# Income Tax Assessment Act 1936

**No. 27, 1936**

## Compilation No. 179

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This compilation is in 7 volumes

Volume 1: sections 1–78A
Volume 2: sections 79A–121L
Volume 3: sections 124ZM–204
**Volume 4: sections 251R–468**
Volume 5: Schedules
Volume 6: Endnotes 1–4
Volume 7: Endnote 5

Each volume has its own contents

**This compilation includes retrospective amendments made by Act No. 8, 2022**

Prepared by the Office of Parliamentary Counsel, Canberra

# About this compilation

### This compilation

This is a compilation of the *Income Tax Assessment Act 1936* that shows the text of the law as amended and in force on 22 February 2022 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Part VIIB—Medicare levy and Medicare levy surcharge

## 251R Interpretation

(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 2E 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 Medicare 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 Medicare 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

(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



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(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 is entitled to a notional tax offset in respect of that child under Subdivision 961-A of the *Income Tax Assessment Act 1997*.

(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 Families Secretary has determined, under Subdivision D of Division 1 of Part 3 of that Act, each parent's or spouse's percentage of care for the child during a care period (within the meaning of that Act);

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 corresponds with that percentage of care.

(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.



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(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 Medicare levy, during that period by virtue of paragraph 251U(1)(a), (b), (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) Medicare 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) Medicare 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:



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(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

(c) the spouse was an eligible prescribed person in relation to that period; and

(d) apart from this subsection, Medicare 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 Medicare 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



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(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 Medicare levy payable in accordance with this Part and Medicare levy (fringe benefits) 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



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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 a 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;

(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 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; and

(d) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-405(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount; and

(e) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-415(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount; and

(f) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-420(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount.



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Note 1: 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.

Note 2: The tax offset for foreign income tax under Division 770 of the *Income Tax Assessment Act 1997* can be applied against your liability to pay Medicare levy or Medicare levy (fringe benefits) surcharge: see item 22 of the table in subsection 63-10(1) of that Act.

(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 the person in accordance with any other provision of this Act.

## 251T Medicare levy (other than Medicare levy surcharge) 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; 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.



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## 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 Medicare 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; or

(b) the person was entitled under the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004*, the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* or the *Treatment Benefits (Special Access) Act 2019* to free medical treatment during the whole of that period in respect of every incapacity, disease or disabling condition; or

(ca) the person was, during the whole of that period, a recipient of:

(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*; or

(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*; or

(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



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(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*; or

(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*; or

(d) during the whole of that period the person was a non-resident; or

(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; or

(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

(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 Health Minister 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).



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(2) A person shall not be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing Medicare 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 Medicare 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 Medicare 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 Medicare levy, during that period by virtue of paragraph (1)(a), (b), (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 Medicare 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 Immunities Act 1972* have the same respective meanings as in that Convention.



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## 251V Subsections 251R(4), (5), (6B), (6C) and (6D) not to apply to Medicare levy surcharge

(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 Medicare 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 Medicare levy surcharge

(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 Medicare 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.



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## 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 Medicare levy or Medicare levy (fringe benefits) 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 Medicare levy or Medicare levy (fringe benefits) 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 (fringe benefits) surcharge Act

The Commissioner has the general administration of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.



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# 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 the officer 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.

Note: See section 253 for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

(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.



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(g) Everything done by the public officer which the officer is required to do in the officer's 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 the 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; and

(b) is ordinarily resident 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) commits, 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), 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.



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## 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.



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(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; and

(b) is ordinarily resident 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 or her, 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 the officer's 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;



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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.



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(12) Everything done by the public officer of a trust estate that the officer is required to do in the officer's capacity of public officer shall be deemed to have been done by the trustee of the trust estate.

(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.

## 253 Notifying and serving companies

For the purposes of this Act, or a regulation under this Act, if the Commissioner thinks fit, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

(a) a director, the secretary or another officer of the company; or

(b) an attorney or agent of the company.

Note: See paragraph 252(1)(e) for alternative ways to serve documents on a company (through its public officer or someone else acting or appearing to act for the company).

## 254 Agents and trustees

(1) With respect to every agent and with respect also to every trustee, the following provisions shall apply:

(a) He or she 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 or her in his or her representative



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capacity, or derived by the principal by virtue of his or her agency, and for the payment of tax thereon.

(b) He or she shall in respect of that income, or those profits or gains, make the returns and be assessed thereon, but in his or her 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 or she 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 or she is hereby authorized and required to retain from time to time out of any money which comes to him or her in his or her 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 or she 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 or she has retained, or should have retained, under paragraph (d); but he or she shall not be otherwise personally liable for the tax.

