset; and
 - (b) Division 250 applies to the tax preferred use of the asset after the alteration instead.
- (7) This subitem applies to an asset that is put to a tax preferred use if:
 - (a) the tax preferred use started before 1 July 2007; and
 - (b) immediately before 1 July 2007:
 - (i) section 51AD did not apply to the asset in relation to a taxpayer; and
 - (ii) Division 16D did not apply to the asset; and
 - (c) the arrangement under which the tax preferred use of the asset occurs is materially altered on or after 1 July 2007; and
 - (d) but for this subitem and subitem (8):
 - (i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or
 - (ii) Division 16D would apply to the asset immediately after the alteration.
- (8) If subitem (7) applies:
 - (a) section 51AD and Division 16D do not apply to the asset; and
 - (b) Division 250 applies to the tax preferred use of the asset after the alteration instead.

Table A

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- (9) For the purposes of applying subparagraphs (5)(c)(ii) and (e)(ii) and (7)(b)(ii) and (d)(ii), disregard the operation of section 159GL of the *Income Tax Assessment Act 1936*.
- (10) For the purposes of applying Division 250 to the tax preferred use of an asset in accordance with subitem (6) or (8), the **arrangement period** for the tax preferred use of the asset is taken to start on the day on which the alteration referred to in paragraph (5)(d) or (7)(c) occurs.
- (11) Section 51AD does not apply to an asset for the income year commencing on 1 July 2007, or a later income year, if:
- (a) the asset is put to a tax preferred use under a legally enforceable arrangement; and
 - (b) the arrangement was entered into before 1 July 2007; and
 - (c) the tax preferred use of the asset starts on or after 1 July 2003 and before 1 July 2007.
- (12) The amendment made by item 69 of this Schedule applies in relation to an income year that begins on or after 1 July 2008.
- (13) In this item:
- arrangement** has the same meaning as in the *Income Tax Assessment Act 1997*.
- asset** includes property (within the meaning of section 51AD and Division 16D).
- Division 16D** means Division 16D of Part III of the *Income Tax Assessment Act 1936*.
- Division 250** means Division 250 of the *Income Tax Assessment Act 1997*.
- section 51AD** means section 51AD of the *Income Tax Assessment Act 1936*.
- tax preferred use** has the same meaning as in the *Income Tax Assessment Act 1997*.

Schedule 8**13 Application**

- (1) The amendments made by items 1 to 5 of this Schedule apply to the 2006-07 year of income and later years of income.
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Table A

Schedule 11

78 Application

- (1) The amendments made by this Schedule apply in relation to:
 - (a) assessments for years of income starting after 30 June 2007; and
 - (b) registrations under section 39J of the *Industry Research and Development Act 1986* for those years of income.
- (2) A term that is used in this item and has a meaning given by the *Income Tax Assessment Act 1936* has the same meaning in this item.

79 Transitional provisions—deductions under former section 73Y of the *Income Tax Assessment Act 1936*

- (1) This item modifies paragraphs 73T(3)(a) and (4)(a) and 73V(3)(a) of the *Income Tax Assessment Act 1936* as amended by this Schedule for the Y_0 year of income that is the first year of income starting after 30 June 2007.
- (2) Those paragraphs have effect for that year of income as if an eligible company or one of its group members could deduct an amount under section 73QA for the Y_{-1} year of income if the company or group member had been eligible to claim an additional deduction under section 73Y of that Act (as in force before the commencement of this Schedule) for that Y_{-1} year of income.
- (3) A term that is used in this item and had a meaning given by any of sections 73P to 73Z of the *Income Tax Assessment Act 1936* immediately before the commencement of this Schedule has the same meaning in this item.

80 Transitional provisions—reduced notional expenditure on foreign owned R&D

- (1) This item has effect for the purposes of the application of sections 73P to 73Z (inclusive) of the *Income Tax Assessment Act 1936* as amended by this Schedule, if:
 - (a) in its group membership period including all or part of the year of income (the *initial year*) starting after 30 June 2007 and before 1 July 2008, an eligible company has incurred an amount of expenditure that is expenditure on foreign owned

Table A

- R&D by the eligible company in its group membership period for the year of income; and
- (b) any of the 3 immediately preceding years of income were not nil expenditure years.
- (2) For the purposes of paragraph 73QB(1)(b) of the *Income Tax Assessment Act 1936*, the eligible company is taken to have been able to deduct an amount under subsection 73B(14C) of that Act for each of the following years of income:
- (a) the year of income before the initial year;
- (b) the year of income 2 years before the initial year;
- (c) the year of income 3 years before the initial year.
- (3) The reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for an earlier year of income described in the second column of an item of the table is taken to be the amount set out in the third column of that item.

