Income Tax Assessment Act 1936

No. 27, 1936

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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

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part III—Liability to taxation 1

Division 10E—PDFs (pooled development funds) 1

Subdivision A—Shares in PDFs 1

124ZM Treatment distributions to shareholders in PDF 1
124ZN Exemption of income from sale of shares in a PDF 4
124ZO Shares in a PDF are not trading stock 4
124ZQ Effect of company becoming a PDF 5
124ZR Effect of company ceasing to be a PDF 5

Subdivision B—The taxable income of PDFs 6

124ZS Definitions 6
124ZTA Taxable income in first year as PDF if PDF component is nil 6
124ZT SME assessable income 7
124ZU SME income component 7
124ZV Unregulated investment component 8

Subdivision C—Adjustments of the tax treatment of capital gains and capital losses of PDFs 9

124ZW Definitions 9
124ZX Companies to which this Subdivision applies 10
124ZY Classes of assessable income 10
124ZZ Treatment of capital gains 11
124ZZA Allocation of gain amounts and loss amounts to classes of assessable income 11
124ZZB Assessable income etc. in relation to capital gains 12
124ZZD No net capital loss 12

Division 11—Interest paid by companies on bearer debentures 13

126 Interest paid by a company on bearer debentures 13
127 Credit for tax paid by company 14
128 Assessments of tax 14

Division 11A—Dividends, interest and royalties paid to non-residents and to certain other persons 15

Subdivision A—General 15

128AAA Application of Division to non-share dividends 15
128A Interpretation 15

Authorised Version C2022C00106 registered 10/03/2022

128AA Deemed interest in respect of transfers of certain securities ... 20
128AB Certificates relating to issue price of certain securities ... 21
128AC Deemed interest in respect of hire-purchase and certain other agreements ... 22
128AD Indemnification etc. agreements in relation to bills of exchange and promissory notes ... 26
128AE Interpretation provisions relating to offshore banking units ... 27
128AF Payments through interposed entities ... 33
128B Liability to withholding tax ... 34
128C Payment of withholding tax ... 47
128D Certain income not assessable ... 49
128F Division does not apply to interest on certain publicly offered company debentures or debt interests ... 49
128FA Division does not apply to interest on certain publicly offered unit trust debentures or debt interests ... 59
128GB Division not to apply to interest payments on offshore borrowings by offshore banking units ... 64
128NA Special tax payable in respect of certain securities and agreements ... 65
128NB Special tax payable in respect of certain dealings by current and former offshore banking units ... 66
128NBA Credits in respect of amounts assessed in relation to certain financial arrangements ... 68
128P Objections ... 71
128R Informal arrangements ... 71

Division 11C—Payments in respect of mining operations on Indigenous land 72

128U Interpretation ... 72
128V Liability to mining withholding tax ... 75
128W Payment of mining withholding tax ... 75

Division 12—Oversea ships 77

129 Taxable income of ship-owner or charterer ... 77
130 Commissioner may require master or agent to make return ... 77
131 Determination by Commissioner ... 77
132 Assessment of tax ... 78

Authorised Version C2022C00106 registered 10/03/2022

133 Master liable to pay 78
134 Notice of assessment 78
135 Clearance of ship 78
135A Freights payable under certain agreements 78

Division 15—Insurance with non-residents 80
141 Interpretation 80
142 Income derived by non-resident insurer 80
143 Taxable income of non-resident insurer 81
144 Liability of agents of insurer 81
145 Deduction of premiums 81
146 Exporter to furnish information 82
147 Rate of tax in special circumstances 82
148 Reinsurance with non-residents 82

Division 16—Averaging of incomes 86
149 Average income 86
149A Capital gains, abnormal income and certain death benefits to be disregarded 86
150 First average year 87
151 First application of Division in relation to a taxpayer 87
152 Taxpayer not in receipt of assessable income 87
153 Taxpayer with no taxable income 88
154 Excess of allowable deductions 88
155 Permanent reduction of income 88
156 Rebate of tax for, or complementary tax payable by, certain primary producers 89
157 Application of Division to primary producers 96
158 Application of Division 97
158A Election that Division not apply 97

Division 16D—Certain arrangements relating to the use of property 98
159GE Interpretation 98
159GEA Division applies to certain State/Territory bodies 105
159GF Residual amounts 106
159GG Qualifying arrangements 110
159GH Application of Division in relation to property 114
159GJ Effect of application of Division on certain deductions etc. 115

Authorised Version C2022C00106 registered 10/03/2022

159GK Effect of application of Division on assessability of arrangement payments 124
159GL Special provision relating to Division 10C or 10D property 128
159GM Special provision where cost of plant etc. is also eligible capital expenditure 129
159GN Effect of use of property under qualifying arrangement for producing assessable income 129
159GO Special provisions relating to partnerships 133

Division 16E—Accruals assessability etc. in respect of certain security payments 137

159GP Interpretation 137
159GQ Tax treatment of holder of qualifying security 143
159GQA Accrual period 144
159GQB Accrual amount 145
159GQC Implicit interest rate for fixed return security 146
159GQD Implicit interest rate for variable return security 147
159GR Consequences of actual payments 150
159GS Balancing adjustments on transfer of qualifying security 150
159GT Tax treatment of issuer of a qualifying security 152
159GU Effect of Division on certain transfer profits and losses 154
159GV Consequence of variation of terms of security 154
159GW Effect of Division in relation to non-residents 156
159GX Effect of Division where certain payments not assessable 157
159GY Effect of Division where qualifying security is trading stock 158
159GZ Stripped securities 158

Division 16J—Effect of cancellation of subsidiary's shares in holding company 161

159GZZZC Interpretation—general 161
159GZZZD Meaning of *eligible entity*, *eligible interest* and *eligible proportion* 162
159GZZZE Share cancellations to which this Division applies 162
159GZZZF Effect on subsidiary of share cancellations to which this Division applies 162
159GZZZG Pre-cancellation disposals of eligible interests 163
159GZZZH Post-cancellation disposals of eligible interests etc. 164

Authorised Version C2022C00106 registered 10/03/2022

159GZZZI Additional application of sections 159GZZZG and 159GZZZH to associates 165

Division 16K—Effect of buy-backs of shares 167

Subdivision AA—Application of Division to non-share equity interests 167

159GZZZIA Application of Division to non-share dividends 167

Subdivision A—Interpretation 167

159GZZZJ Interpretation 167

159GZZZK Explanation of terms 168

159GZZZL *Special* buy-backs not made in ordinary course of trading on a stock exchange 168

159GZZZM Purchase price in respect of buy-back 168

Subdivision B—Company buying-back shares 169

159GZZZN Buy-back and cancellation disregarded for certain purposes 169

Subdivision C—Off-market purchases 169

159GZZZP Part of off-market purchase price is a dividend 169

159GZZZQ Consideration in respect of off-market purchase 170

Subdivision D—On-market purchases 173

159GZZZR No part of on-market purchase price is a dividend 173

159GZZZS Consideration in respect of on-market purchase 174

Division 17—Rebates 175

Subdivision A—Concessional rebates 175

159H Application 175

Subdivision AB—Lump sum payments in arrears 175

159ZR Interpretation 175

159ZRA Eligibility for rebate 178

159ZRB Calculation of rebate 178

159ZRC Notional tax amount for recent accrual years 179

159ZRD Notional tax amount for distant accrual years 179

Subdivision B—Miscellaneous 181

160AAAA Tax rebate for low income aged persons and pensioners 181

160AAAB Tax rebate for low income aged persons and pensioners—trustees assessed under section 98 182

160AAA Rebate in respect of certain benefits etc. 184

Authorised Version C2022C00106 registered 10/03/2022

160AAB Rebate in respect of amounts assessable under section 26AH 186
160AD Maximum amount of rebates 189
160ADA Most tax offsets under the 1997 Assessment Act are treated as rebates 189

Part IIIB—Australian branches of foreign banks 190

Division 1—Preliminary 190
160ZZVA Object 190
160ZZVB Application 190
160ZZV Definitions 191
160ZZW Certain provisions to apply as if Australian branch of foreign bank were a separate legal entity 192

Division 2—Provisions relating to income tax 194
160ZZX Income of branch to have Australian source 194
160ZZZ Notional borrowing by branch from bank 194
160ZZZA Notional payment of interest by branch to bank 194
160ZZZC Offshore banking units 196
160ZZZE Notional derivative transactions between branch and bank 196
160ZZZF Notional foreign exchange transactions between branch and bank 197
160ZZZG Losses 197
160ZZZH Net capital losses 197
160ZZZI Certain transactions to be disregarded 198

Division 3—Provisions relating to withholding tax 199
160ZZZJ Withholding tax on interest paid by branch to bank 199

Division 4—Extension of Part to Australian branches of foreign financial entities 200
160ZZZK Treatment like Australian branches of foreign banks 200

Division 5—Modifications relating to hybrid mismatch rules 201
160ZZZL Certain "hybrid mismatch" deductions denied 201
160ZZZN Adjusting if Australian branch derives dual inclusion income in a later year 203
160ZZZP Dual inclusion income not to be applied more than once 203
160ZZZR Interpretation 204

Authorised Version C2022C00106 registered 10/03/2022

Part IV—Returns and assessments 205

161 Annual returns 205
161A Form and content of returns 205
161AA Contents of returns of full self-assessment taxpayers 206
161G Tax agent to give taxpayer copy of notice of assessment 206
162 Further returns and information 207
163 Special returns 207
166 Assessment 207
166A Deemed assessment 207
167 Default assessment 209
168 Special assessment 210
169 Assessments on all persons liable to tax 210
169AA Consolidated assessments 210
169A Reliance by Commissioner on returns and statements 211
170 Amendment of assessments 211
170A Amendment of assessments—interaction with other Acts 224
170B Protection for anticipation of certain discontinued announcements 226
170C Power of Commissioner to reduce amount of tax payable in certain cases 232
171 Where no notice of assessment served 232
171A Limited period to make assessments for nil liability returns for the 2003-04 year of income or earlier 232
172 Refunds of amounts overpaid 235
172A Consequences of amendment of assessments of tax offset refunds 235
173 Amended assessment to be an assessment 236
174 Notice of assessment 237
175 Validity of assessment 237
175A Objections against assessments 237

Part IVA—Schemes to reduce income tax 238

177A Interpretation 238
177B Operation of Part 241
177C Tax benefits 242
177CB The bases for identifying tax benefits 250

Authorised Version C2022C00106 registered 10/03/2022

177D Schemes to which this Part applies....251
177DA Schemes that limit a taxable presence in Australia....253
177E Stripping of company profits....256
177EA Creation of franking debit or cancellation of franking credits....258
177EB Cancellation of franking credits—consolidated groups....266
177F Cancellation of tax benefits etc. 268
177G Amendment of assessments....276
177H Diverted profits tax—objects 276
177J Diverted profits tax—application 277
177K Diverted profits tax—$25 million income test 280
177L Diverted profits tax—sufficient foreign tax test 281
177M Diverted profits tax—sufficient economic substance test....282
177N Diverted profits tax—consequences 283
177P Diverted profits tax—liability 283
177Q Diverted profits tax—general interest charge on unpaid diverted profits tax or shortfall interest charge 284
177R Diverted profits tax—when shortfall interest charge is payable 284

Part VA—Tax file numbers 285

Division 1—Preliminary 285

202 Objects of this Part 285
202A Interpretation 288
202AA Definition of *eligible PAYG payment* 291
202AB Declaration that an arrangement is, or is not, a unit trust....292

Division 2—Issuing of tax file numbers 293

202B Application for tax file number 293
202BA Issuing of tax file numbers 293
202BB Current tax file number 294
202BC Deemed refusal by Commissioner....294
202BD Interim notices....294
202BE Cancellation of tax file numbers....295
202BF Alteration of tax file numbers....295

Authorised Version C2022C00106 registered 10/03/2022

Division 3—Quotation of tax file numbers by recipients of eligible PAYG payments 296

202C TFN declarations by recipients of eligible PAYG payments 296
202CA Operation of TFN declaration 296
202CB Quotation of tax file number in TFN declaration 297
202CC Making a replacement TFN declaration in place of an ineffective declaration 299
202CD Sending of TFN declaration to Commissioner 299
202CE Effect of incorrect quotation of tax file number 300
202CEA Validation notices 302
202CF Payer must notify Commissioner if no TFN declaration by recipient 303
202CG Disclosing recipients' tax file numbers to payers 303

Division 4—Quotation of tax file numbers in connection with certain investments 305

202D Explanation of terms: investment, investor, investment body 305
202DB Quotation of tax file numbers in connection with investments 308
202DC Method of quoting tax file number 309
202DD Investor excused from quoting tax file number in certain circumstances 309
202DDB Quotation of tax file number in connection with indirectly held investment 309
202DE Securities dealer to inform the investment body of tax file number 312
202DF Effect of incorrect quotation of tax file number 312
202DG Investments held jointly 313
202DH Tax file number quoted for superannuation or surcharge purposes taken to be quoted for purposes of the taxation of eligible termination payments 314
202DHA Tax file number quoted for Division 3 purposes taken to have been quoted for superannuation purposes 315
202DI Tax file number quoted for RSA purposes taken to be quoted for purposes of the taxation of superannuation benefits 316

Authorised Version C2022C00106 registered 10/03/2022

202DJ Tax file number quoted for purposes of taxation of superannuation benefits taken to be quoted for surcharge purposes 316

Division 4A—Quotation of tax file numbers in connection with farm management deposits 318

202DL Quotation of tax file number 318

202DM Effect of incorrect quotation of tax file number 318

Division 4B—Quotation of tax file numbers in connection with certain closely held trusts 320

202DN Application of Division 320

202DO Quotation of tax file numbers 320

202DP Trustee must report quoted tax file numbers 320

202DR Effect of incorrect quotation of tax file number 321

Division 5—Exemptions 323

202EA Persons receiving certain pensions etc.—employment 323

202EB Persons receiving certain pensions etc.—investments 324

202EC Entities not required to lodge income tax returns 325

202EE Non-residents 327

202EG Manner of completing declarations 328

202EH Declarations under this Division to be retained in certain circumstances 328

Division 6—Review of decisions 329

202F Review of decisions 329

202FA Statements to accompany notification of decisions 330

Division 8—Tax file number sharing and verification 331

203 Verification of tax file numbers 331

204 Disclosure of tax file numbers to certain registrars 332

Authorised Version C2022C00106 registered 10/03/2022

Part III—Liability to taxation

Division 10E—PDFs (pooled development funds)

Subdivision A—Shares in PDFs

124ZM Treatment distributions to shareholders in PDF

Unfranked part of distribution exempt from income tax

(1) If a company makes a distribution to a shareholder at a time when the company is a PDF, the unfranked part of the distribution is exempt from income tax.

Rest of section deals with franked part

(2) The rest of this section applies to the franked part of the distribution.

Usual case

(3) Subsection (4) applies if the assessable income of a year of income of a taxpayer who or that is:

(a) a company or a natural person (other than a company or natural person in the capacity of a trustee); or

(c) a public trading trust in relation to that year of income; or

(d) a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to that year of income;

would (apart from subsection (4)) include:

(e) the franked part of the distribution; or

(f) any of the franked part of the distribution that flows indirectly to the taxpayer.

This subsection does not apply to cases dealt with in subsections (5) and (6).

Authorised Version C2022C00106 registered 10/03/2022

(4) Subject to subsection (7), the following is exempt income of the taxpayer:

(a) if paragraph (3)(e) applies—the franked part;

(b) if paragraph (3)(f) applies—so much of the franked part of the distribution as flows indirectly to the taxpayer.

Taxpayers who qualify for venture capital franking tax offset

(5) If a taxpayer (other than a life assurance company) is entitled to a tax offset in relation to the distribution under section 210-170 of the *Income Tax Assessment Act 1997*, then:

(a) so much of the franked part of the distribution as equals the part of the distribution that is franked with a venture capital credit is exempt income of the taxpayer; and

(b) if the franked part exceeds the amount so exempt—the excess is, subject to subsection (7), exempt income of the taxpayer.

(6) If a life assurance company is entitled to a tax offset in relation to the distribution under section 210-170 of the *Income Tax Assessment Act 1997*, then:

(a) so much of the franked part of the distribution as equals the amount worked out using the following formula is exempt income of the life assurance company:

$$\text{Venture capital franked part} \times \frac{\text{Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

complying superannuation class of taxable income is the life assurance company's complying superannuation class of taxable income, within the meaning of the *Income Tax Assessment Act 1997*, for the year of income in which the distribution is made.

venture capital franked part is the part of the distribution that is franked with a venture capital credit.

Authorised Version C2022C00106 registered 10/03/2022

total income is the life assurance company's assessable income for the year of income in which the distribution is made; and

(b) if the franked part exceeds the amount so exempt—the excess is, subject to subsection (7), exempt income of the life assurance company.

No exemption if return prepared on basis that amount assessable

(7) Subsection (4) and paragraphs (5)(b) and (6)(b) do not exempt, and are taken never to have exempted, an amount if the taxpayer's return of income of the year of income is prepared on the basis that the amount is included in the taxpayer's assessable income of that year.

Where partner entitled to deduction for amount flowing indirectly

(8) If:

(a) any of the franked part of the distribution flows indirectly to a taxpayer who is a partner in a partnership; and

(b) apart from this subsection, the amount that flows indirectly would be allowable as a deduction from the taxpayer's assessable income of a year of income; and

(c) the taxpayer is of a kind mentioned in any of paragraphs (3)(a) to (d);

the amount that flows indirectly is not allowable as a deduction from that assessable income.

(9) Subsection (8) does not prevent, and is taken never to have prevented, an amount from being allowable as a deduction if the taxpayer's return of income of the year of income is prepared on the basis that the amount is so allowable.

Where trustee assessed on amount flowing indirectly

(10) If:

(a) any of the franked part of the distribution flows indirectly to the trustee of a trust estate; and

Authorised Version C2022C00106 registered 10/03/2022

(b) apart from this subsection, the trustee would be liable under section 98, 99 or 99A to be assessed and pay tax on the amount that flows indirectly;

the trustee is not liable under that section to be assessed and to pay tax on the amount that flows indirectly.

(11) Subsection (10) does not prevent, and is taken never to have prevented, the trustee from being liable under that section to be assessed and to pay tax on an amount if the trustee elects to be so liable.

(12) An election must be made in the trustee's return of income of the trust estate for the year of income concerned.

Interpretation

(13) In this section:

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

part of a distribution that is franked with a venture capital credit has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

124ZN Exemption of income from sale of shares in a PDF

Income derived by a taxpayer from selling shares in a company is exempt from income tax if the company is a PDF at the time of the sale.

Note: Any capital gain or capital loss from a disposal of shares in a PDF is disregarded: see section 118-13 of the *Income Tax Assessment Act 1997*.

124ZO Shares in a PDF are not trading stock

Shares in a PDF are not trading stock for the purposes of this Act.

Authorised Version C2022C00106 registered 10/03/2022

124ZQ Effect of company becoming a PDF

(1) This section applies to shares in a company that a taxpayer holds when the company becomes a PDF.

(2) In determining for the purposes of this Act whether an amount is or was allowable as a deduction to the taxpayer in respect of acquiring the shares, the shares are taken to have been shares in a PDF throughout the period beginning immediately before the taxpayer acquired them and ending when the company became a PDF.

(3) For the purposes of this Act, the shares are taken to have been trading stock of the taxpayer at no time during that period.

(4) Section 170 does not prevent an assessment from being amended to give effect to this section.

124ZR Effect of company ceasing to be a PDF

(1) This section applies to shares in a company that a taxpayer holds when the company ceases to be a PDF.