(f) He or she is hereby indemnified for all payments which he or she 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 or she pays any amount for which they are jointly liable, each other one is liable to pay him or her an 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 the Commissioner would have against the property of any other taxpayer in respect of tax.

(2) Subsection (1) applies to the following in the same way as it applies to tax:

(a) the general interest charge under:



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(i) former section 163AA, former section 170AA, former subsection 204(3), former subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB of this Act;

(ii) section 5-15 of the *Income Tax Assessment Act 1997*;

(b) additional tax under former Part VII of this Act;

(c) 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 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) the person shall when required by the Commissioner pay the tax due and payable by the non-resident;

(b) the person is hereby authorized and required to retain from time to time out of any money which comes to the person 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;



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(c) the person is hereby made personally liable for the tax payable by the person on behalf of the non-resident to the extent of any amount that the person has retained, or should have retained, under paragraph (b); but the person shall not be otherwise personally liable for the tax;

(d) the person is hereby indemnified for all payments which the person 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 the person to the non-resident shall be deemed to be money which comes to the person 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 withholding MITs) shall be deemed not to be money which comes to the person on behalf of the non-resident.

(2B) For the purposes of subsection (2A), if an entity must pay an amount to the Commissioner under Subdivision 12A-C in Schedule 1 to the *Taxation Administration Act 1953* in respect of money due by the entity to a non-resident, treat that amount as being an amount that must be withheld from the money under Subdivision 12-H in that Schedule.

(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) This section applies to the following in the same way as it applies to tax:



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(a) the general interest charge under:

(i) former section 163AA, former section 170AA, former subsection 204(3), former subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB of this Act;

(ii) section 5-15 of the *Income Tax Assessment Act 1997*;

(b) additional tax under former Part VII of this Act;

(c) 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 the banker 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;



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(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.

(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 the person's 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



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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



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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*.

(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).

(2AAD) Subsection (1) applies to a person who has a Division 230 financial arrangement even if the person is not carrying on a business in relation to the arrangement. However, that subsection only requires the person to keep records that, for the purposes of this Act, are relevant to the arrangement.

(2AAE) To avoid doubt, for the purposes of subsection (4), if the records mentioned in that subsection relate to a Division 230 financial arrangement that a person has, the transactions or acts mentioned in that subsection are taken to be completed at:

(a) the end of the year of income in which the person ceases to have the arrangement; or

(b) if:

(i) the person applies the hedging financial arrangement method in Subdivision 230-E of the *Income Tax Assessment Act 1997* to determine the amount of one or



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more gains or losses the person makes from the arrangement; and

(ii) determining the way in which those gains or losses are dealt with in accordance with subsection 230-310(4) of that Act is possible only at a time after the end of the income year mentioned in paragraph (a);

the end of the year of income in which that time occurs.

(2AA) The records to be kept under subsection (1) include records required to be kept for the purposes of section 820-960 or 820-980 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

(ca) for records required to be kept under section 230-355 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.

(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



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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, 124AO or 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*.



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(4AC) If former subsection 58(1), subsection 73AA(1), or former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1), 124JD(1) or 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 will enable the transferee to work out how former section 58, section 73AA, or former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA, 124JD or 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



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(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:



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(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:

(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



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*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*.



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***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.

## 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;



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(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;

(ga) whether the premium has been reduced under section 23-1 of the *Private Health Insurance Act 2007*, and if so, the amount of the reduction;

(gb) the name, address and date of birth of a participant (within the meaning of the *Private Health Insurance Act 2007*) in the premiums reduction scheme (within the meaning of that Act) in respect of the policy;

(gc) whether the premium has been increased in accordance with Division 34 of the *Private Health Insurance Act 2007*, and if so, the amount of the increase;

(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***



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## 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 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).



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(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



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(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 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:

(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



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exceeding a fine of 5 penalty units for offences against the regulations.



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# 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,



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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.



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***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.



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***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.



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***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 2E 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



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(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



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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; 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



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(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.

***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



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(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.

***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***, in relation to an attribution debit, has the meaning given by section 373.

***gross tainted turnover*** has the meaning given by section 435.



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***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.

***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.



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***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).



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***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



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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



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(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;



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(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;
(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:



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(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



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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 would be so included if Division 230 of the *Income Tax Assessment Act 1997* did not apply); 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

(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:



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(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:



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(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;
(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.

***transitional finance share*** has the meaning given by section 327B.

***transitional finance share dividend*** means a dividend in respect of a transitional finance share.



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***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.

***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:



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(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:

(i) the primary entity is sufficiently influenced by:

(A) the controlling entity; or



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(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;



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(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



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(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 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



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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;

either of those days; or



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(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

(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.



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(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.

***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



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(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



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(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:



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(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.



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## 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.



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## 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



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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



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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:



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(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 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.