Reduced notional expenditure on foreign owned R&D

Item	Earlier year of income	Amount of reduced notional expenditure on foreign owned R&D
1	The year of income before the initial year	90% of the amount described in paragraph (1)(a)
2	The year of income 2 years before the initial year	80% of the amount described in paragraph (1)(a)
3	The year of income 3 years before the initial year	70% of the amount described in paragraph (1)(a)

- (4) To avoid doubt, this item has effect for the purposes of the application of sections 73P to 73Z (inclusive) of the *Income Tax Assessment Act 1936* as amended by this Schedule not only for the initial year but also for the next 2 years of income.

Note: This item will be relevant only to years of income assessments for which can be affected by the amount of reduced notional expenditure on foreign owned R&D for years of income before the initial year.

- (5) A term that is used in this item and has a meaning given by section 73B, or any of sections 73P to 73Z (inclusive), of the *Income Tax Assessment Act 1936* as amended by this Schedule has the same meaning in this item.

Table A

Tax Laws Amendment (Personal Income Tax Reduction) Act 2008
(No. 29, 2008)

Schedule 1

10 Application

The amendments made by this Part apply to assessments for the 2008-09 year of income.

The following provision commences on 1 July 2009:

20 Application

The amendments made by this Part apply to assessments for the 2009-10 year of income.

The following provision commences on 1 July 2010:

30 Application

The amendments made by this Part apply to assessments for the 2010-11 year of income and later years of income.

Tax Laws Amendment (Election Commitments No. 1) Act 2008 (No. 32, 2008)

Schedule 1

58 Application

The amendments made by this Schedule apply to fund payments made in relation to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.

Table A

Tax Laws Amendment (2008 Measures No. 2) Act 2008 (No. 38, 2008)

Schedule 9

4 Application

The amendments made by this Schedule apply in relation to Equine Workers Hardship Wage Supplement Payments received in the 2007-08 income year and later income years.

Schedule 11

2 Application

The amendment made by this Schedule applies to assessments for the 2002-03 year of income and later years of income.

Tax Laws Amendment (Budget Measures) Act 2008 (No. 59, 2008)

Schedule 1

7 Application

The amendment made by item 6 applies to depreciating assets acquired on or after 1 July 2008.

13 Application

The amendments made by items 10 to 12 apply in relation to the 2008-09 year of income and later years.

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008 (No. 63, 2008)

4 Review of operation of amendments

- (1) The Minister must cause an independent review of the operation of the amendments made by this Act to be undertaken and completed by 30 June 2010.

Table A

- (2) The persons who undertake the review under subsection (1) must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.
- (4) The review must be conducted by a panel of not less than 5 persons, of which at least:
 - (a) 3 persons must be nominated by relevant key stakeholder organisations; and
 - (b) 2 persons must be nominated by the Minister.

Schedule 1

16 Application

The amendments made by this Part apply in relation to the 2008-09 income year and later income years.

First Home Saver Accounts (Further Provisions) Amendment Act 2008
(No. 92, 2008)

Schedule 1

26 Application

The amendments made by this Schedule apply from 1 October 2008.

Tax Laws Amendment (2008 Measures No. 4) Act 2008 (No. 97, 2008)

Schedule 1

12 Application

The amendments made by this Schedule apply in relation to demutualisations occurring on and after 1 July 2007.

Table A**Schedule 3****11 Application**

The amendment made by item 10 of this Schedule applies to assessments for the 2006-07 year of income and later income years.

14 Application

The amendment made by item 13 of this Schedule applies to assessments for the 2006-07 year of income and later income years.

18 Transitional

The amendment made by item 15 of this Schedule does not affect the continuity of an approval given for the purposes of the definition of *an approved research institute* in subsection 73A(6) of the *Income Tax Assessment Act 1936* before the commencement of this Schedule.

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 (No. 144, 2008)

Schedule 14**58 Application of amendments of the *Income Tax Assessment Act 1936***

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to the 2009-2010 year of income and later years of income.