(2) For the purposes of this Act (except Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*), the taxpayer is taken:

(a) to have sold the shares immediately before the company ceased to be a PDF; and

(b) to have rebought the shares immediately after the company so ceased;

for a consideration equal to the market value of the shares immediately after the company so ceased.

(3) Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* apply as if the taxpayer:

(a) had disposed of the CGT assets constituted by the shares, and had done so immediately before the company ceased to be a PDF; and

(b) had re-acquired those assets immediately afterwards;

Authorised Version C2022C00106 registered 10/03/2022

for an amount equal to the shares' market value immediately after the company so ceased.

Subdivision B—The taxable income of PDFs

124ZS Definitions

In this Subdivision:

non-CGT assessable income means an amount included in assessable income otherwise than under Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997* or Subdivision C of this Division.

SME investment means an investment other than an unregulated investment.

Note: ***SME*** stands for small and medium enterprises.

unregulated investment has the same meaning as in the *Pooled Development Funds Act 1992*.

124ZTA Taxable income in first year as PDF if PDF component is nil

(1) This section applies if:

(a) a company becomes a PDF during a year of income and is still a PDF at the end of the year of income; and

(b) the PDF component for the year of income is a nil amount; and

(c) the year of income is the 1997-98 year of income or a later one.

(2) The company's taxable income of the year of income is the amount that, if the period (the ***notional year***) beginning at the start of the year of income and ending immediately before the company becomes a PDF were a year of income of the company, would be the company's taxable income of the notional year.

Authorised Version C2022C00106 registered 10/03/2022

124ZT SME assessable income

SME assessable income

(1) A company's ***SME assessable income*** of a year of income is the sum of:

(a) so much of the company's non-CGT assessable income of the year of income as was derived:

(i) from, or from the disposal of, an SME investment of the company; and

(ii) at a time when the company was a PDF; and

(b) any assessable income allocated to the company's SME assessable income under section 124ZZB.

Note: Section 124ZZB deals with capital gains etc.

When assessable income derived

(2) For the purposes of paragraph (1)(a), if an amount is derived by a company during, but not at a particular time during, a year of income, the amount is taken to have been derived by the company on the last day of the year of income.

124ZU SME income component

Full-year PDFs

(1) The SME income component of a year of income of a company that is a PDF throughout the year of income is so much of the company's taxable income of the year of income as does not exceed the amount (if any) remaining after deducting from the company's SME assessable income of the year of income any deductions allowable to the company in relation to the year of income.

Part-year PDFs

(2) The ***SME income component*** of a year of income of a company that becomes a PDF during the year of income and is still a PDF at

Authorised Version C2022C00106 registered 10/03/2022

the end of the year of income is so much of the company's adjusted taxable income of the year of income as does not exceed the amount (if any) remaining after deducting from the company's SME assessable income of the year of income any deductions where both of the following conditions are satisfied:

(a) the deductions were allowable to the company in relation to the year of income;

(b) the deductions were taken into account in working out the company's PDF component of the year of income.

For this purpose, ***adjusted taxable income*** means so much of the company's taxable income of the year of income as does not exceed its PDF component of the year of income.

124ZV Unregulated investment component

Full-year PDFs

(1) The ***unregulated investment component*** of a year of income of a company that is a PDF throughout the year of income is the amount (if any) remaining after deducting from the company's taxable income of the year of income the company's SME income component of the year of income.

Part-year PDFs

(2) The ***unregulated investment component*** of a year of income of a company that becomes a PDF during the year of income and is still a PDF at the end of the year of income is the amount (if any) remaining after deducting from the company's adjusted taxable income of the year of income the company's SME income component of the year of income. For this purpose, ***adjusted taxable income*** means so much of the company's taxable income of the year of income as does not exceed its PDF component of the year of income.

Authorised Version C2022C00106 registered 10/03/2022

Subdivision C—Adjustments of the tax treatment of capital gains and capital losses of PDFs

124ZW Definitions

In this Subdivision:

accumulated net capital loss for a year of income (the ***loss year***) means the amount (if any) by which the total of:

(a) the total of the overall capital losses for all classes of assessable income for the loss year; and

(b) any accumulated net capital loss for the last year of income *before* the loss year;

exceeds:

(c) the total of the overall capital gains for all classes of assessable income for the loss year (before section 116GB is applied).

class, in relation to assessable income, means a class specified in section 124ZY.

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

non-CGT assessable income means an amount included in assessable income otherwise than under Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997* or this Subdivision.

ordinary capital gain for a CGT event means any capital gain that would (apart from this Subdivision) arise from the event.

ordinary capital loss for a CGT event means any capital loss that would (apart from this Subdivision) arise from the event.

overall capital gain for a class of assessable income means:

(a) the amount by which the total ordinary capital gain for that class exceeds the total ordinary capital loss for that class; or

(b) if an amount has been applied under subsection 124ZZB(2) to reduce an overall capital gain previously worked out under this definition—that gain as so reduced.

Authorised Version C2022C00106 registered 10/03/2022

overall capital loss for a class of assessable income means the amount by which the total ordinary capital gain for that class is less than the total ordinary capital loss for that class.

residual overall capital gain means so much of an overall capital gain as remains after applying subsection 124ZZB(2).

SME assessable income has the meaning given by Subdivision B.

SME investment means an investment other than an unregulated investment.

total ordinary capital gain for a class means the total of so much of any ordinary capital gains as has been allocated to that class under section 124ZZA.

total ordinary capital loss for a class means the total of so much of any ordinary capital losses as has been allocated to that class under section 124ZZA.

unregulated investment has the same meaning as in the *Pooled Development Funds Act 1992*.

124ZX Companies to which this Subdivision applies

This Subdivision applies to a company in relation to a year of income if:

(a) the company is a PDF throughout the year of income; or

(b) the company becomes a PDF during the year of income and is still a PDF at the end of the year of income.

124ZY Classes of assessable income

Classes

(1) The classes of assessable income of the company are as follows:

(a) SME assessable income (see section 124ZT);

(b) other assessable income (see subsection(2)).

Authorised Version C2022C00106 registered 10/03/2022

Other assessable income

(2) The company's ***other assessable income*** of the year of income is the sum of:

(a) so much of the company's non-CGT assessable income of the year of income as is not included in the company's SME assessable income of the year of income; and

(b) any assessable income allocated to the company's other assessable income under section 124ZZB.

124ZZ Treatment of capital gains

Nothing is to be included in the company's assessable income of the year of income under section 102-5 of the *Income Tax Assessment Act 1997* (about net capital gains).

124ZZA Allocation of gain amounts and loss amounts to classes of assessable income

Disposals of SME investments

(1) If:

(a) there is an ordinary capital gain amount, or an ordinary capital loss amount, in respect of a disposal of an SME investment of the company; and

(b) the company was a PDF at the time of the disposal;

the ordinary capital gain amount or ordinary capital loss amount, as the case may be, is taken into account in determining the overall capital gain or overall capital loss for the class known as SME assessable income.

Disposals of assets other than SME investments

(2) If:

(a) there is an ordinary capital gain amount, or an ordinary capital loss amount, in respect of a disposal of an asset of the company; and

(b) subsection (1) does not apply to the disposal;

Authorised Version C2022C00106 registered 10/03/2022

the ordinary capital gain amount or the ordinary capital loss amount, as the case may be, is taken into account in determining the overall capital gain or overall capital loss for the class known as other assessable income.

124ZZB Assessable income etc. in relation to capital gains

(1) The assessable income of each class includes the amount (if any) that is left over after the overall capital gain for that class has been reduced in accordance with this section.

(2) If there is an overall capital loss for a particular class of assessable income, the loss is to be applied in reduction of overall capital gains for the remaining class.

(3) Any accumulated net capital loss for the immediately preceding year of income is to be applied in reduction of residual overall capital gains for the classes of assessable income in the following order:

(a) SME assessable income;

(b) other assessable income.

124ZZD No net capital loss

The company does not make a net capital loss for the year of income, despite section 102-10 of the *Income Tax Assessment Act 1997*.

Authorised Version C2022C00106 registered 10/03/2022

Division 11—Interest paid by companies on bearer debentures

126 Interest paid by a company on bearer debentures

(1) If:

(a) a company pays or credits an amount of interest in respect of a debenture payable to bearer; and

(b) the interest is not, to any extent, subject to withholding tax under Division 11A; and

(c) neither of sections 128F (to the extent it applies to non-residents who are not engaged in carrying on a business in Australia at or through a permanent establishment in Australia) and 128GB applies to the interest; and

(e) the company does not give the Commissioner the name and address of the holder of the debenture;

the company is liable to pay income tax, as imposed by the *Income Tax (Bearer Debentures) Act 1971*, on the amount paid or credited, or, if the company makes a deduction under subsection (2), the amount that otherwise would have been paid or credited.

(1A) Subsection (1) does not affect any other liability of the company to pay income tax.

(2) The company may deduct and retain for its own use from an amount payable to a person in respect of which the company is liable to pay tax in accordance with subsection (1) an amount equal to that tax.

(3) Where the Commissioner is satisfied that that person is not liable to furnish a return, the Commissioner must refund to that person the amount of tax paid by the company in respect of his or her debentures.

Authorised Version C2022C00106 registered 10/03/2022

127 Credit for tax paid by company

(1) Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to whom it was paid or credited, the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person.

128 Assessments of tax

An assessment of tax payable in accordance with this Division by a company may be an assessment of the amount of tax so payable upon interest in respect of a number of debentures, whether held by the one holder or not.

Authorised Version C2022C00106 registered 10/03/2022

Division 11A—Dividends, interest and royalties paid to non-residents and to certain other persons

Subdivision A—General

128AAA Application of Division to non-share dividends

(1) This Division:
  (a) applies to a non-share equity interest in the same way as it applies to a share; and
  (b) applies to an equity holder in the same way as it applies to a shareholder; and
  (c) applies to a non-share dividend in the same way as it applies to a dividend.

(2) Subsection (1) does not apply to:
  (a) section 128AE; and
  (b) section 128F; and
  (ba) section 128FA.

128A Interpretation

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

ADI means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

dividend:
  (a) includes part of a dividend; and
  (b) (except when used in paragraph (d) of the definition of ***interest*** in subsection (1AB)) does not include a dividend paid in respect of a non-equity share.

enterprise means a business or other industrial or commercial undertaking.

Authorised Version C2022C00106 registered 10/03/2022

entity means:

(a) the Commonwealth, a State or an authority of the Commonwealth or of a State;

(b) a natural person;

(c) a company;

(d) the partners in a partnership, in their capacity as partners;

(e) the persons carrying on a joint venture, in their capacity as such persons; or

(f) the trustees of a trust, in their capacity as such trustees.

foreign bank means a non-resident company that carries on a banking business.

joint venture means an enterprise carried on by 2 or more persons in common otherwise than as partners.

non-ADI financial institution means a corporation that:

(a) is a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*; and

(b) is included in Category D (Money Market Corporation) in a list kept under section 11 of that Act; and

(c) carries on a general business of providing finance (within the meaning of that Act) on a commercial basis.

nostro account means an account that:

(a) an ADI or non-ADI financial institution holds with a foreign bank and maintains for the sole purpose of settling international transactions; and

(b) operates on the basis that:

(i) amounts deposited in the account are held in the account for no more than 10 days; and

(ii) amounts advanced by way of an overdraft on the account are repaid within 10 days.

(1AA) In this Division and in an Act imposing withholding tax:

income includes a royalty and a dividend.

Authorised Version C2022C00106 registered 10/03/2022

(1AB) For the purposes of this Division:

interest includes an amount:

(a) that is in the nature of interest; or

(b) to the extent that it could reasonably be regarded as having been converted into a form that is in substitution for interest; or

(c) to the extent that it could reasonably be regarded as having been received in exchange for interest in connection with a washing arrangement; or

(d) that is a dividend paid in respect of a non-equity share; or

(e) if regulations under the *Income Tax Assessment Act 1997* are made having the effect that instruments known as upper tier 2 capital instruments, or a class of instruments of that kind, are debt interests—that is paid on such a debt interest and is not a return of an investment;

but does not include an amount to the extent to which it is a return on an equity interest in a company.

washing arrangement means an arrangement under which the title to a security is transferred to a resident shortly before an interest payment is made where the sole or dominant purpose of the arrangement is to reduce the amount of withholding tax payable by a person.

(1AC) An example of an amount in the nature of interest is an amount representing a discount on a security.

(1AD) An example of an amount in substitution for interest is a lump sum payment made instead of payments of interest.

(1AE) For the purposes of this Division, if a lender assigns a loan, or the right to interest under a loan, any payment from the borrower to the assignee that represents an amount that would have been interest if the assignment had not taken place is taken to be a payment of interest.

Authorised Version C2022C00106 registered 10/03/2022

Section 128A

(1AF) For the purposes of this Division, if a person acquires a security, or the right to interest under a security, any payment from the issuer of the security to that person that represents an amount that would have been interest if the acquisition had not taken place is taken to be a payment of interest.

(1A) Subject to subsection (1B), for the purposes of this subsection and sections 128AA, 128AB, 128AD, 128C, 128NA and 128NBA:

(a) a reference to the reduced issue price of a security that has been partially redeemed on one or more occasions is a reference to the issue price of the security reduced by the amount of the partial redemption or the sum of the amounts of the partial redemptions, as the case may be;

(b) expressions used in this subsection or those sections that are also used in Division 16E have the same respective meanings as in that Division; and

(c) sections 159GV (other than subsection 159GV(2)) and 159GZ apply as if references in those sections to "this Division" were references to "subsection 128A(1A) and sections 128AA, 128AB, 128AD, 128C, 128NA and 128NBA".

(1B) Subsection (1A) applies as if:

(a) paragraph (c) of the definition of ***qualifying security*** in subsection 159GP(1) were omitted; and

(b) paragraph (a) of the definition of ***security*** in that subsection included a reference to debt interests.

(2) For the purposes of this Division, interest or a royalty shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs.

(3) For the purposes of this Division, a beneficiary who is presently entitled to a dividend, to interest or to a royalty included in the income of a trust estate shall be deemed to have derived income

Authorised Version C2022C00106 registered 10/03/2022

consisting of that dividend, interest or royalty at the time when he or she became so entitled.

(4) In section 260, ***income tax*** or ***tax*** includes withholding tax.

(5) For the purposes of this Division:

(a) the borrowing of moneys by a company by means of the issue of a number of debentures or debt interests in one borrowing operation shall be deemed to be the raising of a loan;

(b) subject to paragraph (a), each receipt of moneys by a borrower under a contract under which moneys are to be, or may be, advanced by way of loan shall be deemed to be the raising of a loan; and

(c) the moneys received by the raising of a loan, less the expenses of borrowing, shall be deemed to be the loan moneys in respect of the loan.

(6) A reference in this Division to beneficial interests in relation to an entity shall be read:

(a) in the case of an entity being a company or the partners in a partnership—as a reference to beneficial interests in respect of the capital of, and in respect of any profits or income of, the company or partnership;

(b) in the case of an entity being persons carrying on a joint venture—as a reference to beneficial interests in respect of the enterprise; and

(c) in the case of an entity being the trustees of a trust—as a reference to beneficial interests under the trust.

(7) A reference in this Division to the use of moneys for the purposes of an enterprise shall be read as not including use of those moneys in the course of carrying on an enterprise:

(a) by way of providing capital for another enterprise; or

(b) by way of the making of loans.

(9) For the purposes of this Division:

Authorised Version C2022C00106 registered 10/03/2022

(a) a reference to particular loan moneys (including the reference in paragraph (b)) includes a reference to moneys that, in the opinion of the Commissioner, represent those loan moneys; and

(b) without limiting the generality of paragraph (a):

(i) moneys received by way of repayment of a loan made out of particular loan moneys; and

(ii) moneys received in respect of shares in the capital of a company, being shares purchased or subscribed for by the expenditure of particular loan moneys, upon a sale of the shares, a return of capital by the company or liquidation of the company;

shall be deemed to represent those loan moneys.

(10) For the purposes of this Division, the trustee of a provident, benefit, superannuation or retirement fund is a non-resident at a particular time if, and only if, the fund is a foreign superannuation fund at that time.

(11) If, apart from this subsection, there is, in relation to a fund, no person who is a trustee of the fund for the purposes of this Division, the person, or each of the persons, who manages the fund is taken, for the purposes of this Division, to be the trustee, or a trustee, as the case requires, of the fund.

128AA Deemed interest in respect of transfers of certain securities

(1) Where:

(a) a person transfers a qualifying security; and

(b) the transfer price of the security exceeds the issue price or, where the security has been partially redeemed, the reduced issue price of the security;

so much of the transfer price as equals the excess referred to in paragraph (b) shall, for the purposes of this Division, be deemed to be income that consists of interest.

Authorised Version C2022C00106 registered 10/03/2022

(2) For the purposes of references to the transfer price, issue price or reduced issue price of a qualifying security in subsection (1), any application of subsection 159GP(2) shall be disregarded.

128AB Certificates relating to issue price of certain securities

(1) Where:

(a) a qualifying security is or was transferred either before or after the commencement of this section; and

(b) at the time of transfer either:

(i) the transferor is or was a resident; or

(ii) the transferor is or was a non-resident and the transfer price is or was derived from a source in Australia;

the transferee may at any time after the transfer (including a time after the transferee ceases to be the holder of the security) apply, in the approved form, to the Commissioner for the issue of a certificate under this section.

(3) Where the Commissioner is satisfied that the requirements of paragraph (1)(b) are satisfied in relation to the transfer of the qualifying security to which an application under subsection (1) relates and that the security was transferred on a particular date and for a particular consideration to the applicant, the Commissioner shall issue to the applicant a certificate that:

(a) is expressed to be issued under this section;

(b) identifies the security to which it relates;

(c) specifies that date as the date of transfer;

(d) specifies that consideration, or, where subsection 159GP(2) applies, the amount that is taken under that subsection to be the consideration for the transfer, as the transfer price; and

(e) specifies the name of the applicant as the transferee.

(4) Where the Commissioner issues a certificate under this section in relation to a qualifying security that has been transferred to a person, the following provisions have effect:

Authorised Version C2022C00106 registered 10/03/2022

(a) for the purposes of the application of this Division in relation to the first subsequent transfer (if any) of the qualifying security by the person:

(i) the amount specified in the certificate shall be taken to be the issue price of the security; and

(ii) where the security was partially redeemed before the transfer to the person—any such partial redemption shall be taken not to have occurred;

(b) if the security is redeemed or partially redeemed without having been subsequently transferred by the person—in determining for the purposes of the application of this Division the extent (if any) to which the redemption payment comprises an amount that is interest by reason only of the definition of ***interest*** in subsection 128A(1AB):

(i) the amount specified in the certificate as the transfer price shall be taken to be the issue price of the security; and

(ii) where the security was partially redeemed before the transfer to the person—any such partial redemption shall be taken not to have occurred.

(5) If the Commissioner refuses an application under subsection (1), the Commissioner shall serve on the applicant, by post or otherwise, notice in writing that the application has been refused.

128AC Deemed interest in respect of hire-purchase and certain other agreements

(1) In this section:

agreement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

attributable agreement payment, in relation to a relevant agreement, means so much of any payment made or liable to be

Authorised Version C2022C00106 registered 10/03/2022

made under the agreement as represents consideration for the use, sale or disposal of the relevant agreement property.

carry forward interest, in relation to an attributable agreement payment in relation to a relevant agreement, means so much (if any) of the notional interest in relation to the payment as exceeds the amount of the payment.

eligible value, in relation to the relevant agreement property in relation to a relevant agreement, means the market value of the property at the time at which the agreement commences or commenced to apply in relation to the property.

formula interest, in relation to an attributable agreement payment in relation to a relevant agreement, means the amount ascertained in accordance with the formula $\frac{2\ AC}{B\ (B + 1)}$, where:

A is the total interest in relation to the relevant agreements.