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*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;



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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

(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 × 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:



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***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:



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(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



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(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



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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 × 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:



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(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.



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(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 deductible gift recipients 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.



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## 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.



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## 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.

## 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.



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(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.



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(iv) all 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 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:



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(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.



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# 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 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.



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## 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.



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### 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



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(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



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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:

(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.



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## 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



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(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 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.



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(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



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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



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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



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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



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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.



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# 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



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(ii) an indirect control interest in the company or trust that is taken into account under paragraph (1)(b) or (d).

(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.



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(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



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(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

(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



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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



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(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:

(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).



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## 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



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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%;

(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%.



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## 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



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(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 accounting period of the company, of the total rights to



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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.



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(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 (within the meaning of former Part XI) 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:



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(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

(ii) any interests that the company has in FIFs (within the meaning of former Part XI) 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



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(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



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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.

(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:



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(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).



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## 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*.

### 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.



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(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:



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(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.

***Total percentage*** means the aggregate of the percentages that would, apart from this subsection, be the attribution percentages of all the attributable taxpayers.



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# 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



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(within the meaning of section 95) of the trust of a year of income;

(ca) where a beneficiary of a trust is specifically entitled to an amount of a capital gain or a franked distribution of the trust for a year of income:

(i) in the case of a capital gain—the amount mentioned in subsection 115-225(1) in respect of the beneficiary; or

(ii) in the case of a franked distribution—the amount mentioned in subsection 207-37(1) in respect of the beneficiary;

to the extent that it is not covered under paragraph (c);

(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



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(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).



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(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:



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(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.



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## 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;

(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



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(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.



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(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:



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(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

(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 subsection (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.

(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:

$$\text{Attribution account percentage} \times \text{Foreign tax}$$

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



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(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

(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.

(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



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(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:

(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.



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(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:

(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



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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.



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# 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



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(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

(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

(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:



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(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.

## 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 D 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:



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(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 of this Act as modified in accordance with Subdivisions B to D; 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

(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 D 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



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(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 D 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.

(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.



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(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 paragraph (2)(a) 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.

(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;



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(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:



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***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, Division 15 of Part III (other than subsection 148(1)) and sections 456, 457, 459A and 461;

(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*;

(ba) Division 230 of the *Income Tax Assessment Act 1997*;

(c) Division 820 of the *Income Tax Assessment Act 1997*;

(d) Division 832 of the *Income Tax Assessment Act 1997* (about hybrid mismatch rules).



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## 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.



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## 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



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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



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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.



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(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):

(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



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(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 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



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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:

$$\frac{\text{Eligible debt holding period} - \text{Notional exempt income period}}{\text{Eligible debt term}}$$

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



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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 cross-border requirement for transfer pricing

(1) This section applies in calculating the attributable income of the eligible CFC.

(2) Conditions that operate between the eligible CFC and another entity do not satisfy the cross-border test in subsection 815-120(3) of the *Income Tax Assessment Act 1997* if:

(a) the other entity is a CFC; and

(b) the eligible CFC and the other entity are residents of the same listed country (disregarding section 383 of this Act).

## 401 Reduction of disposal consideration or capital proceeds if attributed income not distributed

(1) If:



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(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:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the eligible CFC in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in an attribution account entity (the ***disposal entity***); and

(b) immediately before the disposal or 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 consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or 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



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(b) where the disposal of the asset, or 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 consideration in respect of the disposal or 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 the consideration or 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 consideration in respect of the disposal or 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 (b)) such that the sum of the grossed-up amounts of the parts to which the election relates equals the consideration or 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:

$$\frac{\text{Consideration}}{\text{Total grossed-up surplus}}$$

where:



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***consideration*** means the amount of the consideration or the capital proceeds.

***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 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



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(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.

(3) If:

(a) an attribution account entity makes an attribution account payment to the eligible CFC in the eligible period; and

(b) apart from this subsection, the whole or part of the attribution account payment would be included in the notional



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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 (within the meaning of former Part XI) makes a FIF attribution account payment (within the meaning of former Part XI) 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 post FIF abolition debit arises under section 23AK 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 post FIF abolition debit is notional exempt income of the eligible CFC for the eligible period.

(5) For the purposes of subsection (4), the grossed-up amount of the post FIF abolition debit is:

(a) where subparagraph 23AK(3)(b)(i) applied in relation to the debit—the amount of the debit; or

(b) where subparagraph 23AK(3)(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.



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### 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 Application of Subdivision 768-A of the *Income Tax Assessment Act 1997*

(1) For the purpose of applying Subdivision 768-A of the *Income Tax Assessment Act 1997* (about returns on foreign investment) in calculating the attributable income of the eligible CFC, disregard section 389A of this Act (which is about disregarding Division 974 of the *Income Tax Assessment Act 1997* and certain other provisions).