Tax Laws Amendment (2008 Measures No. 5) Act 2008 (No. 145, 2008)

Schedule 3**2 Application**

The amendment made by this Schedule applies to interest paid on or after the commencement of this Schedule.

Table A

Schedule 5

9 Application

The amendments made by this Schedule apply to assessments for the income year (the *application year*) in which this Act receives the Royal Assent and later income years.

10 Transitional

- (1) Subsections 102MB(2), (3) and (4), and section 102MC, of the *Income Tax Assessment Act 1936* do not apply to a unit trust for the application year if the trustee of the trust chooses that those provisions are not to apply.
- (2) A choice the trustee can make under subitem (1) must be made by the day the trustee lodges the trustee's return of income for the application year.
- (3) The way the trustee prepares the trustee's return of income for the application year is sufficient evidence of the making of the choice.

Example: A unit trust that would cease to be a public trading trust because of the safe harbour rule could make a choice under this provision so that it is taxed as a public trading trust for the application year.

Table B**Modifications**

Banking (State Bank of South Australia and Other Matters) Act 1994
(No. 69, 1994)

**PART 2.4—MODIFICATIONS OF THE INCOME TAX LAW
RELATING TO THE RESTRUCTURING OF THE STATE
BANK OF SOUTH AUSTRALIA**

Division 1—Preliminary**34 Object of Part**

The object of this Part is to facilitate the restructuring of the State Bank of South Australia by modifying the effect of the income tax law.

35 Interpretation

An expression used in this Part and in the *Income Tax Assessment Act 1936* has the same meaning in this Part as it has in that Act.

36 Definitions

In this Part:

designated subsidiary of the State Bank of South Australia means a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia;

re-transfer provision means:

- (a) section 16 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory;

transfer provision means:

- (a) section 7 of the *State Bank (Corporatisation) Act 1994* of South Australia; or
- (b) a corresponding provision of a law of another State or of a Territory.

Table B

Division 2—Bank of South Australia Limited to benefit from the post-26 February 1992 depreciation regime

37 Amendments to allow Bank of South Australia Limited to benefit from the post-26 February 1992 depreciation regime

- (1) For the purposes of section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*, Bank of South Australia Limited is taken not to be, and never to have been, an associate of:
 - (a) the State Bank of South Australia; or
 - (b) a designated subsidiary of the State Bank of South Australia.
- (2) For the purposes of section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*, a unit of property that was acquired by Bank of South Australia Limited as a result of the operation of a transfer provision is taken to have been acquired by Bank of South Australia Limited under a contract entered into after 26 February 1992.

Division 3—Development allowance and general investment allowance

38 Development allowance and general investment allowance—acquisition or construction of property

- (1) This section applies to a unit of property if:
 - (a) the property was acquired, constructed or commenced to be constructed, by:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia; and
 - (b) the property was transferred to Bank of South Australia Limited as a result of the operation of a transfer provision.
- (2) The provisions of Subdivisions B and BA of Division 3 of Part III of the *Income Tax Assessment Act 1936* apply, and are taken always to have applied, as if:
 - (a) the property had been acquired, constructed, or commenced to be constructed, as the case may be, by

Table B

Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case may be; and

- (b) expenditure of a capital nature incurred by the State Bank of South Australia or the designated subsidiary, as the case may be, in respect of the acquisition or construction of the property had been incurred instead by Bank of South Australia Limited; and
- (c) if the property was acquired by the State Bank of South Australia or the designated subsidiary, as the case may be, under a contract entered into at a particular time—the property had been acquired by Bank of South Australia Limited under a contract entered into at that time; and
- (d) if the property was constructed, or commenced to be constructed, by the State Bank of South Australia or the designated subsidiary, as the case may be—Bank of South Australia Limited had commenced to construct the property at the same time as the State Bank of South Australia or the designated subsidiary, as the case may be, had commenced to construct it.

39 Development allowance and general investment allowance—uncompleted contracts for the acquisition of property

- (1) This section applies to a unit of property if:
 - (a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia entered into a contract for the acquisition of the property; and
 - (b) before the property was acquired by the State Bank of South Australia or the designated subsidiary, as the case may be, Bank of South Australia Limited acquired the rights under the contract as a result of the operation of a transfer provision; and
 - (c) Bank of South Australia Limited acquired the property as a result of the performance of the contract.
- (2) The provisions of Subdivisions B and BA of Division 3 of Part III of the *Income Tax Assessment Act 1936* apply, and are taken always to have applied, as if expenditure of a capital nature incurred by the State Bank of South Australia, or the designated

Table B

subsidiary, as the case may be, under the contract in respect of the proposed acquisition of the property had been incurred instead by Bank of South Australia Limited.