B is the total number of attributable agreement payments liable to be made under the relevant agreements; and

C is the number that is ***B***, reduced by the number of attributable agreement payments made under the relevant agreement before the attributable agreement payment concerned.

notional interest, in relation to an attributable agreement payment in relation to a relevant agreement, means the sum of the formula interest (if any) in relation to the payment and the carry forward interest (if any) in relation to the immediately preceding attributable agreement payment in relation to the relevant agreement.

relevant agreement means an agreement entered into after 16 December 1984, being:

(a) a hire-purchase agreement; or

Authorised Version C2022C00106 registered 10/03/2022

(b) a lease or any other agreement relating to the use by a person of property owned by another person, being a lease or agreement under which:

(i) the lessee or person using the property is entitled to purchase or require the transfer of the lease property or property subject to the agreement on the termination or expiration of the lease or agreement; or

(ii) the lease term or term of the agreement is for all, or substantially all, of the effective life of the lease property or property subject to the agreement.

relevant agreement property, in relation to a relevant agreement, means:

(a) in the case of a hire-purchase agreement—the property that is the subject of the agreement; and

(b) in any other case—the property in relation to which subparagraph (b)(i) or (ii) of the definition of ***relevant agreement*** applies.

total interest, in relation to a relevant agreement, means the sum of all of the attributable agreement payments liable to be made under the relevant agreement, reduced by the eligible value of the relevant agreement property.

(2) Where an agreement (including a hire-purchase agreement and a lease) relates to the use by a person of 2 or more items of property owned by another person, this section applies as if, instead of the single agreement, there were separate agreements relating to the use of each of the items of property having such of the terms of the first-mentioned agreement as are relevant.

(3) Where a variation is or was made in the terms of, or liability to make payments under, a relevant agreement, then, for the purposes of the application of this section:

(a) the relevant agreement shall be taken to be, or to have been, terminated at the time at which the variation has effect; and

(b) a new relevant agreement shall be taken to be, or to have been, entered into at the time at which the variation has effect

Authorised Version C2022C00106 registered 10/03/2022

and on the terms of the first-mentioned relevant agreement as so varied.

(4) Where any right or option under an agreement to extend the term of, or otherwise vary the effect of, the agreement is or was exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the agreement to provide for the extension or other effect.

(5) Where an attributable agreement payment in relation to a relevant agreement is made, so much of the attributable agreement payment as does not exceed the notional interest in relation to the payment shall, for the purposes of this Division, be deemed to be income that consists of interest.

(6) Where:

(a) a relevant agreement is entered into after the commencement of this section; and

(b) at the time at which the relevant agreement is entered into, the total interest in relation to the relevant agreement exceeds the sum of all amounts that, if all of the attributable agreement payments liable to be made under the relevant agreement were made, would, disregarding this subsection, be deemed to be income that consists of interest under subsection (5) in relation to the relevant agreement;

the amount of the notional interest in relation to the first attributable agreement payment in relation to the relevant agreement shall, for the purposes of this section, be increased by an amount equal to the excess referred to in paragraph (b).

(7) For the purposes of section 128D, where withholding tax is payable on a part of an attributable agreement payment that is taken under subsection (5) of this section to be an amount of interest, the withholding tax shall be taken to be payable on the whole of the attributable agreement payment.

Authorised Version C2022C00106 registered 10/03/2022

128AD Indemnification etc. agreements in relation to bills of exchange and promissory notes

(1) Where:

(a) the drawer of a bill of exchange issued after the day on which this section comes into operation pays an amount (in this subsection referred to as the ***indemnification amount***) to the acceptor of the bill to indemnify, reimburse or otherwise compensate the acceptor in respect of the whole or a part of an amount (which whole or part is in this subsection referred to as the ***eligible presentment amount***) that the acceptor has, or will, become liable to pay to the payee under the bill on presentment of the bill;

(b) no part of the indemnification amount is, or will be, included in the assessable income of the acceptor of any year of income; and

(c) the whole or a part (in this subsection referred to as the ***eligible presentment interest***) of the eligible presentment amount consists or will consist of interest;

so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the acceptor in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest.

(2) Where:

(a) a person (in this subsection referred to as the ***indemnifier***) pays an amount (in this subsection referred to as the ***indemnification amount***) to the issuer of a promissory note issued after the day on which this section comes into operation to indemnify, reimburse or otherwise compensate the issuer in respect of the whole or a part of an amount (which whole or part is in this subsection referred to as the ***eligible presentment amount***) that the issuer has, or will, become liable to pay to the payee under the note on presentment of the note;

Authorised Version C2022C00106 registered 10/03/2022

(b) no part of the indemnification amount is, or will be, included in the assessable income of the issuer of any year of income; and

(c) the whole or a part (in this subsection referred to as the ***eligible presentment interest***) of the eligible presentment amount consists or will consist of interest;

so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the issuer in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest.

128AE Interpretation provisions relating to offshore banking units

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

borrow includes raise finance by the issue of a security.

lend includes provide finance by the purchase of a security.

OB activity has the same meaning as in section 121D.

offshore banking unit has the meaning given by this section.

offshore borrowing means:

(a) a borrowing in any currency, by a person who is or has been an offshore banking unit, from a non-resident who is not a related person (within the meaning of Division 9A); or

(b) a borrowing in a currency other than Australian currency, by a person who is or has been an offshore banking unit, from a resident or a related person (within the meaning of Division 9A).

offshore gold borrowing means borrowing gold from an offshore person within the meaning of section 121E.

prevailing borrowing rate, in relation to a person who is or has been an offshore banking unit, in relation to a particular time, means the effective annual interest rate that the Commissioner considers was payable by the person on borrowings at or about that

Authorised Version C2022C00106 registered 10/03/2022

time or, where there were none, by offshore banking units generally at or about that time.

prevailing borrowing term, in relation to a person who is or has been an offshore banking unit, in relation to a particular time, means the period that the Commissioner considers was the usual term of borrowings by the person at or about that time or, where there were none, by offshore banking units generally at or about that time.

security means a bond, debenture, debt interest, bill of exchange, promissory note or other security or similar instrument.

tax exempt gold means gold that is tax exempt gold under this section.

tax exempt loan money means an amount that is tax exempt loan money under this section.

transfer to a person includes apply an amount for the benefit of a person.

(1A) The Minister must not make a declaration under subsection (2), or a determination under subsection (2AA), after the day on which the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* received the Royal Assent.

(2) The Minister may, by notifiable instrument, declare a person being:

(a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or

(b) a public authority constituted by a law of a State, being a public authority that carries on the business of State banking; or

(ba) a company in which all of the equity interests are beneficially owned by an offshore banking unit (other than one to which paragraph (c) applies); or

(c) a person whom the Minister is satisfied is appropriately authorised to carry on business as a dealer in foreign exchange; or

Authorised Version C2022C00106 registered 10/03/2022

(d) a life insurance company registered under section 21 of the *Life Insurance Act 1995*; or

(e) a company incorporated under the *Corporations Act 2001* that provides funds management services on a commercial basis (other than solely to related persons):

(i) that is, under the *Financial Sector (Collection of Data) Act 2001*, a registered entity included in the category for money market corporations; or

(ii) all of the shares which are beneficially owned by a company covered by subparagraph (i); or

(iii) a financial services licensee (as defined by section 761A of the *Corporations Act 2001*) whose licence covers dealing in securities (as defined by subsection 92(3) of the *Corporations Act 2001* for the purposes of Chapters 6 to 6CA, disregarding Chapter 6C, of that Act), providing financial advice in relation to such securities or operating a managed investment scheme (as defined by section 9 of the *Corporations Act 2001*); or

(f) a company that the Minister determines, in writing, to be an OBU under subsection (2AA);

to be an offshore banking unit for the purposes of this Division.

(2AA) The Minister may, on written application by a company, determine, by notifiable instrument, that the company is an OBU.

(2AB) The determination must:

(a) specify the day when the company commences to be an OBU; and

(b) contain any other information the Minister considers appropriate.

(2AC) A determination of the Minister under subsection (2AA) must be made in accordance with guidelines determined by the Minister under subsection (2AD).

(2ACA) A determination under subsection (2AA) that a company is an OBU and a declaration under subsection (2), for the purposes of

Authorised Version C2022C00106 registered 10/03/2022

paragraph (2)(f), that the company is an offshore banking unit for the purposes of this Division may be included in the same instrument.

(2AD) The Minister must, by legislative instrument, determine guidelines for the making of determinations under subsection (2AA). The guidelines may require the Minister to take into account:

(a) specified criteria; or

(b) recommendations of particular bodies; or

(c) any other factors.

(2A) If a person who is an offshore banking unit for the purposes of this Division:

(a) is convicted of an offence against section 8L, 8N, 8Q, 8T or 8U of the *Taxation Administration Act 1953*, or against Division 136 or 137 of the *Criminal Code* in relation to a taxation law (within the meaning of the *Taxation Administration Act 1953*); or

(b) incurs a tax liability, within the meaning of that Act, by way of a penalty equal to 90% of an amount;

the Minister may, by notifiable instrument, declare that the person is no longer an offshore banking unit for the purposes of this Division.

(2B) If the Minister makes such a declaration in respect of a company that is an offshore banking unit only because of paragraph (2)(ba), the offshore banking unit mentioned in that paragraph, and in any previous application of that paragraph that was necessary for it to apply to the company, is no longer an offshore banking unit from the time when the declaration comes into force.

(2C) If a person who is an offshore banking unit ceases to be a person of a kind mentioned in any of paragraphs (2)(a), (b), (ba) and (c), the Minister must, by notifiable instrument, declare that the person is no longer an offshore banking unit for the purposes of this Division.

Authorised Version C2022C00106 registered 10/03/2022

(2D) Except as mentioned in subsection (2A), (2B) or (2C), a person does not cease to be an offshore banking unit for the purposes of this Division.

(3) A declaration under subsection (2), (2A) or (2C) shall not come into force before the day on which the declaration is registered on the Federal Register of Legislation under the *Legislation Act 2003*.

(4) Where:

(a) a person who is an offshore banking unit makes an offshore borrowing or offshore gold borrowing; and

(b) the lender would, but for section 128GB, be liable to pay withholding tax on income consisting of interest on the offshore borrowing or offshore gold borrowing;

then, for the purposes of this Division, the amount borrowed is tax exempt loan money or tax exempt gold of the person.

(5) Where:

(a) a person who is or has been an offshore banking unit makes a loan of tax exempt loan money or tax exempt gold where the loan is an OB activity or would be if the person were an OBU; and

(b) the loan is repaid;

the amount repaid is, for the purposes of this Division, deemed to be tax exempt loan money or tax exempt gold of the person.

(7) Where a person who is or has been an offshore banking unit transfers an amount of tax exempt loan money or tax exempt gold to another person, the following provisions have effect for the purposes of this Division:

(a) subject to subsections (10) and (11), the amount transferred ceases to be tax exempt loan money or tax exempt gold of the person; and

(b) the amount transferred does not become tax exempt loan money or tax exempt gold of the other person.

(8) Where a person who is or has been an offshore banking unit transfers to another person an amount of money or gold that, in the

Authorised Version C2022C00106 registered 10/03/2022

opinion of the Commissioner, includes tax exempt loan money or tax exempt gold, so much of the amount transferred as the Commissioner considers was tax exempt loan money or tax exempt gold is deemed, for the purposes of this Division, to have been tax exempt loan money or tax exempt gold of the person.

(9) Where a person who is or has been an offshore banking unit deals with an amount of tax exempt loan money or tax exempt gold of the person under the person's internal accounting arrangements in such a way that the amount becomes available for possible transfer to other persons (other than by way of payment in carrying on an OB activity, or what would be an OB activity if the person were an OBU, or repayment of an offshore borrowing or an offshore gold borrowing), the following provisions have effect for the purposes of this Division:

(a) the person is, when the amount so becomes available, deemed to make a transfer of the amount to another person, other than by way of payment in carrying on an OB activity (or what would be an OB activity if the person were an OBU) or repayment of an offshore borrowing or an offshore gold borrowing;

(b) any actual transfer of the amount by the person to another person shall be disregarded.

(10) For the purposes of this Division, where a person who is or has been an offshore banking unit transfers tax exempt loan money to another person in exchange for an equivalent amount in a different currency:

(a) the amount received in exchange shall be taken to be the same money as was transferred; and

(b) the transfer shall be taken not to have occurred.

(11) For the purposes of this Division, where a person who is or has been an offshore banking unit transfers tax exempt loan money or tax exempt gold to another person by way of a deposit for the purposes of temporary safe-keeping pending the making of an offshore loan or repayment of an offshore borrowing or an offshore gold borrowing:

Authorised Version C2022C00106 registered 10/03/2022

(a) the amount held on deposit and upon being repaid shall be taken to be the same money as was transferred; and

(b) the transfer shall be taken not to have occurred.

(12) For the purposes of this section, an amount:

(a) deposited in an account with a bank or other financial institution; or

(b) paid by way of consideration for the issue of a security;

shall be taken to have been lent to, and borrowed by, the bank, financial institution or issuer of the security.

(13) If an offshore banking unit consists of:

(a) one or more permanent establishments in Australia at or through which the offshore banking unit carries on what are OB activities within the meaning of Division 9A; and

(b) one or more other permanent establishments either in Australia or outside Australia;

then this section and section 128NB apply as if:

(c) the offshore banking unit consisted only of the permanent establishments referred to in paragraph (a); and

(d) the permanent establishments referred to in paragraph (b) were separate persons.

128AF Payments through interposed entities

(1) This section applies if:

(a) a payment received by a non-resident through one or more interposed companies, partnerships, trusts or other persons is attributable to an amount of dividends, interest or royalties paid by a resident; and

(b) one or more of the interposed companies, partnerships, trusts or other persons is exempt from tax.

(1A) However, this section does not apply if one or more of the interposed entities is an AMIT for the year of income in which the payment is received.

Authorised Version C2022C00106 registered 10/03/2022

Note: See Division 12A in Schedule 1 to the *Taxation Administration Act 1953* for provisions about withholding tax that apply specifically to AMITs.

(2) If this section applies, the amount of dividends, interest or royalties paid by a resident is taken, for the purposes of this Division, to have been paid by the resident directly to the non-resident.

(3) For the purposes of this section, a person is exempt from tax if, at the time at which the payment was received by the non-resident, all income of the person was exempt from tax.

128B Liability to withholding tax

(1A) In this section, a reference to a person to whom this section applies is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least 1 of whom is, a resident.

Note: References in this section to amounts paid to a person may include amounts from an AMIT that, under section 12A-205 in Schedule 1 to the *Taxation Administration Act 1953*, are treated as payments to the person (from the trustee of the AMIT or a custodian).

(1) Subject to subsections (3), (3A), (3D) and (3E), this section applies to income that:

(a) is derived, on or after 1 January 1968, by a non-resident; and

(b) consists of a dividend paid by a company that is a resident.

Note: An amount declared to be conduit foreign income is an amount to which this section does not apply: see sections 802-15 and 802-17 of the *Income Tax Assessment Act 1997*.

(2) Subject to subsection (3), this section also applies to income that:

(a) is derived, on or after 1 January 1968, by a non-resident; and

(b) consists of interest that:

(i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a country outside Australia at or through a permanent establishment of that person in that country; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) is paid to the non-resident by a person who, or by persons each of whom, is not a resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

Note: An amount of interest paid to a person by a temporary resident is an amount to which this section does not apply: see section 768-980 of the *Income Tax Assessment Act 1997*.

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

(a) is, or has, after 2 July 1973, been, derived, or derived in part, by a person to whom this section applies in carrying on business in a country outside Australia at or through a permanent establishment of the person in that country; and

(b) consists of interest that:

(i) is or has been paid to the person by another person to whom this section applies and is not an outgoing wholly incurred by that other person in carrying on business in a country outside Australia at or through a permanent establishment of that other person in that country; or

(ii) is or has been paid to the first-mentioned person by a person who is, or by persons each of whom is, not a resident and is, or is in part, an outgoing incurred by that last-mentioned person or those last-mentioned persons in carrying on business in Australia at or through a permanent establishment of that last-mentioned person or those last-mentioned persons in Australia;

this section also applies to that income or to the part of that income so derived, as the case may be.

Note: An amount of interest paid to a person by a temporary resident is an amount to which this section does not apply: see section 768-980 of the *Income Tax Assessment Act 1997*.

(2B) Subject to subsection (3), this section also applies to income that:

(a) is derived by a non-resident:

Authorised Version C2022C00106 registered 10/03/2022

(i) during the 1993-94 year of income of the non-resident; or

(ii) during a later year of income of the non-resident; and

(b) consists of a royalty that:

(i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a foreign country at or through a permanent establishment of that person in that country; or

(ii) is paid to the non-resident by a person who, or by persons each of whom, is not a resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

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

(a) is derived, or derived in part, by a person (the ***recipient***) to whom this section applies in carrying on business in a country outside Australia at or through a permanent establishment of the person in that country; and

(b) consists of a royalty that:

(i) is paid to the recipient by another person (the ***payer***) to whom this section applies and is not an outgoing wholly incurred by the payer in carrying on business in a country outside Australia at or through a permanent establishment of the payer in that country; or

(ii) is paid to the recipient by one or more persons (the ***non-resident payers***), each of whom is not a resident, and is, or is in part, an outgoing incurred by the non-resident payers in carrying on business in Australia at or through a permanent establishment of the non-resident payers in Australia;

this section also applies to that income or to the part of that income mentioned in paragraph (a).

Authorised Version C2022C00106 registered 10/03/2022

(2D) Subsections (2B) and (2C) do not apply to income to the extent to which it is a return on an equity interest in a company.

(3) This section does not apply to:

(aaa) income that consists of a non-share dividend that is unfrankable under section 215-10 of the *Income Tax Assessment Act 1997*; or

(a) income derived by a non-resident that is:

(i) exempt from income tax because of section 50-5 (other than because of item 1.6 in the table in that section) or 50-10, item 6.1 or 6.2 of the table in section 50-30, section 50-40 or item 9.1, 9.2 or 9.3 of the table in section 50-45 of the *Income Tax Assessment Act 1997*; and

(ii) exempt from income tax in the country in which the non-resident resides; or

(aa) income derived by a non-resident that is an overseas charitable institution (within the meaning of section 121C) where the income is exempt under subsection 121ELA(1); or

(ba) income that is exempt from income tax because of section 124ZM (which exempts dividends paid by PDFs); or

(d) income in respect of which a trustee is liable to be assessed under section 99 or section 99A; or

(e) income that is derived by a trustee, being a trustee in relation to a trust created by a person who, at the time the income is derived, is a resident and in respect of which the Commissioner is empowered, under section 102, to assess the trustee to pay income tax; or

(ga) income that consists of:

(i) the franked part of a dividend; or

(ii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) on a share acquired under an employee share scheme (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit; or

Authorised Version C2022C00106 registered 10/03/2022

(iii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) to an eligible continuing substantial member (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit;

other than a dividend in respect of which a determination is made under paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b) of this Act; or

(gb) income that consists of a dividend derived from assets included in the insurance funds of a life assurance company that carries on business in Australia at or through a permanent establishment of the life assurance company in Australia; or

(gc) income that consists of interest derived on a nostro account by a non-resident that is a foreign bank; or

(h) income that consists of:

(ii) interest derived by a non-resident in carrying on business in Australia at or through a permanent establishment of the non-resident in Australia (except interest derived by a limited partner in a VCLP, ESVCLP or AFOF as such a partner);

(iv) interest to which section 128F, 128FA or 128GB applies; or

(j) income in respect of which a taxpayer is liable to be assessed under Division 9C; or

(jb) income that:

(i) is derived by a non-resident that is a superannuation fund for foreign residents; and

(ii) consists of interest, or consists of dividends or non-share dividends paid by a company that is a resident; and

(iii) is exempt from income tax in the country in which the non-resident resides; or

Authorised Version C2022C00106 registered 10/03/2022

Note: See subsection (3CA) for extra requirements relating to this paragraph.