(2) For the purpose of applying this Act in calculating the attributable income of the eligible CFC, disregard paragraph 768-5(1)(d) of the *Income Tax Assessment Act 1997* if:

(a) the eligible CFC receives, either directly or indirectly through one or more interposed trusts or partnerships, a foreign equity distribution (within the meaning of the *Income Tax Assessment Act 1997*) from a company; and

(b) at the time the distribution is made, both the eligible CFC and the company are residents of the same listed country or unlisted country.

## Subdivision C—Modifications relating to Australian capital gains tax

### 405 Interpretation

(1) In this Subdivision:



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***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.

(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.



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### 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



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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 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.



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(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



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(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



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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

(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*



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*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:<br>(a) a resident of that listed country at that time; or<br>(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:<br>(a) a resident of an unlisted country at that time; or<br>(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



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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:

(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



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(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.



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(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):

(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



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(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



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(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



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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.



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## 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



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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



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(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;

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:



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(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.



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# 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***)



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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:



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(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, 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



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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.



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(3) If:

(a) arm's length conditions are taken by Subdivision 815-B of the *Income Tax Assessment Act 1997* to operate for purposes relating to the company; and

(b) had those conditions operated, an amount described in any of the paragraphs of subsection (1) as being an amount shown in the recognised accounts of the company for the statutory account period would 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:



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(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



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(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



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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:

$$\text{Notional gross tainted turnover of partnership} \times \text{Partner's interest}$$

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:

$$\text{Notional gross turnover of partnership} \times \text{Partner's interest}$$



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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

(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:



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(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:



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(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:

(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



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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



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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 company, under a transaction covered by any of the



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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.



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## 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.



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## 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 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.



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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 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;



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(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:

$$\text{Adjusted passive income} \times \frac{\text{Total assets} - \text{Untainted policy liabilities}}{\text{Total assets}}$$

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.



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***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:

$$\left[\text{Minimum solvency} + \text{Maximum event retention}\right] \times \left[1 - \frac{\text{Tainted outstanding claims}}{\text{Outstanding claims}}\right]$$

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:



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(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



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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



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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:

(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);



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(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;



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(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

(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).



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(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:



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***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) where any of the following conditions are satisfied at the time the policy was entered into:



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(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



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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;



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(b) accommodation in a hotel, motel, guest-house or similar place;

(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.



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(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:



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(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;



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(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



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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);

(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:



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(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



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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.

(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;



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(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



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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 the preparation of the recognised accounts of the partnership for the statutory accounting period;



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(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.



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(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.



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## 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.



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(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.



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(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 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

If:

(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.

## 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;



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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.



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# 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



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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:

$$\text{Indirect attribution interests via CFE} \times \text{Foreign accruals-taxed attributable income}$$

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



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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.

(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:

$$\text{Attribution percent} \times \text{Adjusted distributable profits}$$

where:



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***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;



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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 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:

$$\text{AP} \times \text{Interest/Entitlement} \times \text{Section 456 to 459A amount}$$

where:



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***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



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an Australian trust or a trust that is, in relation to the year of income concerned:

(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:

(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.

(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



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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 following assumptions:

(i) 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;

(ii) Subdivision 115-C of the *Income Tax Assessment Act 1997* applied only to so much of the beneficiary's share of each capital gain of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;



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(iii) Subdivision 207-B of the *Income Tax Assessment Act 1997* applied only to so much of the beneficiary's share of each franked distribution 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



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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.

(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.



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# Division 10—Post-attribution asset disposals

## 461 Reduction of disposal consideration or capital proceeds if 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:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in an attribution account entity (the ***disposal entity***); and

(b) immediately before the disposal or 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 consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is, subject to subsection (3), taken to be reduced by so much of the amount of the attribution surplus, or sum of the attribution surpluses, as the case requires; and

(d) an attribution debit is taken to arise at the time of the disposal or the CGT event under section 372, in relation to the taxpayer, for each attribution account entity (the ***surplus***



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***entity***) in relation to which there is a surplus to which paragraph (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 (c); and

(f) there is no grossed-up amount in relation to the attribution debit under section 373.

(3) For the purposes of paragraph (1)(c):

(a) if the disposal of the asset or 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) if there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (a) of this subsection) it exceeds the consideration from the disposal or the capital proceeds from the CGT event, then only so much of the surplus as does not exceed that consideration or 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 consideration from the disposal or 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 that consideration or 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:



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$$\frac{\text{Consideration}}{\text{Total surplus}}$$

where:

***consideration*** means the amount of the consideration or the capital proceeds.

***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.



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# 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



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(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



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(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.

## 465 Offence of failing to keep records

(1) A person who contravenes section 462, 462A, or 464A commits 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:



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(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.



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