Division 4—Transfer of tax file number information

Subdivision A—Transfers to Bank of South Australia Limited

40 When Subdivision applies

This Subdivision applies if:

- (a) an account or deposit with:
 - (i) the State Bank of South Australia; or
 - (ii) a designated subsidiary of the State Bank of South Australia;

is transferred, or is proposed to be transferred, to Bank of South Australia Limited under a transfer provision; and

- (b) the account or deposit is an investment to which Part VA of the *Income Tax Assessment Act 1936* applies; and
- (c) immediately before the transfer or proposed transfer, the investor's tax file number is or will be taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have been quoted to the State Bank of South Australia or the designated subsidiary, as the case requires, in connection with the investment.

41 Eligible tax file number information

For the purposes of this Division, information is eligible tax file number information in relation to an investment if the information is:

- (a) if the investor actually quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires:
 - (i) the investor's tax file number; and
 - (ii) information connecting that number with the investor; or
- (b) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of

Table B

section 202DDA of the *Income Tax Assessment Act 1936*:

- (i) the investment body remitter number of the interposed entity concerned; and
 - (ii) information connecting that number with the interposed entity concerned; or
- (c) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202DDB of the *Income Assessment Act 1936*:
- (i) the tax file number of the primary investor concerned; and
 - (ii) information connecting that number with the primary investor concerned; or
- (d) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202EB of the *Income Tax Assessment Act 1936*—information given by the investor as mentioned in subsection 202EB(1) of that Act; or
- (e) if the investor is taken to have quoted the investor's tax file number to the State Bank of South Australia or the designated subsidiary, as the case requires, because of section 202EC of the *Income Tax Assessment Act 1936*—information given by the investor as mentioned in subsection 202EC(1) of that Act.

42 Eligible tax file number information may be disclosed to Bank of South Australia Limited

The State Bank of South Australia or the designated subsidiary, as the case requires, may disclose eligible tax file number information in relation to the investment to Bank of South Australia Limited if:

- (a) at least 15 days before the disclosure, the State Bank of South Australia or the designated subsidiary, as the case may be, publishes notices under section 43 about the proposed disclosure; and
- (b) the investor does not object to the disclosure in accordance with either of the notices.

Table B

43 Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

- (1) The State Bank of South Australia or a designated subsidiary of the State Bank of South Australia may cause to be published in both:
 - (a) a newspaper circulating generally throughout Australia; and
 - (b) a newspaper circulating generally throughout South Australia;a notice, in a form approved by the Commissioner, that:
 - (c) states that the State Bank of South Australia or the designated subsidiary, as the case may be, proposes to disclose specified kinds of eligible tax file number information to Bank of South Australia Limited; and
 - (d) states that an investor concerned may give the State Bank of South Australia or the designated subsidiary, as the case requires, a written objection within 14 days after the publication of the notice; and
 - (e) states that if an investor lodges such an objection, the information will not be disclosed to Bank of South Australia Limited; and
 - (f) contains such additional information as is required by the form.
- (2) Notices under subsection (1) that relate to the same proposal must be published on the same day.

44 Consequences of disclosure of eligible tax file number information to Bank of South Australia Limited

- (1) If eligible tax file number information in relation to an investment is disclosed to Bank of South Australia Limited under this Subdivision, the investor is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*:
 - (a) to have quoted his or her tax file number to Bank of South Australia Limited under Division 4 of that Part in connection with the investment; and
 - (b) to have so quoted his or her tax file number at whichever is the later of the following times:

Table B

- (i) the time when the disclosure of the eligible tax file number information occurred;
 - (ii) the time when the transfer of the investment occurred.
- (2) For the purposes of subsection 202DG(2A) of the *Income Tax Assessment Act 1936*, if:
- (a) eligible tax file number information in relation to an investment is disclosed to Bank of South Australia Limited under this Subdivision; and
 - (b) the eligible tax file number information is covered by paragraph 41(a);
- the investor is taken to have actually quoted his or her tax file number under Division 4 of Part VA of that Act.