(k) income that is not included in assessable income because of subsection 271-105(1); or

(l) income derived by a trustee that, because of paragraph 102UK(2)(b) or 102UM(2)(b), is not included in the assessable income of a trustee beneficiary of the trust estate; or

(m) income that consists of a royalty that is paid to the non-resident by a person (the ***lessee***) as consideration for the lease, by the lessee from the non-resident, of a vessel if:

(i) the lessee is an Australian resident company; and

(ii) the vessel is not an excluded vessel (within the meaning of the *Shipping Reform (Tax Incentives) Act 2012*); and

(iii) under the lease, the lessee has whole possession and control of the vessel (including the right to appoint the master and crew of the ship); and

(iv) during the period of the lease, the vessel is used, or is available for use, as mentioned in paragraph 8(1)(c) of the *Shipping Reform (Tax Incentives) Act 2012*; or

(n) income that is non-assessable non-exempt income because of Division 880 of the *Income Tax Assessment Act 1997* or Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

(3A) Paragraph (3)(ga) does not apply to income consisting of a dividend, or a part of a dividend, that is derived by the trustee of a trust, or a partnership, to the extent (if any) to which any amount paid to, or applied for the benefit of, a taxpayer (being a beneficiary in the trust or a partner in the partnership) that:

(a) was attributable to the dividend; and

(b) was paid or applied:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) under a financing arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time;

may reasonably be regarded as equivalent to the payment of interest on a loan.

(3B) In subsection (3A):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

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

(3C) In determining for the purposes of subsection (3A) the extent (if any) to which an amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment or application of the amount; and

(c) any other relevant matters.

(3CA) Paragraph (3)(jb) applies to income derived by the superannuation fund mentioned in subparagraph (3)(jb)(i) only if:

(a) the superannuation fund satisfies the portfolio interest test in subsection (3CC) in relation to the entity mentioned in subsection (3CB) (the ***test entity***):

(i) at the time the income was derived; and

(ii) throughout any 12 month period that began no earlier than 24 months before that time and ended no later than that time; and

(b) the superannuation fund does not, at the time the income was derived, have influence of a kind described in subsection (3CD) in relation to the test entity; and

(c) the income is *not* non-assessable non-exempt income of the superannuation fund because of:

(i) Subdivision 880-C of the *Income Tax Assessment Act 1997*; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

(3CB) For the purposes of subsection (3CA), the test entity is:

(a) unless paragraph (b) applies—the entity that paid the interest, dividends or non-share dividends as mentioned in subparagraph (3)(jb)(ii); or

(b) if subsection 128A(3) applies in relation to a resident trust estate (within the meaning of Division 6)—the trust estate.

(3CC) A superannuation fund satisfies the portfolio interest test in this subsection in relation to the test entity at a time if, at that time, the total participation interest (within the meaning of the *Income Tax Assessment Act 1997*) the superannuation fund holds in the test entity:

(a) is less than 10%; and

(b) would be less than 10% if, in working out the direct participation interest (within the meaning of that Act) that any entity holds in a company:

(i) an equity holder were treated as a shareholder; and

(ii) the total amount contributed to the company in respect of non-share equity interests were included in the total paid-up share capital of the company.

(3CD) A superannuation fund has influence of a kind described in this subsection in relation to the test entity at a time if any of the following requirements are satisfied at that time:

(a) the superannuation fund:

(i) is directly or indirectly able to determine; or

(ii) in acting in concert with others, is directly or indirectly able to determine;

the identity of at least one of the persons who, individually or together with others, make (or might reasonably be expected to make) the decisions that comprise the control and direction of the test entity's operations;

(b) at least one of those persons is accustomed or obliged to act, or might reasonably be expected to act, in accordance with

Authorised Version C2022C00106 registered 10/03/2022

the directions, instructions or wishes of the superannuation fund (whether those directions, instructions or wishes are expressed directly or indirectly, or through the superannuation fund acting in concert with others).

(3CE) However, a superannuation fund does not have influence of a kind described in subsection (3CD) if, disregarding any breach of terms of a debt interest by any entity, the superannuation fund would not have influence of that kind.

(3D) This section does not apply to a demerger dividend to which section 45B does not apply.

(3E) This section does not apply to income that consists of a dividend that:

(a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and

(b) is attributable to the permanent establishment; and

(c) is not paid to the person in the person's capacity as trustee.

Note: This subsection not only ensures that this section does not apply to that income to make withholding tax payable on it, but also (as a result) ensures that none of that income is non-assessable non-exempt income under section 128D. Subsection 44(1) makes that income assessable income.

(3F) In subsection (3E):

permanent establishment of a person:

(a) has the same meaning as in a double tax agreement (as defined in Part X) that relates to a foreign country and affects the person; or

(b) has the meaning given by subsection 6(1), if there is no such agreement.

(4) A person who derives income to which this section applies that consists of a dividend is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.

Authorised Version C2022C00106 registered 10/03/2022

(5) A person who derives income to which this section applies that consists of interest is, subject to subsections (6) and (7), liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.

(5A) A person who derives income to which this section applies that consists of a royalty is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.

(6) Where:

(a) income to which this section applies consists of interest and is paid to the person by whom it is derived by a person to whom this section applies; and

(b) the interest is, in part only, an outgoing incurred by that person to whom this section applies in carrying on business in a country outside Australia at or through a permanent establishment of that person to whom this section applies in that country;

income tax is payable under subsection (5) upon so much only of the income as is attributable to so much of the interest as is not an outgoing so incurred.

(7) Where:

(a) income to which this section applies consists of interest and is paid to the person by whom it is derived by a person who, or by persons each of whom, is not a resident; and

(b) the interest is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia;

income tax is payable under subsection (5) upon so much only of the income as is attributable to so much of the interest as is an outgoing so incurred.

(8) For the purposes of subparagraphs (2)(b)(i) and (2A)(b)(i) and paragraph (6)(b), where:

Authorised Version C2022C00106 registered 10/03/2022

(a) interest is paid, or has, after 2 July 1973, been paid, to a person by another person, being a person to whom this section applies, carrying on business in a country outside Australia; and

(b) the interest or a part of the interest:

(i) is interest incurred by the other person in gaining or producing income that is derived by the other person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country or is interest incurred by the other person for the purpose of gaining or producing income to be so derived; or

(ii) is interest incurred by the other person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the other person otherwise than in so carrying on business at or through a permanent establishment of the other person in a country outside Australia;

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

(9) For the purposes of subparagraphs (2)(b)(ii) and (2A)(b)(ii) and paragraph (7)(b), where:

(a) interest is paid, or has, after 2 July 1973, been paid, to a person by another person or other persons (in this subsection referred to as ***the borrower***), being:

(i) another person who is or was carrying on business in Australia and is not or was not a resident; or

(ii) other persons who are or were carrying on business in Australia and each of whom is not or was not a resident; and

(b) the interest or a part of the interest:

(i) is interest incurred by the borrower in gaining or producing income that is derived by the borrower in

Authorised Version C2022C00106 registered 10/03/2022

carrying on business in Australia at or through a permanent establishment of the borrower in Australia or is interest incurred by the borrower for the purpose of gaining or producing income to be so derived; or

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

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

(9A) For the purposes of subparagraphs (2B)(b)(i) and (2C)(b)(i), where:

(a) a royalty is paid, to a person by another person, being a person to whom this section applies, carrying on business in a country outside Australia; and

(b) the royalty, or a part of the royalty:

(i) is a royalty incurred by the other person in gaining or producing income that is derived by the other person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country or is a royalty incurred by the other person for the purpose of gaining or producing income to be so derived; or

(ii) is a royalty incurred by the other person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the other person otherwise than in so carrying on business at or through a permanent establishment of the other person in a country outside Australia;

the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the other person in carrying on business in a

Authorised Version C2022C00106 registered 10/03/2022

country outside Australia at or through a permanent establishment of the other person in that country.

(9B) For the purposes of subparagraphs (2B)(b)(ii) and (2C)(b)(ii), where:

(a) a royalty is paid to a person by another person or other persons (the ***licensee***), being:

(i) another person who is or was carrying on business in Australia and is not or was not a resident; or

(ii) other persons who are or were carrying on business in Australia and each of whom is not or was not a resident; and

(b) the royalty or a part of the royalty:

(i) is a royalty incurred by the licensee in gaining or producing income that is derived by the licensee in carrying on business in Australia at or through a permanent establishment of the licensee in Australia or is a royalty incurred by the licensee for the purpose of gaining or producing income to be so derived; or

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

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

(9C) If:

(a) apart from this subsection, tax would be payable under subsection 126(1) on an amount of interest paid to a person; and

(b) section 128F would apply to the interest, assuming that paragraph (1)(e) of that section had not been enacted;

then:

Authorised Version C2022C00106 registered 10/03/2022

(c) despite anything else in this section, the interest is taken, for the purposes of this Division, to be income derived by the person and to be income to which this section applies; and

Note: As a result of this paragraph, the interest will not be subject to tax under subsection 126(1): see paragraph 126(1)(b).

(d) in addition to the effect of any credit arising under section 18-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the interest, the total tax payable by the person, other than under this section, is reduced by the amount of any tax payable under this section on the interest; and

(e) tax paid under this section on the interest is not an allowable deduction.

(10) Income tax payable by a person in accordance with this section is in addition to any other income tax payable by him or her upon income to which this section does not apply.

(11) Income tax payable by a person in accordance with this section upon income to which this section applies by virtue of subsection (2A) or (2C) is in addition to, and shall not be taken into account in arriving at the amount of, any other income tax payable by him or her in respect of that income.

128C Payment of withholding tax

(1) Withholding tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the income to which the tax relates was derived by the person.

(3) If any of the withholding tax which a person is liable to pay remains unpaid after the time by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

(a) started at the beginning of the day by which the withholding tax was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

Authorised Version C2022C00106 registered 10/03/2022

(i) the withholding tax;

(ii) general interest charge on any of the withholding tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

(4AA) If:

(a) a person is liable to pay the general interest charge on an amount of withholding tax which is payable on an amount that, by virtue of the application of section 128AA, is taken to consist of interest paid in relation to the transfer of a qualifying security;

(b) the Commissioner is satisfied that:

(i) before the security was transferred, a notice expressed to be issued under subsection 265B(4) identifying the security was given by the person, in connection with the transfer, to the transferee;

(ii) one or more of the statements made in the notice is incorrect; and

(iii) the person did not know of the circumstance referred to in subparagraph (ii) at the time of transfer of the security; and

(c) the proper amount of the withholding tax liability of the person exceeds the amount that would have been the amount of the withholding tax liability if it were determined on the basis that the statements made in the notice were correct;

the Commissioner shall remit so much of the amount of the general interest charge as bears to that amount the same proportion as the amount of the excess referred to in paragraph (c) bears to the amount of withholding tax.

(6) The ascertainment of the amount of any withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(7) The Commissioner may serve on a person, by post or otherwise, a notice in which is specified:

Authorised Version C2022C00106 registered 10/03/2022

(a) the amount of any withholding tax that the Commissioner has ascertained is payable by that person; and

(b) the date on which that tax became due and payable.

(8) The production of a notice served under subsection (7), or of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is prima facie evidence that the amount of withholding tax specified in the notice became due and payable by the person on whom the notice was served on the date so specified.

128D Certain income not assessable

Income other than income to which section 128B applies by virtue of subsection (2A), (2C) or (9C) of that section upon which withholding tax is payable, or upon which withholding tax would, but for paragraph 128B(3)(ga), (jb) or (m), section 128F, section 128FA or section 128GB, be payable, is not assessable income and is not exempt income of a person.

Note: An amount of interest paid to a person by a temporary resident is non-assessable non-exempt income: see section 768-980 of the *Income Tax Assessment Act 1997*.

128F Division does not apply to interest on certain publicly offered company debentures or debt interests

Interest to which this section applies

(1) This section applies to interest paid by a company in respect of a debenture or debt interest in the company if:

(a) the company was a resident of Australia when it issued the debenture or debt interest; and

(b) the company is a resident of Australia when the interest is paid; and

(c) for a debt interest other than a debenture—the debt interest:

(i) is a non-equity share; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or

(iii) is a syndicated loan; or

(iv) is prescribed by the regulations for the purposes of this section; and

(d) either:

(i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or

(ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A).

(1A) This section also applies to interest paid by a company in respect of a debenture or debt interest in the company if:

(a) the company was a non-resident when it issued the debenture or debt interest; and

(b) the company is a non-resident when the interest is paid; and

(c) the debenture or debt interest was issued, and the interest is paid, by the company in carrying on business at or through a permanent establishment in Australia; and

(d) for a debt interest other than a debenture—the debt interest:

(i) is a non-equity share; or

(ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or

(iii) is a syndicated loan; or

(iv) is prescribed by the regulations for the purposes of this section; and

(e) either:

(i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or

(ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A).

Authorised Version C2022C00106 registered 10/03/2022

(1B) If:

(a) some or all of the transfer price (within the meaning of section 128AA) of a debenture or debt interest is taken under that section to be income that consists of interest; and

(b) for a debt interest other than a debenture—the debt interest:

(i) is a non-equity share; or

(ii) consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share; or

(iii) is a syndicated loan; or

(iv) is prescribed by the regulations for the purposes of this section; and

(c) either:

(i) the issue of the debenture or debt interest satisfies the public offer test set out in subsection (3) or (4); or

(ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test set out in subsection (3A);

this section applies to the interest.

Note: Subsection (6) does not apply to the interest because that subsection deals only with interest paid on a debenture or debt interest by the issuing company.

Tax not payable

(2) Tax is not payable under this Division in respect of interest to which this section applies.

Public offer test

(3) The issue of a debenture or debt interest by a company ***satisfies the public offer test*** if the issue resulted from the debenture or debt interest being offered for issue:

(a) to at least 10 persons each of whom:

(i) was carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets; and

Authorised Version C2022C00106 registered 10/03/2022

(ii) was not known, or suspected, by the company to be an associate (see subsection (9)) of any of the other persons covered by this paragraph; or

(b) to at least 100 persons whom it was reasonable for the company to have regarded as either:

(i) having acquired debentures or debt interests in the past; or

(ii) being likely to be interested in acquiring debentures or debt interests; or

(c) as a result of being accepted for listing on a stock exchange, where the company had previously entered into an agreement with a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, requiring the company to seek such listing; or

(d) as a result of negotiations being initiated publicly in electronic form, or in another form, that was used by financial markets for dealing in debentures or debt interests; or

(e) to a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, who, under an agreement with the company, offered the debenture or debt interest for sale within 30 days in a way covered by any of paragraphs (a) to (d).

(3A) An invitation to become a lender under a syndicated loan facility by a company ***satisfies the public offer test*** if the invitation was made:

(a) to at least 10 persons each of whom:

(i) was carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets; and

(ii) was not known, or suspected, by the company to be an associate (see subsection (9)) of any of the other persons covered by this paragraph; or

Authorised Version C2022C00106 registered 10/03/2022

(b) publicly in electronic form, or in another form, that was used by financial markets for dealing in debentures or debt interests; or

(c) to a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, who, under an agreement with the company, made the invitation to become a lender under the facility within 30 days in a way covered by paragraph (a) or (b).

Global bonds

(4) The issue of a debenture or debt interest by a company also ***satisfies the public offer test*** if the debenture or debt interest is a global bond (see subsection (10)).

Issues and invitations that always fail the public offer test

(5) The issue of a debenture or debt interest by a company does not ***satisfy the public offer test*** if, at the time of the issue, the company knew, or had reasonable grounds to suspect, that:

(a) the debenture, an interest in the debenture or the debt interest was being, or would be, acquired either directly or indirectly by an associate of the company; and

(b) either:

(i) the associate is a non-resident and the debenture or interest, or the debt interest, was not being, or would not be, acquired by the associate in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or

(ii) the associate is a resident of Australia and the debenture or interest, or the debt interest, was being, or would be, acquired by the associate in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and

(c) the debenture or interest, or the debt interest, was not being, or would not be, acquired by the associate in the capacity of:

Authorised Version C2022C00106 registered 10/03/2022

(i) a dealer, manager or underwriter in relation to the placement of the debenture or debt interest; or

(ii) a clearing house, custodian, funds manager or responsible entity of a registered scheme.

(5AA) An invitation to become a lender under a syndicated loan facility is taken never to have ***satisfied the public offer test*** if, at the time the invitation is made, the company knew, or had reasonable grounds to suspect, that:

(a) an associate of the company is or will become a lender under the facility; and

(b) either:

(i) the associate is a non-resident and the associate is not or would not become a lender under the facility in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or

(ii) the associate is a resident of Australia and the associate is or would become a lender under the facility in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and

(c) the associate is not or would not become a lender under the facility in the capacity of:

(i) a dealer, manager or underwriter in relation to the invitation; or

(ii) a clearing house, custodian, funds manager or responsible entity of a registered scheme.

No exemption for interest paid to certain associates of the issuing company

(6) This section does not apply to interest paid by the company to a person in respect of the debenture or debt interest if, at the time of the payment, the company knows, or has reasonable grounds to suspect, that:

(a) the person is an associate of the company; and

(b) either:

Authorised Version C2022C00106 registered 10/03/2022

(i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or

(ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and

(c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

Australian public bodies are treated as Australian resident companies

(7) This section applies in relation to a debenture or debt interest issued by:

(a) the Commonwealth, a State or a Territory; or

(b) an authority of the Commonwealth, of a State or of a Territory;

as if the Commonwealth, State, Territory or authority were a company and a resident of Australia.

Debentures or debt interests issued through certain non-resident subsidiaries can also get the exemption

(8) If:

(a) a company (the ***parent company***) beneficially owns all of the issued equity interests in the capital of a company (the ***subsidiary***) that is not a resident of Australia; and

(b) the subsidiary's only business is raising finance for the purposes of the parent company; and

(c) the subsidiary raises finance in the United States of America or in another country specified in the regulations (but not

Authorised Version C2022C00106 registered 10/03/2022

Australia) by issuing a debenture or debt interest in that country; and

(d) when the debenture or debt interest is issued, the subsidiary is treated as a resident of that country for the purposes of the tax law (see subsection (9)) of the country;

then this section has effect as if the parent company had raised the finance and issued the debenture or debt interest.

Definitions

(9) In this section:

associate has the meaning given by section 318, except that paragraphs (1)(b), (2)(a) and (4)(a) of that section must be disregarded.

clearing house means a person who operates a facility that is used by financial markets for investing in or dealing in securities.

company includes a company in the capacity of trustee of a resident trust estate if:

(a) the trust is not a charity; and

(b) the only person who is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust is a company other than a company in the capacity of trustee.

debenture, without affecting its meaning elsewhere in this Act, includes a promissory note or a bill of exchange (in addition to the things mentioned in the definition of ***debenture*** in subsection 6(1)).

global bond has the meaning given by subsection (10).

registered scheme has the same meaning as in the *Corporations Act 2001*.

responsible entity, of a registered scheme, has the same meaning as in the *Corporations Act 2001*.

Authorised Version C2022C00106 registered 10/03/2022

syndicated loan means a loan or other form of financial accommodation that is provided under a syndicated loan facility, being a facility that has 2 or more lenders.

syndicated loan facility has the meaning given by subsections (11), (12) and (13).

tax law, in relation to a country other than Australia, means:

(a) if the country has federal foreign tax—the law of the country that imposes the federal foreign tax; or

(b) in any other case—the law of the country that imposes foreign tax.