45 Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

If information covered by paragraph 41(e) is disclosed to Bank of South Australia Limited under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 42 of this Act.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

46 When Subdivision applies

This Subdivision applies if:

- (a) an account or deposit with Bank of South Australia Limited is transferred, or is proposed to be transferred, to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under a re-transfer provision; and
- (b) the account or deposit is an investment to which Part VA of the *Income Tax Assessment Act 1936* applies; and
- (c) immediately before the transfer or proposed transfer, the investor's tax file number is or will be taken, because of section 44, to have been quoted to Bank of

Table B

South Australia Limited in connection with the investment for the purposes of Part VA of the *Income Tax Assessment Act 1936*; and

- (d) eligible tax file number information in relation to the investment was disclosed to Bank of South Australia Limited under Subdivision A.

47 Eligible tax file number information may be disclosed to the State Bank of South Australia

- (1) This section applies if the investment is transferred, or is proposed to be transferred, to the State Bank of South Australia.
- (2) Bank of South Australia Limited may disclose the eligible tax file number information in relation to the investment to the State Bank of South Australia if:
 - (a) at least 22 days before the disclosure, Bank of South Australia Limited sends the investor a notice under section 49 about the proposed disclosure; and
 - (b) the investor does not object to the disclosure in accordance with the notice.

48 Eligible tax file number information may be disclosed to a designated subsidiary of the State Bank of South Australia

- (1) This section applies if the investment is transferred, or is proposed to be transferred, to a designated subsidiary of the State Bank of South Australia.
- (2) Bank of South Australia Limited may disclose the eligible tax file number information in relation to the investment to the designated subsidiary if:
 - (a) at least 22 days before the disclosure, Bank of South Australia Limited sends the investor a notice under section 49 about the proposed disclosure; and
 - (b) the investor does not object to the disclosure in accordance with the notice.

49 Notices telling investors about proposed transfer of eligible tax file number information and inviting objections

Bank of South Australia Limited may send an investor a notice, in a form approved by the Commissioner, that:

- (a) states that Bank of South Australia Limited proposes to disclose specified kinds of eligible tax file number information to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia; and
- (b) states that the investor may give Bank of South Australia Limited a written objection within 21 days after:
 - (i) if the notice is sent by post—the day on which the notice is posted; or
 - (ii) if the notice is sent by being delivered to the investor personally—the day of delivery; or
 - (iii) if the notice is sent by being left at a particular place or address—the day on which the notice is left at that place or address; and
- (c) states that if the investor lodges such an objection, the information will not be disclosed to the State Bank of South Australia, or to the designated subsidiary, as the case requires; and
- (d) contains such additional information as is required by the form.

Note: Section 28A of the *Acts Interpretation Act 1901* sets out the methods of sending notices.

50 Consequences of disclosure of eligible tax file number information to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

- (1) If eligible tax file number information in relation to an investment is disclosed to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under this Subdivision, the investor is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*:

Table B

- (a) to have quoted his or her tax file number to the State Bank of South Australia or to the designated subsidiary, as the case requires, under Division 4 of that Part in connection with the investment; and
 - (b) to have so quoted his or her tax file number at whichever is the later of the following times:
 - (i) the time when the disclosure of the eligible tax file number information occurred;
 - (ii) the time when the transfer of the investment occurred.
- (2) For the purposes of subsection 202DG(2A) of the *Income Tax Assessment Act 1936*, if:
- (a) eligible tax file number information in relation to an investment is disclosed to the State Bank of South Australia, or to a designated subsidiary of the State Bank of South Australia, under this Subdivision; and
 - (b) the eligible tax number information was covered by paragraph 41(a);
- the investor is taken to have actually quoted his or her tax file number under Division 4 of Part VA of that Act.

51 Modification of subsection 202EC(4) of the *Income Tax Assessment Act 1936*

- (1) If information covered by paragraph 41(e) is disclosed to the State Bank of South Australia under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 47 of this Act.
- (2) If information covered by paragraph 41(e) is disclosed to a designated subsidiary of the State Bank of South Australia under this Subdivision, subsection 202EC(4) of the *Income Tax Assessment Act 1936* has effect as if the reference in that subsection to subsection 202EC(1) of that Act included a reference to section 48 of this Act.