Global bond

(10) A debenture or debt interest issued by a company is a ***global bond*** if:

(a) it describes itself as a global bond or a global note; and

(b) it is issued to a clearing house (see subsection (9)) or to a person as trustee or agent for, or otherwise on behalf of, one or more clearing houses; and

(c) in connection with the issue, the clearing house or houses:

(i) confer rights in relation to the debenture or debt interest on other persons; and

(ii) record the existence of the rights; and

(d) before the issue:

(i) the company; or

(ii) a dealer, manager or underwriter, in relation to the placement of debentures or debt interests, on behalf of the company;

announces that, as a result of the issue, such rights will be able to be created; and

(e) the announcement is made in a way or ways covered by any of paragraphs (3)(a) to (e) (reading a reference in those paragraphs to "debentures or debt interests" as if it were a reference to such a right, and a reference to the "company" as

Authorised Version C2022C00106 registered 10/03/2022

if it included a reference to the dealer, manager or underwriter); and

(f) under the terms of the debenture or debt interest, interests in the debenture or debt interest are able to be surrendered, whether or not in particular circumstances, in exchange for other debentures or debt interests issued by the company that are not themselves global bonds.

(11) A written agreement is a ***syndicated loan facility*** if:

(a) the agreement describes itself as a syndicated loan facility or syndicated facility agreement; and

(b) the agreement is between one or more borrowers and at least 2 lenders; and

(c) under the agreement each lender severally, but not jointly, agrees to lend money to, or otherwise provide financial accommodation to, the borrower or borrowers; and

(d) the amount to which the borrower or borrowers will have access at the time the first loan or other form of financial accommodation is to be provided under the agreement is at least $100,000,000 (or a prescribed amount).

(12) A written agreement is also a ***syndicated loan facility*** if:

(a) the agreement describes itself as a syndicated loan facility or syndicated facility agreement; and

(b) the agreement is between one or more borrowers and one lender where the agreement provides for the addition of other lenders; and

(c) the agreement provides that, when other lenders are added, each lender severally, but not jointly, agrees to lend money to, or otherwise provide financial accommodation to, the borrower or borrowers; and

(d) the amount to which the borrower or borrowers will have access at the time the first loan or other form of financial accommodation is to be provided under the agreement is at least $100,000,000 (or a prescribed amount).

Authorised Version C2022C00106 registered 10/03/2022

(13) However, an agreement under which there are 2 or more borrowers is a ***syndicated loan facility*** only if all of them are:

(a) members of the same wholly-owned group (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) parties to the same joint venture; or

(c) associates of each other.

(14) For the purposes of this section, a change (including by novation) to the lenders under a syndicated loan facility does not result in a different agreement.

(15) For a debt interest that consists of 2 or more related schemes (within the meaning of the *Income Tax Assessment Act 1997*) where one or more of them is a non-equity share, this section applies only to interest paid in respect of the non-equity share.

Note: Subsection 128A(1AB) defines ***interest*** for the purposes of this Division. Under that subsection, dividends paid in respect of a non-equity share are treated as being interest.

(16) The rule in subsection (15) does not apply to the extent that interest in respect of the other related scheme or schemes would be interest to which this section applies in respect of a debenture or debt interest.

128FA Division does not apply to interest on certain publicly offered unit trust debentures or debt interests

Interest to which this section applies

(1) This section applies to interest paid by the trustee of an eligible unit trust in respect of a debenture or debt interest issued by the trustee if:

(a) for a debt interest other than a debenture—the debt interest:

(i) is a syndicated loan; or

(ii) is prescribed by the regulations for the purposes of this section; and

(b) either:

Authorised Version C2022C00106 registered 10/03/2022

(i) the issue of the debenture or debt interest satisfies the public offer test set (see subsection (6)); or

(ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test (see subsection (6A)).

(2) If:

(a) some or all of the transfer price (within the meaning of section 128AA) of a debenture or debt interest issued by the trustee of an eligible unit trust is taken under that section to be income that consists of interest; and

(b) for a debt interest other than a debenture—the debt interest:

(i) is a syndicated loan; or

(ii) is prescribed by the regulations for the purposes of this section; and

(c) either:

(i) the issue of the debenture or debt interest satisfies the public offer test set (see subsection (6)); or

(ii) for a syndicated loan—the invitation to become a lender under the relevant syndicated loan facility satisfies the public offer test (see subsection (6A));

this section applies to the interest.

Note: Subsection (4) does not apply to the interest because that subsection deals only with interest paid on a debenture or debt interest by the issuing eligible unit trust.

Tax not payable

(3) Tax is not payable under this Division in respect of interest to which this section applies.

No exemption for interest paid to certain associates of the issuing trustee

(4) This section does not apply to interest paid by the trustee of an eligible unit trust to a person in respect of the debenture or debt

Authorised Version C2022C00106 registered 10/03/2022

interest if, at the time of the payment, the trustee knows, or has reasonable grounds to suspect, that:

(a) the person is an associate of the trustee; and

(b) either:

(i) the associate is a non-resident and the payment is not received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in Australia at or through a permanent establishment of the associate in Australia; or

(ii) the associate is a resident of Australia and the payment is received by the associate in respect of a debenture or debt interest that the associate acquired in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country; and

(c) the associate does not receive the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

Debentures or debt interests issued through certain non-resident subsidiaries can also get the exemption

(5) If:

(a) the trustee of an eligible unit trust holds all of the issued equity interests in the capital of a company that is not a resident of Australia; and

(b) the company's only business is raising finance for the purposes of the eligible unit trust; and

(c) the company raises finance in a country specified in the regulations (but not Australia) by issuing a debenture or debt interest in that country; and

(d) when the debenture or debt interest is issued, the company is treated as a resident of that country for the purposes of the tax law (see subsection (8)) of the country;

then this section has effect as if the trustee had raised the finance and issued the debenture or debt interest.

Authorised Version C2022C00106 registered 10/03/2022

Public offer test

(6) For the purposes of working out under this section whether the issue of a debenture or debt interest by the trustee of an eligible unit trust ***satisfies the public offer test***, subsections 128F(3) to (5) apply to the trustee of the eligible unit trust in a corresponding way to the way in which those subsections apply to a company, subject to subsection (7) of this section.

(6A) For the purposes of working out under this section whether an invitation to become a lender under a syndicated loan facility satisfies the public offer test, subsections 128F(3A) and (5AA) apply to the trustee of the eligible unit trust in a corresponding way to the way in which those subsections apply to a company, subject to subsection (7) of this section.

(7) For the purposes of applying subsection 128F(3), (3A), (4), (5) or (5AA) as mentioned in subsection (6) or (6A) of this section:

(a) a reference in any of those subsections to a company knowing, suspecting or having reasonable grounds to suspect something, or it being reasonable for a company to have regarded something, is taken to be a reference to the trustee of the eligible unit trust knowing, suspecting or having reasonable grounds to suspect that thing, or it being reasonable for the trustee of the eligible unit trust to have regarded that thing; and

(b) a reference in any of those subsections to an associate is taken to be a reference to an associate within the meaning of this section; and

(c) a reference in any of those subsections to a global bond is taken to be a reference to a global bond within the meaning of subsection 128F(10).

(7A) For the purposes of this section, a change (including by novation) to the lenders under a syndicated loan facility does not result in a different agreement.

Authorised Version C2022C00106 registered 10/03/2022

Definitions

(8) In this section:

associate has the meaning given by section 318, except that:

(a) paragraphs (1)(b), (2)(a) and (4)(a) of that section must be disregarded; and

(b) subsection (5) of that section applies to a unit trust mentioned in paragraph (b) of the definition of ***eligible unit trust*** in this subsection in the same way as that subsection applies in relation to a public unit trust.

clearing house has the same meaning as in section 128F.

company has the same meaning as in section 128F.

debenture:

(a) in relation to the trustee of an eligible unit trust, includes debenture stock, bonds, promissory and other notes, bills of exchange and any other securities issued by the trustee, whether constituting a charge on the assets of the eligible unit trust or not; and

(b) in relation to a company, has the same meaning as in section 128F.

eligible unit holder means:

(a) the trustee of a public unit trust; or

(b) the trustee (within the meaning of the *Income Tax Assessment Act 1997*) of a complying superannuation fund that has 50 or more members; or

(c) the trustee of a pooled superannuation trust within the meaning of the *Income Tax Assessment Act 1997*; or

(d) the trustee (within the meaning of the *Income Tax Assessment Act 1997*) of a complying approved deposit fund; or

(e) a life insurance company within the meaning of the *Income Tax Assessment Act 1997*; or

(f) a public company within the meaning of section 103A; or

Authorised Version C2022C00106 registered 10/03/2022

(g) the trustee of a unit trust in which all of the issued units are held by 2 or more entities that are eligible unit holders because of:

(i) the application of another paragraph of this definition (whether or not the same paragraph); or

(ii) a previous application of this paragraph; or

(iii) any combination of subparagraphs (i) and (ii).

eligible unit trust means:

(a) a public unit trust; or

(b) a unit trust in which all of the issued units are held by 2 or more eligible unit holders.

public unit trust has the same meaning as in section 102P (disregarding subsection (2) of that section).

registered scheme has the same meaning as in section 128F.

responsible entity has the same meaning as in section 128F.

syndicated loan has the same meaning as in section 128F.

syndicated loan facility has the same meaning as in section 128F.

tax law has the same meaning as in section 128F.

(9) For the purposes of this section, a trust or fund of a kind mentioned in any of paragraphs (a) to (d) of the definition of ***eligible unit holder*** in subsection (8) in relation to a year of income is taken to be a trust or fund of that kind at all times during the year of income.

128GB Division not to apply to interest payments on offshore borrowings by offshore banking units

(1) This section applies to:

(a) interest paid by a person in respect of an offshore borrowing of the person; or

Authorised Version C2022C00106 registered 10/03/2022

(b) interest consisting of gold paid by a person in respect of an offshore gold borrowing of the person;

if, when the borrowing took place, the person was an offshore banking unit (whether or not the person is still an offshore banking unit when the interest is paid).

(1A) However, this section does not apply to:

(a) interest paid on or after 1 January 2024; and

(b) interest consisting of gold paid on or after 1 January 2024.

(2) Tax is not payable in accordance with this Division in respect of interest to which this section applies.

128NA Special tax payable in respect of certain securities and agreements

(1) Where, but for subsection 128AA(2):

(a) the transferor of a qualifying security who is not liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay withholding tax in relation to the transfer; or

(b) the transferor of a qualifying security who is liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay additional withholding tax in relation to the transfer;

then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person who is the transferee of the qualifying security of an amount equal to the withholding tax or the additional withholding tax, as the case may be, that the person would be so liable to pay.

(2) Where:

(a) an attributable agreement payment or attributable agreement payments were made by a person under a relevant agreement before the commencement of section 128AC; and

(b) the Commissioner is of the opinion that the payment or payments were made before the commencement of that

Authorised Version C2022C00106 registered 10/03/2022

section, or that the payment or payments were of a greater amount than they would otherwise have been, for the sole or dominant purpose of securing the result that the total amount (in this subsection referred to as the ***actual withholding tax***) of withholding tax payable under that section in relation to all attributable agreement payments made under the relevant agreement after the commencement of that section would be less than the amount (in this subsection referred to as the ***notional withholding tax***) that would otherwise have been payable;

then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person of an amount equal to the amount by which the notional withholding tax exceeds the actual withholding tax.

(3) For the purposes of subsection (2), expressions used in that subsection that are also used in section 128AC have the same respective meanings in that subsection as in that section.

(4) Where there is an avoided withholding tax amount in relation to a person under this section, the person is liable to pay income tax, as imposed by the *Income Tax (Securities and Agreements) (Withholding Tax Recoupment) Act 1986*, in respect of the avoided withholding tax amount.

128NB Special tax payable in respect of certain dealings by current and former offshore banking units

(1) Where a person who is or has been an offshore banking unit transfers to another person an amount of tax exempt loan money or tax exempt gold, other than by way of:

(a) payment in carrying on an OB activity or what would be an OB activity if the person were an OBU; or

(b) repayment of an offshore borrowing or offshore gold borrowing;

the person is liable to pay income tax, as imposed by the *Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Act 1988*, on the lost withholding tax amount in respect of the transfer.

Authorised Version C2022C00106 registered 10/03/2022

(2) For the purposes of subsection (1), the lost withholding tax amount in respect of the transfer is an amount ascertained in accordance with the formula:

$$\text{IWT rate} \times \text{PB rate} \times \text{PB term} \times \text{TA}$$

where:

IWT rate is the rate declared by the Parliament in respect of income to which subsection 128B(5) applies.

PB rate is the prevailing borrowing rate in relation to the person at the time of the transfer.

PB term is the number of years in the prevailing borrowing term in relation to the person at the time of the transfer; and

TA is the amount of tax exempt loan money or tax exempt gold transferred.

(3) Tax under this section is due and payable by the person liable to pay the tax at the end of:

(a) 21 days after the end of the month in which the transfer to which it relates takes place; or

(b) such further period as the Commissioner, in special circumstances, allows.

Application

(3A) The Commissioner must not exercise his or her power under paragraph (3)(b) on or after 1 July 2000.

Note: For provisions about collection and recovery of tax on or after 1 July 2000, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(4) Section 128C (other than subsections (1) and (4AA)) applies, in addition to its application apart from this subsection, as if references in that section to withholding tax were references to tax payable under this section.

Authorised Version C2022C00106 registered 10/03/2022

(5) The Commissioner may remit the whole or part of an amount of tax payable under this section in relation to the transfer of an amount of tax exempt loan money or tax exempt gold to another person if:

(a) the Commissioner is satisfied that:

(i) the liability to pay the amount of tax arose because the person mistakenly believed, on reasonable grounds, that the other person was a non-resident or an offshore banking unit, that interest payable to the person in respect of the amount transferred would be an outgoing of a particular kind or that the amount transferred was not tax exempt loan money or tax exempt gold; and

(ii) the person had taken reasonable steps to ascertain the matter to which the mistaken belief related; or

(b) the Commissioner is satisfied that there are special circumstances justifying the remission of the whole or part of the amount of tax.

128NBA Credits in respect of amounts assessed in relation to certain financial arrangements

When section applies

(1) This section applies if:

(a) the amount of any withholding tax that has become payable by a taxpayer on a payment of interest under, or in relation to the transfer of, a qualifying security or a Division 230 financial arrangement has been paid; and

(b) there is a net financial arrangement amount (see subsection (5)) in relation to the taxpayer in relation to:

(i) if the payment of interest is a payment in relation to the transfer of the qualifying security—the security; or

(ii) if the payment of interest is such a payment by virtue of the application of section 128AC in relation to an attributable agreement payment within the meaning of that section—the attributable agreement payment; or

Authorised Version C2022C00106 registered 10/03/2022

(iii) in any other case—the payment of interest; and

(c) the amount of the withholding tax payable on the interest exceeds the amount that would have been payable on the interest if the interest were reduced by the net financial arrangement amount.

Entitlement to apply for credit

(2) The taxpayer may apply to the Commissioner for a credit of an amount equal to the excess.

Requirements for application

(3) The application must be in the approved form.

Entitlement to credit

(4) If the Commissioner is satisfied as to the matters mentioned in paragraphs (1)(a), (b) and (c), the applicant is entitled to a credit of an amount equal to the excess.

Net financial arrangement amount

(5) For the purposes of this section, if:

(a) in the case of a qualifying security—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the qualifying security, attributable agreement payment or payment of interest under section 159GQ; or

(b) in the case of a Division 230 financial arrangement—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*;

exceeds:

(c) in the case of a qualifying security—the sum of all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the

Authorised Version C2022C00106 registered 10/03/2022

security or the payment, as the case may be, under that section; or

(d) in the case of a Division 230 financial arrangement—the sum of:

(i) all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*; and

(ii) all amounts (if any) of interest paid under the arrangement before the interest mentioned in paragraph (1)(a) is paid;

there is a net financial arrangement amount equal to the excess.

(6) For the purposes of paragraph (5)(b) and subparagraph (5)(d)(i), disregard any year of income in which the taxpayer was not an Australian resident.

(7) For the purposes of subsection (6):

(a) if section 230-485 of the *Income Tax Assessment Act 1997* applies in relation to a year of income:

(i) treat the foreign residency period mentioned in that section as a year of income in which the taxpayer was not an Australian resident; and

(ii) treat the Australian residency period mentioned in that section as a year of income in which the taxpayer was an Australian resident; and

(b) if section 230-490 of that Act applies in relation to a year of income:

(i) treat the period during that year in which the taxpayer was not an Australian resident as a year of income in which the taxpayer was not an Australian resident; and

(ii) treat the period during that year in which the taxpayer was an Australian resident as a year of income in which the taxpayer was an Australian resident.

Authorised Version C2022C00106 registered 10/03/2022

128P Objections

If an applicant for a certificate under this Division is dissatisfied with a decision of the Commissioner:

(a) in any case—to refuse to issue the certificate; or

(b) in the case of a certificate under section 128AB—to specify a particular amount in the certificate;

the applicant may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

128R Informal arrangements

For the purposes of this Division, the Commissioner may have regard to arrangements, understandings and practices not having legal force in the same manner as if they had legal force.

Authorised Version C2022C00106 registered 10/03/2022

Division 11C—Payments in respect of mining operations on Indigenous land

128U Interpretation

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

Aboriginals Benefit Account means the Aboriginals Benefit Account continued in existence by section 62 of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

distributing body means:

(a) an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*;

(b) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(d) any other incorporated body that:

(i) is established by or under provisions of a law of the Commonwealth or of a State or Territory that relate to Indigenous persons; and

(ii) is empowered or required (whether under that law or otherwise) to pay moneys received by the body to Indigenous persons or to apply such moneys for the benefit of Indigenous persons, either directly or indirectly.

mineral royalties means royalties payable in respect of the mining of minerals.

minerals means:

(a) gold, silver, copper, tin and other metals;

(b) coal, shale, petroleum (within the meaning of the *Income Tax Assessment Act 1997*) and valuable earths and substances;

(c) mineral substances;

(d) gems and precious stones; and

(e) ores and other substances containing minerals;

Authorised Version C2022C00106 registered 10/03/2022

whether suspended in water or not, and includes water.

miner's right means a miner's right or other authority issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals, being a right or authority that empowers the holders to take possession of, mine or occupy land or take any other action in relation to land for any purpose in connection with mining.

mining includes the obtaining of minerals from alluvial or surface deposits.

mining interests, in relation to any land, means any lease or other interest in the land (including a right to prospect or explore for minerals in or on the land) issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals.

mining payment means a payment made to a distributing body or made to, or applied for the benefit of, an Indigenous person or persons, being:

(a) a payment made on or after 1 July 1979 and before the day that the *Financial Management Legislation Amendment Act 1999* commenced, out of the Aboriginals Benefit Reserve to the extent that the payment represents money paid into the Aboriginals Benefit Reserve on or after 1 July 1979 in pursuance of subsection 63(2) or (4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and

(aa) a payment made on or after the day that the *Financial Management Legislation Amendment Act 1999* commenced by the Commonwealth in respect of a debit from the Aboriginals Benefit Account to the extent that the payment represents an amount credited to the Aboriginals Benefit Account in pursuance of subsection 63(1) or (4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and

(b) any payment made on or after 1 July 1979 that is of the kind referred to in subsection 44 (1) or (2) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and

Authorised Version C2022C00106 registered 10/03/2022

(c) any other payment made on or after 1 July 1979 under provisions of a law of the Commonwealth or of a State or Territory that relate to Indigenous persons or under an agreement made in accordance with such provisions, being a payment made:

(i) in consideration of the issuing, granting or renewal of a miner's right or mining interest in respect of Indigenous land;

(ii) in consideration of the granting of permission to a person to enter or remain on Indigenous land or to do any act on Indigenous land in relation to prospecting or exploring for, or mining of, minerals; or

(iii) by way of payment of mineral royalties payable in respect of the mining of minerals on Indigenous land or by way of payment of an amount determined by reference to an amount of mineral royalties received by the Commonwealth, a State or the Northern Territory in respect of the mining of minerals on Indigenous land;

but does not include:

(d) a payment made by a distributing body; or

(e) a native title benefit (within the meaning of the *Income Tax Assessment Act 1997*).

(2) In section 260, ***income tax*** or ***tax*** includes mining withholding tax.

(3) For the purposes of this Division, a mining payment is taken to include any amount that has been, or purports to have been, withheld from the mining payment for the purposes of section 12-320 in Schedule 1 to the *Taxation Administration Act 1953*.

(4) For the purposes of the succeeding provisions of this Division, where a mining payment (in this subsection referred to as the ***relevant mining payment***) is made to, or applied for the benefit of, 2 or more persons, there shall be deemed to have been made to, or applied for the benefit of, each of those persons, a mining payment of an amount equal to so much of the relevant mining payment as bears to the relevant mining payment the same proportion as 1

Authorised Version C2022C00106 registered 10/03/2022

bears to the number of persons to whom the relevant mining payment was made or for whose benefit the relevant mining payment was applied, as the case may be.

128V Liability to mining withholding tax

(1) Where a mining payment is made to, or applied for the benefit of, a person, that person is liable to pay income tax on the amount of the mining payment at the rate declared by the Parliament for the purposes of this section.

(2) Income tax payable by a person in accordance with this section is in addition to other income tax payable by that person upon amounts that are not mining payments.

128W Payment of mining withholding tax

(1) Mining withholding tax is due and payable by a person liable to pay the tax at the expiration of 21 days after the end of the month in which the payment of the amount to which the tax relates was made, or of such further period as the Commissioner, in special circumstances, allows.

Note: For provisions about collection and recovery of mining withholding tax and other amounts, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(4) The ascertainment of the amount of any mining withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(5) The Commissioner may serve on a person liable to pay mining withholding tax, by post or otherwise, a notice in which is specified:

(a) the amount of any mining withholding tax that the Commissioner has ascertained is payable by that person; and

(b) the date on which that tax became due and payable.

(6) The production of a notice served under subsection (5), or of a document under the hand of the Commissioner, a Second

Authorised Version C2022C00106 registered 10/03/2022

Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is prima facie evidence that the amount of mining withholding tax specified in the notice became due and payable by the person on whom the notice was served on the date specified in the notice as the date on which that tax became due and payable.

Authorised Version C2022C00106 registered 10/03/2022

Division 12—Oversea ships

129 Taxable income of ship-owner or charterer

Where a ship belonging to or chartered by a person whose principal place of business is out of Australia carries passengers, live-stock, mails or goods shipped in Australia, 5% of the amount paid or payable to him or her in respect of such carriage, whether that amount is payable in or out of Australia, shall be deemed to be taxable income derived by him or her in Australia.

130 Commissioner may require master or agent to make return

(1) The Commissioner may, by writing, require:

(a) the master of a particular ship to which section 129 applies, or the agent or other representative in Australia of the owner or charterer of the ship; or

(b) the master of a ship included in a class of ships to which section 129 applies, or the agent or other representative in Australia of the owner or charterer of the ship;

to make a return of the amounts so paid or payable.

(2) An instrument under paragraph (1)(a):

(a) must be given to the master, agent or representative; and

(b) is not a legislative instrument.

(3) An instrument under paragraph (1)(b) is a legislative instrument.

131 Determination by Commissioner

If such return is not made, or if the Commissioner is not satisfied with the return, the Commissioner may determine the amount so paid or payable.

Authorised Version C2022C00106 registered 10/03/2022

132 Assessment of tax

The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

133 Master liable to pay

(1) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.

(2) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom the notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

134 Notice of assessment

Where any person is liable to pay tax under this Division, the Commissioner shall give notice to the person of the assessment, and he or she shall forthwith pay the tax.

135 Clearance of ship

A collector or officer of customs for any State or Territory shall not grant a clearance to the ship until he or she is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

135A Freights payable under certain agreements

Where goods are shipped in pursuance of an agreement of the kind specified in section 7C of the *Australian Industries Preservation Act 1906-1937*, the amount paid or payable to the owner or charterer of the ship in respect of the carriage of those goods shall, for the purposes of this Division, be deemed to be the amount remaining after deducting from the amount which would be

Authorised Version C2022C00106 registered 10/03/2022

payable according to the gross rate of freight specified in the agreement the amount of any rebate allowed in pursuance of the agreement or any payment, whenever made, by the owner or charterer, or out of funds provided by the owner or charterer, to any person or persons being the owner or shipper of the goods or the agent of either of them in respect of the shipment.

Authorised Version C2022C00106 registered 10/03/2022

Division 15—Insurance with non-residents

141 Interpretation

In this Division:

insurance contract means a contract or guarantee whereby liability is undertaken, contingent upon the happening of any specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance.

insured event means an event upon the happening of which the liability under an insurance contract arises.

insured person means a person with whom any insurance contract is entered into by an insurer.

insured property means the property the subject of an insurance contract made or given by an insurer.

insurer means any non-resident who undertakes liability under an insurance contract.

142 Income derived by non-resident insurer

(1) Where an insured person, whether a resident or non-resident, has entered into an insurance contract with an insurer, and the insured property at the time of the making of the contract is situated in Australia, or the insured event is one which can happen only in Australia, the premium paid or payable under the contract shall be included in the assessable income of the insurer, and shall be deemed to be derived by the insurer from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

(2) Where an insured person who is a resident has entered into an insurance contract with an insurer, and an agent or representative in Australia of the insurer was in any way instrumental in inducing

Authorised Version C2022C00106 registered 10/03/2022

the entry of the insured person into that contract, any premium paid or payable under the contract shall, wherever the insured property is situate, or the insured event may happen, be included in the assessable income of the insurer and shall be deemed to be derived by the insurer from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

143 Taxable income of non-resident insurer

The insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under such contracts, a taxable income equal to 10% of the total amount of such premiums:

Provided that, where the actual profit or loss derived or made by the insurer in respect of such premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer in respect thereof, or the amount of the loss so made by the insurer shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

144 Liability of agents of insurer

The insured person and any person in Australia acting on behalf of the insurer shall be the agents of the insurer, and shall be jointly and severally liable as such for all purposes of this Act. If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under this Division in respect of that amount, that person shall be personally liable to pay that tax.

145 Deduction of premiums

Notwithstanding any other provision of this Act, no such premium shall be an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the

Authorised Version C2022C00106 registered 10/03/2022

Commissioner for the payment of any income tax which has been or may be assessed in respect of that premium.

146 Exporter to furnish information

Every person who exports any goods from Australia shall furnish to the Collector of Customs for transmission to the Commissioner a copy of the customs entry for such goods, and shall show thereon such information as is prescribed regarding the insurance of such goods.

147 Rate of tax in special circumstances

Where the insurer satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by the insurer under this Division should be ascertained at the time when premiums are paid to the insurer, the Commissioner may direct that the tax so payable in respect of premiums paid during any financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

148 Reinsurance with non-residents

(1) Notwithstanding anything contained in this Act other than section 177F, but subject to this section, where a person carrying on the business of insurance in Australia reinsures out of Australia the whole or part of any risk with a non-resident:

(a) the premiums paid or credited in respect of the reinsurance shall not be:

(i) an allowable deduction to the person carrying on the business of insurance in Australia; or

(ii) included in the assessable income of the non-resident; and

(b) the income of the person carrying on the business of insurance in Australia shall not include sums recovered from that non-resident in respect of a loss on any risk so reinsured.

Authorised Version C2022C00106 registered 10/03/2022

(2) A person carrying on the business of insurance in Australia who reinsures out of Australia the whole or part of any risk with a non-resident may elect, in accordance with this section, that the provisions of subsection (1) shall not be applied in arriving at that person's taxable income, and thereupon:

(a) those provisions shall not apply in arriving at that person's taxable income of a year of income to which the election applies; and

(b) that person shall be liable to furnish returns, and to pay tax, in accordance with the succeeding provisions of this section, as agent for all non-residents with whom that person so reinsures.

(3) Where a person makes an election under subsection (2), he or she shall, subject to subsection (5), be assessed and liable to pay tax as agent, on an amount equal to 10% of the sum of the gross amounts of the premiums paid or credited by him or her in the year of income (being a year of income to which the election applies) to non-residents in respect of all such reinsurances, as if that amount were the taxable income of a non-resident company (not being a private company) not carrying on business in Australia by means either of a principal office or a branch.

(4) A person who has made an election under this section shall, as agent, furnish to the Commissioner, within the prescribed time, or within such further time as the Commissioner allows, in respect of every year of income to which the election applies:

(a) a return showing the gross amounts of the premiums paid or credited by that person to non-residents in respect of all such reinsurances; or

(b) 2 returns, of which:

(i) one shall show the gross amounts of such premiums paid or credited by that person to non-residents which are companies; and

(ii) the other shall show the gross amounts of such premiums paid or credited by that person to non-residents who are not companies.

Authorised Version C2022C00106 registered 10/03/2022

(5) Where returns are furnished by a person in accordance with paragraph (4)(b), there shall be excluded from the amount on which that person shall be assessed and liable to pay tax as agent in pursuance of subsection (3) an amount equal to 10% of the sum of the gross premiums properly shown in the return specified in subparagraph (4)(b)(ii), and that person shall, in addition to any other tax which that person is liable under this section to pay as agent, be assessed and liable to pay tax as agent on the amount so excluded as if it were the taxable income of a non-resident company (being a private company) not carrying on business in Australia by means either of a principal office or a branch.

(6) An election for the purposes of this section shall:

(c) be made on or before the last day for the furnishing of the taxpayer's return of income of the year of income in respect of which the election is first to apply, or within such further time as the Commissioner allows;

(d) first apply in respect of a year of income which shall be specified in the election; and

(e) apply in respect of all subsequent years of income.

(7) An assessment for the purposes of subsection (3) or (5) shall be made and notified separately from any other assessment.

(8) Where a person is liable, in pursuance of an assessment for the purposes of this section, to pay tax, in respect of any premiums, as agent for more than one non-resident, the amount which that person shall be liable to pay as agent for any one of those non-residents shall be so much of the tax so payable as bears to the whole of that tax the same proportion as the total amount of such of those premiums as were paid to that non-resident bears to the total amount of those premiums.

(9) Where a person is or may become liable under this section to pay tax as agent for a non-resident in respect of any premium paid or credited by that person to that non-resident:

(a) that person shall, for the purposes of section 254, be deemed to have received the premium in that person's representative capacity immediately before it was so paid or credited; and

Authorised Version C2022C00106 registered 10/03/2022

(b) if that person pays or credits the premium before arrangements have been made to the satisfaction of the Commissioner for the payment of any tax which may be assessed in respect of that premium, that person shall be personally liable to pay that tax.

Application to a life assurance company

(10) This section applies to a life assurance company in relation to the whole or a part of a risk if, and only if, the risk or that part of the risk:

(a) is covered by a disability policy as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*; and

(b) relates to a benefit that is payable in an event mentioned in that definition.

Authorised Version C2022C00106 registered 10/03/2022

Division 16—Averaging of incomes

149 Average income

(1) For the purposes of the application of this Division in relation to a taxpayer in relation to a year of income, a reference in this Division to the average income of the taxpayer shall be construed as a reference to the average of the taxable incomes of the taxpayer of the years of income (in this Division referred to as ***average years***) beginning with the first average year and ending with the first-mentioned year of income.

149A Capital gains, abnormal income and certain death benefits to be disregarded

(1) For the purposes of this Division (including the purpose of determining whether this Division applies to the income of a taxpayer):

(a) references in this Division to the assessable income of a taxpayer shall be read as references to the amount that would have been the assessable income if the assessable income did not include any net capital gain and did not include any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997*; and

(b) references in this Division to the taxable income of a taxpayer shall be read as references to the amount that would have been the taxable income if:

(i) the assessable income did not include any net capital gain and did not include any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997*; and

(ii) the taxable income were reduced by so much of the taxable income as consists of above-average special professional income within the meaning of the *Income Tax Assessment Act 1997*.

Authorised Version C2022C00106 registered 10/03/2022

(2) A reference in subsection (1) to the assessable income or taxable income of a taxpayer of a year of income shall, in relation to a taxpayer in the capacity of trustee of a trust estate, be read as a reference to the assessable income or net income, as the case may be, of the trust estate of the year of income.

150 First average year

Subject to this Division, the first average year shall be the fourth year before the year of income. A year the income of which was subject to assessment under the previous Act shall be capable of being a first or subsequent average year.

151 First application of Division in relation to a taxpayer

(1) For the purposes of the first application of this Division in determining the tax payable by a taxpayer, the first average year shall be the first year which is otherwise capable of being an average year, and in which the taxable income is not greater than that of the next succeeding year. No year prior to that first average year shall, for the purposes of any application of this Division in determining the tax payable by a taxpayer, be capable of being an average year.

(2) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year for the purposes of the first application of this Division in determining the tax payable by a taxpayer.

(3) This section shall not apply to a taxpayer whose income has been or is liable to be assessed at an average rate of tax determined under the provisions of the previous Act.

152 Taxpayer not in receipt of assessable income

Any year in which the taxpayer was not carrying on business and was not in receipt of assessable income shall not be counted as an average year, and the provisions of this Division shall apply to the

Authorised Version C2022C00106 registered 10/03/2022

income thereafter derived by the taxpayer as if he or she had never been a taxpayer before that year.

153 Taxpayer with no taxable income

Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being an average year.

154 Excess of allowable deductions

Any excess of allowable deductions over the assessable income of the taxpayer in any average year shall not be taken into account in calculating the average income.

155 Permanent reduction of income

(1) Where a taxpayer establishes that, owing to his or her retirement from his or her occupation, or from any other cause (but not including a change in the investment of assets from which assessable income was derived into assets from which the taxpayer derives income which is not liable to be assessed under this Act), his or her taxable income has been permanently reduced to an amount which is less than two-thirds of his or her average taxable income, he or she shall be assessed, and the provisions of this Division shall apply to the income thereafter derived by him or her, as if he or she had never been a taxpayer before that year.

(2) For the purposes of the application of subsection (1) in relation to a taxpayer in relation to a year of income, a reference in that subsection to the average taxable income of the taxpayer shall be construed as a reference to the amount that would be the average income of the taxpayer in relation to that year of income ascertained in accordance with section 149 if there were excluded from the assessable income of the taxpayer of the average years any income received by him or her from sources from which he or she does not usually receive income.

Authorised Version C2022C00106 registered 10/03/2022

156 Rebate of tax for, or complementary tax payable by, certain primary producers

(1) In this section:

actual taxable income from primary production, in relation to a taxpayer in relation to a year of income, means the amount (if any) remaining after deducting from the assessable primary production income of the taxpayer of the year of income so much of the aggregate of the relevant primary production deductions of the taxpayer of the year of income as does not exceed that assessable income.

assessable primary production income, in relation to a taxpayer in relation to a year of income, means so much of the assessable income of the taxpayer of the year of income as was derived from the carrying on of a primary production business by the taxpayer or was included in the assessable income of the taxpayer of the year of income in consequence of the carrying on of a primary production business by the taxpayer.

deemed taxable income from primary production, in relation to a taxpayer in relation to a year of income, means:

(a) if the taxpayer did not have a non-primary production profit in relation to the year of income—the taxable income of the taxpayer; and

(b) in any other case—the sum of the actual taxable income from primary production of the taxpayer of the year of income and the notional taxable income from primary production of the taxpayer of the year of income.

notional taxable income from primary production, in relation to a taxpayer in relation to a year of income, being a taxpayer who had a non-primary production profit in relation to the year of income, means:

(a) where the taxpayer did not incur a primary production loss in relation to the year of income:

(i) in a case to which subparagraph (ii) does not apply—the amount ascertained by deducting from the taxable

Authorised Version C2022C00106 registered 10/03/2022

income of the taxpayer of the year of income the actual taxable income from primary production of the taxpayer of the year of income; and

(ii) where the taxable income of the taxpayer of the year of income exceeds the actual taxable income from primary production of the taxpayer of the year of income and that excess is greater than $5,000—$5,000 reduced by $1 for each whole dollar by which the amount of that excess exceeds $5,000; and

(b) where the taxpayer incurred a primary production loss in relation to the year of income:

(i) in a case where the sum of the taxable income of the taxpayer of the year of income and the amount of the primary production loss is less than or equal to $5,000—the taxable income of the taxpayer of the year of income; and

(ii) in a case where the sum of the taxable income of the taxpayer of the year of income and the amount of the primary production loss (which sum is in this subparagraph referred to as the ***non-farm income***) exceeds $5,000—an amount ascertained by deducting from $5,000 one dollar for each whole dollar by which so much of the non-farm income as does not exceed $10,000 exceeds $5,000 and deducting from the resultant amount so much (if any) of the amount of the primary production loss as does not exceed that resultant amount.

relevant primary production deductions, in relation to a taxpayer in relation to a year of income, means:

(a) any deductions allowed or allowable in the taxpayer's assessment in respect of income of the year of income that relate exclusively to assessable primary production income of the taxpayer of a year of income;

(b) so much of any other deductions (other than apportionable deductions) allowed or allowable in the taxpayer's assessment in respect of income of the year of income as, in

Authorised Version C2022C00106 registered 10/03/2022

the opinion of the Commissioner, may appropriately be related to assessable primary production income of the taxpayer of a year of income; and

(c) the amount that bears to the apportionable deductions allowed or allowable in the taxpayer's assessment the same proportion as the amount ascertained by deduction from the assessable primary production income of the taxpayer of the year of income any deductions allowable from that assessable income in accordance with paragraphs (a) and (b) bears to the sum of the taxable income of the taxpayer of the year of income and the apportionable deductions.

(2) For the purposes of subsection (1), a taxpayer shall be taken to have a non-primary production profit in relation to a year of income if the assessable income of the taxpayer of the year of income other than assessable primary production income exceeds the aggregate of the deductions (other than relevant primary production deductions) allowable to the taxpayer in respect of the year of income.

(3) For the purposes of subsection (1), a taxpayer shall be taken to have incurred a primary production loss in relation to a year of income if the aggregate of the relevant primary production deductions in relation to the year of income exceeds the assessable primary production income of the taxpayer of the year of income, and the amount of that loss shall be taken to be the amount of the excess.

(5) Where:

(a) this Division applies to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the ***eligible net income***); and

Authorised Version C2022C00106 registered 10/03/2022

(b) the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income exceeds the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income if the notional rates declared by the Parliament for the purposes of this section were the rates of tax payable by the trustee in respect of the eligible net income;

the trustee is entitled, in his or her assessment in respect of the eligible net income, to a rebate of tax of an amount ascertained in accordance with the formula $\frac{AB}{C}$, where:

A is the number of whole dollars in the amount of the deemed net income from primary production.

B is the excess referred to in paragraph (b); and

C is the number of whole dollars in the eligible net income.