Subdivision C—Common provisions**52 Division deemed to be a taxation law for the purposes of section 8WB of the *Taxation Administration Act 1953***

This Division is taken to be a taxation law for the purposes of section 8WB of the *Taxation Administration Act 1953*.

53 Disclosure of tax file number information under this Division taken not to be in breach of guidelines under the *Privacy Act 1988*

A disclosure of eligible tax file number information under this Division is taken not to breach guidelines issued under section 17 of the *Privacy Act 1988*.

Division 5—Reduction of deductions allowable to Bank of South Australia Limited, and associates of Bank of South Australia Limited, in respect of certain superannuation contributions and eligible termination payments**54 Reduction of deductions allowable to Bank of South Australia Limited, and associates of Bank of South Australia Limited, in respect of certain superannuation contributions and eligible termination payments***Reducible deductions*

- (1) For the purposes of this section, a deduction is a reducible deduction if:
 - (a) apart from this section, the deduction is allowable to Bank of South Australia Limited, or an associate of Bank of South Australia Limited, under section 82AAC of the *Income Tax Assessment Act 1936* in respect of a contribution to a fund made before the Proclaimed day for the purposes of making provision for superannuation benefits for, or for dependants of, an ex-employee of:
 - (i) the State Bank of South Australia; or
 - (ii) a tax-exempt designated subsidiary of the State Bank of South Australia; or

Table B

(b) apart from this section, the deduction is allowable to Bank of South Australia Limited, or an associate of Bank of South Australia Limited, under the *Income Tax Assessment Act 1936* in respect of so much of a designated ETP made before the Proclaimed day in consequence of the termination of the employment of an ex-employee of:

- (i) the State Bank of South Australia; or
- (ii) a tax-exempt designated subsidiary of the State Bank of South Australia;

as is not an approved early retirement scheme payment or a bona fide redundancy payment.

Reduction of reducible deductions

(2) A reducible deduction that, apart from this section, is allowable to a taxpayer for a year of income is reduced by the percentage worked out using the formula:

$$\frac{\text{Pre-transfer amount for year}}{\text{Total reducible deductions for year}} \times 100$$

where:

Pre-transfer amount for year means so much of the aggregate of the reducible deductions allowable to taxpayers for the year of income apart from this section as is attributable to the current actuarial value of liabilities that had accrued on the last day on which the ex-employee or ex-employees concerned were employed by the State Bank of South Australia, or by the tax-exempt designated subsidiary or tax-exempt designated subsidiaries, as the case requires.

Total reducible deductions for year means the aggregate of the reducible deductions allowable to taxpayers for the year of income apart from this section.

No deduction unless taxpayer obtains an actuary's certificate

(3) In spite of subsection (2), a reducible deduction is not allowable to a taxpayer for a year of income unless the taxpayer obtains a certificate by an authorised actuary with respect to the operation of this section. The certificate must be in a form approved in writing by the Commissioner. The taxpayer must obtain the certificate:

Table B

- (a) before the date of lodgment of the taxpayer's return of income of the year of income; or
- (b) within such further time as the Commissioner allows.

Definitions

- (4) In this section:

approved early retirement scheme payment has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

associate has the same meaning as in section 26AAB of the *Income Tax Assessment Act 1936*.

authorised actuary means a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

bona fide redundancy payment has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

designated ETP means an eligible termination payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) that is covered by paragraph (a) or (aa) of the definition of ***eligible termination payment*** in section 27A of that Act.

employment includes the holding of an office.

ex-employee:

- (a) in relation to the State Bank of South Australia—means a person who is, or has at any time been, the subject of an order under section 19 of the *State Bank (Corporatisation) Act 1994* of South Australia and who was employed by that Bank immediately before the order was made; and
- (b) in relation to a tax-exempt designated subsidiary of the State Bank of South Australia—means a person who is, or has at any time been, the subject of an order under section 19 of the *State Bank (Corporatisation) Act 1994* of South Australia and who was employed by the designated subsidiary immediately before the order was made.

Table B

in consequence of the termination of employment has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

*Proclaimed day** means a day to be fixed by Proclamation for the purposes of this definition.

tax-exempt designated subsidiary of the State Bank of South Australia means a designated subsidiary of the State Bank of South Australia that is exempt from tax.

*The day proclaimed was 1 July 1994 (*see Gazette* No. S202 of 1 June 1995).