(5A) Where:

(a) this Division applies to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the ***eligible net income***); and

(b) the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income if the notional rates declared by the Parliament for the purposes of this section were the rates of tax payable by the trustee in respect

Authorised Version C2022C00106 registered 10/03/2022

of the eligible net income exceeds the amount of tax that would, apart from this section, section 94, Division 6AA and Part VIIB and but for any rebate or credit to which the trustee is entitled, be payable by the trustee in respect of the eligible net income;

the trustee is liable to pay complementary tax, at the rate declared by the Parliament for the purposes of this subsection, on so much of the net income of the trust estate as is equal to the deemed net income from primary production.

(6) For the purposes of the application of this section in relation to a share of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of subsection 98(1) or (2) or in relation to the net income or a part of the net income of a trust estate of a year of income in respect of which a trustee is liable to be assessed and to pay tax in pursuance of section 99 (which share, net income or part, as the case may be, is in this subsection referred to as the ***eligible net income***):

actual net income from primary production means so much of the net income from primary production of the trust estate as is included in the eligible net income.

assessable primary production income means so much of the assessable income of the trust estate of the year of income as was derived from the carrying on of a primary production business by the trustee or was included in the assessable income of the trust estate of the year of income in consequence of the carrying on of a primary production business by the trustee.

deemed net income from primary production means:

(a) if the trust estate did not have a non-primary production profit in relation to the year of income—the eligible net income; and

(b) in any other case—the sum of the actual net income from primary production of the trust estate of the year of income and the notional net income from primary production of the trust estate of the year of income.

Authorised Version C2022C00106 registered 10/03/2022

eligible part of the primary production loss, in relation to a primary production loss incurred by the trust estate in the year of income, means so much of the primary production loss as is equal to the amount by which the eligible net income would have been increased if the aggregate of the relevant primary production deductions allowable in calculating the amount of the net income of the trust estate of the year of income had been equal to the assessable primary production income of the trust estate of the year of income.

net income from primary production means the amount (if any) remaining after deducting from the assessable primary production income of the trust estate of the year of income so much of the aggregate of the relevant primary production deductions allowable in calculating the net income of the trust estate as does not exceed that assessable primary production income.

notional net income from primary production means:

(a) where the trust estate had a non-primary production profit in relation to the year of income and did not incur a primary production loss in relation to the year of income:
  (i) in a case to which subparagraph (ii) does not apply—the amount ascertained by deducting from the eligible net income the actual net income from primary production (if any); and
  (ii) where the eligible net income exceeds the actual net income from primary production in relation to the year of income and that excess is greater than $5,000—$5,000 reduced by $1 for each whole dollar by which the amount of that excess exceeds $5,000; and

(b) where the trust estate had a non-primary production profit in relation to the year of income and incurred a primary production loss in relation to the year of income:
  (i) in a case where the sum of the eligible net income and the eligible part of the primary production loss is less than or equal to $5,000—the eligible net income; and
  (ii) in a case where the sum of the eligible net income and the eligible part of the primary production loss (which

Authorised Version C2022C00106 registered 10/03/2022

sum is in this subparagraph referred to as the ***non-farm income***) exceeds $5,000—an amount ascertained by deducting from $5,000 one dollar for each whole dollar by which so much of the non-farm income as does not exceed $10,000 exceeds $5,000 and deducting from the resultant amount so much (if any) of the eligible part of the primary production loss as does not exceed that resultant amount.

relevant primary production deductions means:

(a) any deductions allowed or allowable in calculating the amount of the net income of the trust estate of the year of income that relate exclusively to assessable primary production income of a year of income;

(b) so much of any other deductions (other than apportionable deductions) allowed or allowable in calculating the amount of that net income as, in the opinion of the Commissioner, may appropriately be related to assessable primary production income of the trust estate of a year of income; and

(c) the amount that bears to the apportionable deductions allowed or allowable in calculating the amount of that net income the same proportion as the amount ascertained by deducting from the assessable primary production income of the trust estate of the year of income any deductions allowable from that assessable primary production income in accordance with paragraphs (a) and (b) bears to the sum of the net income of the trust estate and the apportionable deductions.

(7) For the purposes of subsection (6), a trust estate shall be taken to have incurred a primary production loss in relation to a year of income if the aggregate of the relevant primary production deductions allowable in calculating the amount of the net income of the trust estate of the year of income exceeds the assessable primary production income of the trust estate of the year of income, and the amount of that loss shall be taken to be the amount of the excess.

Authorised Version C2022C00106 registered 10/03/2022

(8) For the purposes of subsection (6), a trust estate shall be taken to have a non-primary production profit in relation to a year of income if the assessable income of the trust estate of the year of income other than assessable primary production income exceeds the aggregate of the deductions (other than relevant primary production deductions) allowable in calculating the amount of the net income of the trust estate of the year of income.

157 Application of Division to primary producers

(1) In respect of income derived during the year ending on 30 June 1938 and during any subsequent year or during any accounting period adopted in lieu of any such year, the foregoing provisions of this Division shall not apply except in respect of income derived by a primary producer.

(2) For the purposes of this section, ***primary producer*** means a person who carries on in Australia a primary production business.

(3) Subject to subsection (3A), for the purposes only of determining whether a person is carrying on a primary production business, a beneficiary in a trust estate shall, to the extent to which he or she is presently entitled to the income or part of the income of that estate, be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

(3A) Subsection (3) does not operate to deem a beneficiary in a trust estate who is presently entitled to the income or a part of the income of that estate to be carrying on the business carried on by the trustees of the trust estate in a year of income unless:

(a) the share of the income of that trust estate of the year of income to which the beneficiary is presently entitled is not less than $1,040; or

(b) the Commissioner is satisfied that the interest of the beneficiary in the trust estate was not acquired by, or granted to, the beneficiary for the purpose, or primarily for the purpose, of enabling the provisions of this Division to apply in respect of income derived by the beneficiary.

Authorised Version C2022C00106 registered 10/03/2022

(4) If in any year in respect of which this Division applies only to taxpayers who are primary producers, a taxpayer was not carrying on business as a primary producer, that year shall not be counted as an average year and the provisions of this Division shall apply to the income thereafter derived by the taxpayer as if he or she had never been a taxpayer before that year.

158 Application of Division

This Division shall not apply in any case where there are not at least 2 average years or where the taxpayer is assessed in accordance with section 99A in respect of the year of income, and shall not apply to the taxable income of a company except income in respect of which it is assessable as a trustee.

158A Election that Division not apply

(1) A taxpayer may elect that this Division shall not apply in relation to income of the taxpayer of a year of income specified in the election and of all subsequent years of income.

(2) An election in pursuance of subsection (1) shall be made in writing and lodged with the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income specified in the election or within such further time as the Commissioner allows.

(3) Where a taxpayer makes an election under subsection (1), this Division shall not apply in relation to income of the taxpayer of the year of income specified in the election or of any subsequent year of income.

Authorised Version C2022C00106 registered 10/03/2022

Division 16D—Certain arrangements relating to the use of property

159GE Interpretation

(1) In this Division:

arrangement includes:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct whether unilateral or otherwise.

arrangement payment, in relation to an arrangement relating to the use, or the control of the use, of an item of property, means so much of any payment liable to be made under the arrangement as represents consideration for any one or more of the following:

(a) the use of the item;

(b) the control of the use of the item;

(c) the sale or disposal of the item.

arrangement period, in relation to an item of eligible property that is, or is included in, arrangement property in relation to an arrangement at a particular time, means the period that is at that time the total period during which the arrangement is likely to be in force in relation to that item of eligible property (including any period before that time when the arrangement was in force in relation to that item of eligible property).

arrangement property means property that is, or is to be, used, or the use of which is, or is to be, controlled, under an arrangement.

assessable arrangement payment means an arrangement payment that, apart from this Division, would be included in whole or in part in the assessable income of a taxpayer of a year of income.

Authorised Version C2022C00106 registered 10/03/2022

associate means, in relation to a person other than an exempt public body, any person who is an associate, within the meaning of section 318, in relation to the person or, in relation to an exempt public body:

(a) a partner of the exempt public body or a partnership in which the exempt public body is a partner; or

(b) if a partner of the exempt public body is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner; or

(c) a trustee of a trust where the exempt public body, or another entity that is an associate of the exempt public body because of paragraph (a), (b) or (d), benefits under the trust; or

(d) a company where:

(i) the company is sufficiently influenced by:

(A) the exempt public body; or

(B) another entity that is an associate of the exempt public body because of paragraph (a), (b) or (c); or

(C) another company that is an associate of the exempt public body because of another application of this paragraph; or

(D) 2 or more entities covered by the preceding sub-subparagraphs; or

(ii) a majority voting interest in the company is held by:

(A) the exempt public body; or

(B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and paragraphs (a), (b) and (c); or

(C) the exempt public body and the entities that are associates of the exempt public body because of subparagraph (i) of this paragraph and because of paragraphs (a), (b) and (c).

Subsections 318(6) and (7) apply for the purposes of paragraphs (a) to (d) in the same way as those subsections apply for the purposes of section 318.

Authorised Version C2022C00106 registered 10/03/2022

capital expenditure deduction means a deduction:

(a) under the former Division 10, 10AAA, 10AA, 10A, 10C or 10D of this Part; or

(b) under Subdivision 40-B of the *Income Tax Assessment Act 1997* for a depreciating asset that is a forestry road or timber mill building; or

(c) under Division 43 of that Act; or

(d) under section 40-830 of that Act for an amount that is a project amount under subsection 40-840(1) (about mining capital expenditure and transport capital expenditure); or

(e) under the former Subdivision 330-C, 330-H or 387-G of that Act.

control means effectively control.

depreciation deduction means a deduction:

(a) in respect of depreciation under Division 3 of this Act or the former Division 42 of the *Income Tax Assessment Act 1997*; or

(b) for the decline in value of a depreciating asset under Division 40 of the *Income Tax Assessment Act 1997*.

Division 10, 10AA or 10A property means property in relation to which there has been incurred:

(a) allowable capital expenditure within the meaning of the former Division 10 or 10AA of this Part or the former Subdivision 330-C of the *Income Tax Assessment Act 1997* or mining capital expenditure within the meaning of section 40-860 of that Act;

(b) expenditure taken into account in ascertaining an amount of residual capital expenditure specified in the former paragraph 122C(1)(a); or

(c) capital expenditure specified in the former subsection 124F(1) or 124JA(1) of this Act or the former section 387-460 of the *Income Tax Assessment Act 1997*; or

Authorised Version C2022C00106 registered 10/03/2022

(d) capital expenditure on a forestry road in connection with a timber operation, or capital expenditure for the construction or acquisition of a timber mill building.

Division 10AAA property means property in relation to which there has been incurred capital expenditure to which the former Division 10AAA of this Part applies or transport capital expenditure within the meaning of the former Subdivision 330-H, or section 40-865 of the *Income Tax Assessment Act 1997*.

Division 10C or 10D property means property in relation to which there has been incurred qualifying expenditure within the meaning of the former Division 10C or 10D or for which there is a pool of construction expenditure within the meaning of Division 43 of the *Income Tax Assessment Act 1997*.

effective life, in relation to an item of eligible property at a particular time, means the period (if any) that the Commissioner estimates will be, or would be, at that time the effective life of the property after that time assuming that it is or would be maintained in reasonably good order and condition.

eligible amount, in relation to an item of eligible property, means:

(a) where the item is an item of eligible depreciation property—the amount that:
  (i) was the cost of the item of property within the meaning of Division 40, or the former Division 42, of the *Income Tax Assessment Act 1997* to the taxpayer who holds it; or
  (ii) would have been the cost of the item of property to the taxpayer for the purposes of that Division if that Division had applied in relation to the item of property; and

(b) where the item is an item of eligible capital expenditure property—any amount of eligible capital expenditure in relation to the item of property.

Authorised Version C2022C00106 registered 10/03/2022

eligible capital expenditure, in relation to an item of eligible capital expenditure property, means expenditure by reason of which the item of property is eligible capital expenditure property.

eligible capital expenditure property means Division 10, 10AA or 10A property, Division 10AAA property, Division 10C or 10D property or eligible spectrum licences.

eligible depreciation property means:

(a) plant or articles within the meaning of the former section 54 of this Act; or

(b) plant within the meaning of the former section 42-18 of the *Income Tax Assessment Act 1997* or plant within the meaning of section 45-40 of that Act; or

(c) a depreciating asset within the meaning of Division 40 of that Act.

eligible property means:

(a) eligible depreciation property;

(b) Division 10, 10AA or 10A property;

(c) Division 10AAA property;

(d) Division 10C or 10D property; or

(e) eligible spectrum licences.

eligible real property, means eligible property that is:

(a) a building or a part of a building; or

(b) a structure that is a fixture or a part of such a structure.

eligible spectrum licence means a spectrum licence within the meaning of the *Income Tax Assessment Act 1997*.

exempt public body means:

(a) the Commonwealth, a State or a Territory; or

(aa) an STB (within the meaning of Division 1AB) the income of which is wholly exempt from tax; or

(b) a municipal corporation or other local governing body, the income of which is wholly exempt from tax; or

(c) a public authority:

Authorised Version C2022C00106 registered 10/03/2022

(i) that is constituted by or under a law of the Commonwealth, a State or a Territory; and

(ii) the income of which is wholly exempt from tax.

payment portion, in relation to an arrangement payment in relation to an eligible amount in relation to an item of eligible property, means so much of the arrangement payment as the Commissioner considers is attributable to the eligible amount in relation to the item of eligible property.

person includes an exempt public body.

total notional principal, in relation to an eligible amount in relation to an item of eligible property in relation to an application period, means the sum of all notional principal amounts (if any) in relation to payment portions of arrangement payments in relation to the eligible amount in relation to the application period.

Note: This Division applies to deductions under Division 40 (Capital allowances) and Division 43 (Capital works) of the *Income Tax Assessment Act 1997* as if you were the owner of an asset you hold (under that Division) instead of any other person: see section 40-135 of that Act.

(2) For the purposes of the definition of ***arrangement period*** in subsection (1), a reference in that definition to the total period during which an arrangement is, at a particular time, likely to be in force in relation to an item of eligible property that at that time is, or is included in, arrangement property in relation to the arrangement is a reference to:

(a) where at that time the total period during which the arrangement was, or is, to be in force in relation to that item of eligible property (including any period before that time when the arrangement was in force in relation to that item) was or is specified in or ascertainable in accordance with the arrangement—that period; and

(b) in any other case—such period as would have been, or is, at that time the period during which the arrangement would be, or is, likely to be in force in relation to the item of property (including any period before that time when the arrangement

Authorised Version C2022C00106 registered 10/03/2022

was in force in relation to the item), having regard to the provisions of the arrangement and any other relevant circumstances in relation to the arrangement, or in relation to the item of property.

(3) Nothing in this Division prevents an item of eligible property from being an item of eligible property by reason of the application of 2 or more paragraphs of the definition of ***eligible property*** in subsection (1).

(4) For the purposes of the definition of ***total notional principal*** in subsection (1), where:

(a) under section 159GK there is an interest amount within the meaning of that section in relation to a payment portion (not being a notional final payment portion within the meaning of that section) in relation to an arrangement payment; and

(b) the interest amount is less than the amount of the payment portion;

there shall be taken to be a notional principal amount in relation to the payment portion of an amount equal to the difference between the interest amount and the amount of the payment portion.

(5) Where:

(a) under 2 or more successive arrangements relating to the use by a person, or the control by a person of the use, of property owned by another person, the same property is used by, or the use of the same property is controlled by, the same person or by persons who, in relation to each other, are associates; and

(b) the Commissioner considers that the arrangements should be taken, for the purposes of this Division, to be a single arrangement;

the arrangements shall, for the purposes of this Division, be deemed to be a single arrangement entered into at the same time as the first of the arrangements, coming into force at the same time as the first of the arrangements and continuing in force until the expiration of the second or last, as the case requires, of the arrangements.

Authorised Version C2022C00106 registered 10/03/2022

(6) A reference in subsection (5) to successive arrangements includes a reference to:

(a) where the arrangement periods of 2 or more arrangements overlap—those arrangements; and

(b) where there is a period between the expiration of an arrangement and the commencement of another arrangement and the Commissioner considers that the arrangements should be taken to be successive arrangements for the purposes of that subsection—those arrangements.

(7) Where this Division applies in relation to an item of eligible property in relation to a qualifying arrangement, a reference in this Division to the application period in relation to that application of this Division in relation to the item of eligible property is a reference to the period commencing at the time at which this Division in that application commences to apply and ending at the time at which this Division in that application ceases to apply.

(8) For the purposes of this Division, where one or more of the partners in a partnership uses, or controls the use of, an item of property, each of the partners in the partnership shall be taken to use, or to control the use of, the item of property and the partnership shall be taken not to use, or to control the use of, the item of property.

(10) For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

159GEA Division applies to certain State/Territory bodies

In addition to any other operation that this Division has, this Division operates as if the references to an exempt public body included a reference to a prescribed excluded STB (within the meaning of Division 1AB).

Authorised Version C2022C00106 registered 10/03/2022

159GF Residual amounts

(1) Subject to subsection 159GJ(1), in this Division a reference to the residual amount at a particular time (in this subsection referred to as the ***relevant time***) in relation to the eligible amount by reason of which an item of property is eligible depreciation property at the relevant time is a reference to the eligible amount reduced by:

(a) where the item of property was not dealt with by the taxpayer who holds the item in the prescribed manner at any time during the period (in this subsection referred to as the ***relevant period***) before the relevant time when it was held by the taxpayer (within the meaning of Division 40 of the *Income Tax Assessment Act 1997*)—the total amount of deductions for depreciation or decline in value that would, but for any deduction denying provision, have been allowable to the taxpayer under this Act or the *Income Tax Assessment Act 1997* in respect of that item of property for the relevant period if:

(i) at all times during the relevant period the taxpayer had wholly and exclusively dealt with the item of property in the prescribed manner; and

(ii) those deductions were calculated using the diminishing value method; and

(iii) section 57AG, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act 1992*, did not apply in relation to the item of property;

(b) where the item of property was wholly and exclusively dealt with by the taxpayer who held the item in the prescribed manner at all times during the relevant period—the total amount of deductions for depreciation or decline in value that were or, but for any deduction denying provision, would have been, allowed or allowable to the taxpayer in respect of the item of property for that period under this Act or the *Income Tax Assessment Act 1997*; and

(c) in any other case—the total amount of deductions for depreciation or decline in value that, but for any deduction

Authorised Version C2022C00106 registered 10/03/2022

denying provision, would have been allowable to the taxpayer who holds the item of property in respect of the item under this Act or the *Income Tax Assessment Act 1997* for the relevant period if:

(i) the taxpayer had wholly and exclusively dealt with the item of property in the prescribed manner at all times during the relevant period; and

(ii) in respect of any part of the relevant period for which deductions for depreciation or decline in value were or, but for any deduction denying provision, would have been allowed or allowable under this Act or the *Income Tax Assessment Act 1997*—the deductions were allowable on the same basis and at the same percentage as was or would have been allowed or allowable for that part of the relevant period; and

(iii) in respect of any other part (in this subparagraph referred to as the ***relevant part***) of the relevant period—the deductions were allowable:

(A) where the relevant part was immediately succeeded by another part of the relevant period in respect of which deductions for depreciation or decline in value were or, but for any deduction denying provision, would have been allowed or allowable under this Act or the *Income Tax Assessment Act 1997*—on the same basis and at the same percentage as was or would have been allowed or allowable in respect of that other part; and

(B) in any other case—on the same basis and at the same percentage as was or, but for any deduction denying provision, would have been allowed or allowable under this Act or the *Income Tax Assessment Act 1997* in respect of the part of the relevant period for which deductions for depreciation or decline in value was or would have been allowed or allowable,

Authorised Version C2022C00106 registered 10/03/2022

being the part that immediately preceded the relevant part.

(2) For the purposes of subsection (1):

(a) an item of eligible depreciation property shall be taken to be dealt with by a taxpayer in the prescribed manner at a particular time if:

(i) the item of property is used by the taxpayer at that time for the purpose of producing assessable income; or

(ii) the item of property is, at that time, installed ready for use for the purpose of producing assessable income and held in reserve by the taxpayer; and

(b) a reference to a deduction denying provision is a reference to a provision of this Act that would have the effect of denying an entitlement in whole or in part to a deduction otherwise wholly allowable under this Act.

(3) Subject to subsection 159GJ(2), where any of the following amounts (in this subsection referred to as the ***attributable amount***):

(a) an amount of residual previous capital expenditure within the meaning of the former Division 10 or 10AA;

(b) an amount of residual capital expenditure within the meaning of the former Division 10, 10AA or 10A;

(c) an amount of residual (1 May 1981 to 18 August 1981) capital expenditure within the meaning of the former Division 10 or 10AA;

(d) an amount of residual (19 August 1981 to 19 July 1982) capital expenditure within the meaning of the former Division 10 or 10AA;

(e) so much as is unrecouped of an amount of allowable (post-19 July 1982) capital expenditure within the meaning of the former Division 10 or 10AA;

(f) so much as is unrecouped of an amount of allowable capital expenditure within the meaning of the former Subdivision 330-C of the *Income Tax Assessment Act 1997*;

(fa) so much of an amount of mining capital expenditure or transport capital expenditure (within the meaning of the

Authorised Version C2022C00106 registered 10/03/2022

Income Tax Assessment Act 1997) as has not been deducted under Division 40 of that Act;

(g) the difference between capital expenditure and previous deductions as defined in the former subsection 387-470(1) of the *Income Tax Assessment Act 1997*;

(h) the difference between the cost of a forestry road or timber mill building for the purposes of Division 40 of the *Income Tax Assessment Act 1997* and its adjustable value for the purposes of that Division;

ascertained as at the end of a year of income, is attributable in whole or in part to an amount of expenditure (in this subsection referred to as the ***relevant expenditure***) by reason of which an item of property is Division 10, 10AA or 10A property, in this Division a reference to the residual amount at any time during the year of income in relation to the relevant expenditure is a reference to so much of the attributable amount as is attributable to the relevant expenditure.

(4) Subject to subsection 159GJ(3), in this Division a reference to the residual amount at a particular time in relation to an amount of expenditure by reason of which an item of property is Division 10AAA property is a reference to the amount of expenditure reduced by any part of that expenditure that has been allowed or is allowable as a deduction under the former Division 10AAA of this Part or the former Subdivision 330-H of the *Income Tax Assessment Act 1997*, or under Subdivision 40-I of that Act for transport capital expenditure, from the assessable income of any taxpayer of a year of income preceding the year of income in which the particular time occurs.

(5) Subject to subsection 159GJ(4), in this Division a reference to the residual amount at a particular time in relation to an amount of expenditure by reason of which an item of property is Division 10C or 10D property is a reference to the residual capital expenditure within the meaning of the former Division 10C or 10D of this Part, or to the undeducted construction expenditure within the meaning of Division 43 of the *Income Tax Assessment Act*

Authorised Version C2022C00106 registered 10/03/2022

1997, as appropriate, at that time in relation to the amount of expenditure.

(6) In this Division, a reference to the residual amount at a particular time in relation to an amount of expenditure because of which an item of property is an eligible spectrum licence is a reference to:

(a) the amount of unrecouped expenditure (within the meaning of the former section 380-20 of the *Income Tax Assessment Act 1997*) on that licence at that time; or

(b) the adjustable value of that licence (within the meaning of Division 40 of that Act) at that time.

159GG Qualifying arrangements

(1) For the purposes of this Division, where at any time (in this subsection referred to as the ***relevant time***) any of the following conditions is satisfied in relation to an arrangement relating to the use by a person (in this subsection referred to as the ***end-user***), or to the control by a person (in this subsection also referred to as the ***end-user***) of the use, of property owned by another person who is a party to the arrangement, being property that is or includes an item of eligible property:

(a) the arrangement contains provision to the effect that:

(i) if:

(A) on the termination or expiration of the arrangement, the owner sells or otherwise disposes of the whole of the arrangement property, or part of the arrangement property that is or includes the item of eligible property, to any person; and

(B) the owner or an associate receives in respect of the sale or disposal no consideration, or consideration of an amount less than an amount (in this subparagraph referred to as the ***guaranteed residual value***) specified in, or ascertainable under, the provision;

Authorised Version C2022C00106 registered 10/03/2022

the end-user or an associate will pay to the owner or an associate an amount equal to the guaranteed residual value, or to the amount by which the guaranteed residual value exceeds the consideration, as the case may be;

(ii) at or after the termination or expiration of the arrangement, the whole of the arrangement property or part of the arrangement property that is or includes the item of eligible property is to be transferred (whether or not for any consideration) to the end-user or an associate;

(iii) the end-user or an associate has or will have the right to purchase or to require the transfer of the whole of the arrangement property or part of the arrangement property that is or includes the item of eligible property; or

(iv) the arrangement period in relation to the item of eligible property in relation to the arrangement is a period that exceeds 1 year and the end-user or an associate will be liable to carry out, to expend money in respect of or to reimburse the owner or an associate for expenditure in respect of, repairs that may be required to the whole of the arrangement property or to part of the arrangement property that is or includes the item of eligible property;

(b) the arrangement period in relation to the item of eligible property in relation to the arrangement is equal to or greater than:

(i) where the item is an item of eligible real property—50% of the effective life of that item at the commencement of the arrangement period; or

(ii) in any other case—75% of the effective life of that item at the commencement of the arrangement period;

(c) the sum of:

(i) the payment portions of arrangement payments that were liable to be made at or before the relevant time in relation to the eligible amount, or in relation to all of the eligible amounts (including any eligible amount in

Authorised Version C2022C00106 registered 10/03/2022

respect of expenditure incurred after the commencement of the arrangement period), in relation to the item of eligible property; and

(ii) the payment portions of arrangement payments that, having regard to the provisions of the arrangement and any other relevant circumstances, are or were, at the relevant time, likely to become liable to be made after the relevant time in relation to the eligible amount, or in relation to all of the eligible amounts (including any eligible amount in respect of expenditure that, having regard to the provisions of the arrangement and any other relevant circumstances, is or was likely to be incurred during the arrangement period), in relation to the item of eligible property;

is equal to or greater than 90% of the sum of:

(iii) the residual amount in relation to the eligible amount, or the sum of the residual amounts in relation to the eligible amounts, in respect of which expenditure was incurred before the commencement of the arrangement period in relation to the item of eligible property, as ascertained at the commencement of the arrangement period; and

(iv) the amount of any expenditure that was, or is likely to be, incurred during the arrangement period, being expenditure giving rise to an eligible amount in relation to the item of eligible property;

the arrangement shall be taken to be, or to have been, a qualifying arrangement in relation to the item of eligible property:

(d) at the relevant time; and

(e) at all times before the relevant time when the arrangement was in force in relation to the item of eligible property.

(2) For the purposes of this Division, where:

(a) an item of eligible property is, or is included in, arrangement property in relation to an arrangement relating to the use by a person (in this subsection referred to as the ***end-user***), or to the control by a person (in this subsection also referred to as

Authorised Version C2022C00106 registered 10/03/2022

the ***end-user***) of the use, of property owned by another person who is a party to the arrangement; and

(b) the ownership of the item of eligible property is transferred to the end-user or an associate within 1 year after the arrangement ceases to be in force (whether by termination or expiration) in relation to the item of eligible property;

the arrangement shall be taken to have been a qualifying arrangement in relation to the item of eligible property at all times during the period during which the arrangement was in force in relation to the item of eligible property.

(3) For the purposes of subsections (1) and (2):

(a) a lease to a person of property owned by another person shall be taken to be an arrangement relating to the use by the person of property owned by the other person; and

(b) any arrangement entered into in relation to the lease referred to in paragraph (a) shall be taken to be part of the arrangement referred to in that paragraph.

(4) Where, but for this subsection, an arrangement would be a qualifying arrangement in relation to an item of eligible property at a particular time (in this subsection referred to as the ***relevant time***) and the Commissioner, having regard to:

(a) the circumstances by reason of which the arrangement is a qualifying arrangement in relation to that item of eligible property; and

(b) any other relevant circumstances;

considers it unreasonable that the arrangement should be a qualifying arrangement at the relevant time in relation to the item of eligible property, the arrangement shall be taken not to be a qualifying arrangement at the relevant time in relation to the item of eligible property.

(5) Where an arrangement is a qualifying arrangement in relation to an item of eligible property at a particular time (in this subsection referred to as the ***relevant time***) and the arrangement ceases to be a qualifying arrangement in relation to that item of eligible property at a later time, the arrangement shall not be taken not to have been

Authorised Version C2022C00106 registered 10/03/2022

a qualifying arrangement in relation to that item of eligible property at the relevant time by reason of it ceasing to be a qualifying arrangement in relation to that item of eligible property at the later time.

159GH Application of Division in relation to property

(1A) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:

(a) starts on or after 1 July 2007; and

(b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.

(1B) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

(c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.

(1) Subject to subsections (1A), (1B) and (2), where:

(a) at a particular time (in this subsection referred to as the ***relevant time***) an arrangement is a qualifying arrangement under subsection 159GG(1) or (2) in relation to an item of eligible property; and

(b) either of the following conditions is satisfied:

(i) the qualifying arrangement was entered into after 5 o'clock in the afternoon, by standard time in the Australian Capital Territory, on 15 May 1984 and the end-user referred to in subsection 159GG(1) or (2) is an exempt public body;

(ii) the arrangement was entered into after 5 o'clock in the afternoon, by legal time in the Australian Capital

Authorised Version C2022C00106 registered 10/03/2022

Territory, on 16 December 1984 and the use of the property referred to in subsection 159GG(1) or (2) takes place, or will take place, outside Australia and is, or will be, wholly or partly for the purpose of producing exempt income;

this Division applies in relation to the item of eligible property at the relevant time.

(2) This Division does not apply in relation to an item of eligible property at a particular time if at that time section 51AD applies to the item of eligible property in relation to a taxpayer.

159GJ Effect of application of Division on certain deductions etc.

(1) Where this Division applies in relation to an item of eligible depreciation property:

(b) in relation to any year of income the whole of which is included in or comprises the application period—no depreciation deduction shall be allowable to any taxpayer in relation to the item of property for that year of income;

(c) in relation to any other year of income in which the whole or a part of the application period occurs:

(i) in relation to any part (in this subsection referred to as the ***pre-application part***) of the year of income that precedes the application period—there shall be allowable to a taxpayer as a depreciation deduction in relation to the item of property:

(A) where this Division has not previously applied in relation to the item of property—the same depreciation deduction (if any) as would, apart from this Division, be allowable to the taxpayer; and

(B) in any other case—the same depreciation deduction (if any) as would, but for this application of this section, be allowable to the taxpayer;

Authorised Version C2022C00106 registered 10/03/2022

(ii) in relation to the part of the year of income during which this Division applies—no depreciation deduction shall be allowable to any taxpayer in relation to the item of property; and

(iii) in relation to any part (in this subsection referred to as the ***post-application part***) of the year of income that occurs after the application period (not being a part that occurs after the commencement of a subsequent application period):

(A) the residual amount in relation to the item of eligible depreciation property at any time (in this sub-subparagraph referred to as the ***relevant time***) during the post-application part is an amount ascertained in accordance with the formula:

$$A + B - C$$

where:

A is the amount that, but for this application of this section, would be the residual amount at the relevant time in relation to the eligible amount (in this subparagraph referred to as the ***relevant eligible amount***) by reason of which the item is an item of eligible depreciation property.

B is:

(a) where paragraph (b) of this component does not apply—the amount that, in determining the residual amount in component A, would be taken into account as depreciation under subsection 159GF(1) in respect of the application period; and

(b) where, in determining the residual amount in component A, depreciation deductions taken into account in respect of the post-application part would be calculated under this Act or the *Income Tax*

Authorised Version C2022C00106 registered 10/03/2022

Assessment Act 1997 using the diminishing value method—the amount that, in determining the residual amount in component A, would be taken into account under subsection 159GF(1) as depreciation deductions in respect of the application period and the part of the post-application part before the relevant time; and

C is:

(a) where paragraph (a) of component B applies—an amount equal to the total notional principal in relation to the relevant eligible amount in relation to the application period; and

(b) where paragraph (b) of component B applies—the sum of:

(i) the total notional principal in relation to the relevant eligible amount in relation to the application period; and

(ii) the amount that, in determining the residual amount in component A, would be taken into account as depreciation deductions under subsection 159GF(1) in respect of the part of the post-application part before the relevant time if the depreciated value under this Act, the undeducted cost under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of eligible depreciation property at the beginning of the year of income in which this Division ceases to apply were equal to the residual amount at the beginning of the application period as reduced by the total notional

Authorised Version C2022C00106 registered 10/03/2022

principal in relation to the relevant eligible amount in relation to the application period;

(B) for the purposes of any application of this Act or the *Income Tax Assessment Act 1997*, in relation to the item of property in relation to the post-application part—the depreciated value, within the meaning of Division 3 of this Part, the undeducted cost under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of property at any time during the post-application part shall be taken to be an amount equal to the residual amount in relation to the relevant eligible amount at that time as ascertained in accordance with sub-subparagraph (A); and

(C) the depreciation deduction (if any) allowable to a taxpayer in relation to the item of property in relation to the post-application part is the depreciation deduction that would be allowable in respect of that period if this Division did not apply and, in the case of an item of property in relation to which the former paragraph 56(1)(a) of this Act or the diminishing value method under the former Division 42, or Division 40, of the *Income Tax Assessment Act 1997* would, apart from this Division, apply, if the depreciated value, within the meaning of the former section 62 of this Act, the undeducted cost, under the former Division 42 of the *Income Tax Assessment Act 1997* or the adjustable value under Division 40 of that Act, of the item of property at the beginning of the year of income were equal to the residual amount, as ascertained under sub-subparagraph (A), in relation to the relevant

Authorised Version C2022C00106 registered 10/03/2022

eligible amount at the commencement of the post-application part;

(d) the residual amount at any time (in this paragraph referred to as the ***relevant time***) after the year of income in which the application period ends (not being a time after the commencement of a subsequent application period) in relation to the eligible amount (in this paragraph referred to as the ***relevant eligible amount***) by reason of which the item is an item of eligible depreciation property is the amount that would be the residual amount in relation to the relevant eligible amount in relation to the relevant time under sub-subparagraph (1)(c)(iii)(A) if the post-application part referred to in that sub-subparagraph extended to include the relevant time; and

(e) for the purpose of the application of this Act and the *Income Tax Assessment Act 1997* in relation to the item of property at any time after the year of income in which the application period ends—there shall be taken to have been allowed as a depreciation deduction in relation to the item of property in relation to the application period an amount equal to the total notional principal in relation to the eligible amount by reason of which the item of property is eligible depreciation property in relation to the application period.

(2) Where this Division applies in relation to an item of Division 10, 10AA or 10A property:

(a) no deduction is allowable to any taxpayer under:

(ii) section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is mining capital expenditure within the meaning of that Act; or

(iii) Subdivision 40-B of that Act for a depreciating asset that is a forestry road or timber mill building;

in relation to any amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10, 10AA or 10A property for any year of income in which the whole or a part of the application period occurs;

Authorised Version C2022C00106 registered 10/03/2022

(b) the residual amount at any time after the application period (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10, 10AA or 10A property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(3) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

(c) for the purposes of the application of:

(ii) section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is mining capital expenditure within the meaning of that Act; or

(iii) Subdivision 40-B of that Act for a depreciating asset that is a forestry road or timber mill building;

in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10, 10AA or 10A property at any time after the application period, there shall be taken to have been allowed in respect of the amount of expenditure a deduction under whichever of those provisions applies in respect of the amount of expenditure of an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period.

(3) Where this Division applies in relation to an item of Division 10AAA property:

(a) no deduction is allowable to any taxpayer under section 40-830 of the *Income Tax Assessment Act 1997* for a project amount that is transport capital expenditure within the meaning of that Act in relation to any amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property for any year of income in which the whole or a part of the application period occurs; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the residual amount at any time after the application period (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(4) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

(c) for the purposes of the application of section 40-830 of the *Income Tax Assessment Act 1997*, for a project amount that is transport capital expenditure within the meaning of that Act, in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10AAA property for any year of income after the year of income in which this Division ceases to apply—it is taken to be a requirement of that section that the deduction allowable under that section in respect of the amount of expenditure does not exceed the residual amount in relation to the amount of expenditure as worked out in accordance with paragraph (b).

(4) Where this Division applies in relation to an item of Division 10C or 10D property:

(a) in relation to any year of income the whole of which is included in or comprises the application period—no deduction shall be allowable to any taxpayer under Division 43 of the *Income Tax Assessment Act 1997*, in relation to any amount of expenditure by reason of which the item is Division 10C or 10D property for that year of income;

(b) in relation to any other year of income in which the whole or a part of the application period occurs:

(i) in relation to any part (in this subsection referred to as the ***pre-application part***) of the year of income that precedes the application period—there shall be allowable to the taxpayer as a deduction under

Authorised Version C2022C00106 registered 10/03/2022

Division 43 of the *Income Tax Assessment Act 1997* in relation to an amount of expenditure by reason of which the item is Division 10C or 10D property:

(A) where this Division has not previously applied in relation to the amount of expenditure—the same deduction (if any) as would, apart from this Division, be allowable under that Division; and

(B) in any other case—the same deduction (if any) as would, but for this application of this section, be allowable under that Division;

(ii) in relation to the part of the year of income during which this Division applies—no deduction shall be allowable to any taxpayer under Division 43 of the *Income Tax Assessment Act 1997* in relation to any amount of expenditure by reason of which the item is Division 10C or 10D property; and

(iii) in relation to any part (in this subsection referred to as the ***post-application part***) of the year of income that occurs after the application period (not being a part that occurs after the commencement of a subsequent application period):

(A) the residual amount at any time during the post-application part in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property is an amount equal to the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(5) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

(C) the deduction (if any) allowable to a taxpayer in relation to an amount of expenditure (not being

Authorised Version C2022C00106 registered 10/03/2022

expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property under Division 43 of the *Income Tax Assessment Act 1997* in relation to the post-application part is the deduction (if any) that would be allowable to the taxpayer under that Division in respect of that period if this Division (other than this sub-subparagraph) did not apply and if it were a requirement of that Division that the deduction did not exceed the residual amount in relation to the amount of expenditure as ascertained in accordance with sub-subparagraph (A);

(c) the residual amount at any time after the year of income in which the application period ends (not being a time after the commencement of a subsequent application period) in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property is the amount that, but for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF (5) reduced by an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

(d) in the application of Division 43 of the *Income Tax Assessment Act 1997* in relation to any year of income after the year of income in which this Division ceases to apply, in relation to an amount of expenditure (not being expenditure incurred after the application period) by reason of which the item is Division 10C or 10D property it shall be taken to be a requirement of Division 43 of the *Income Tax Assessment Act 1997* that the deduction (if any) allowable to a taxpayer under that Division in respect of the amount of expenditure does not exceed the residual amount in relation to the amount of expenditure as ascertained in accordance with paragraph (c).

Authorised Version C2022C00106 registered 10/03/2022

(5) If this Division applies in relation to an item of property that is an eligible spectrum licence:

(a) an amount cannot be deducted under Division 40 of the *Income Tax Assessment Act 1997* in relation to any amount of expenditure (other than expenditure incurred after the application period) by reason of which the item is an eligible spectrum licence for any year of income in which any of the application period occurs; and

(b) the residual amount at any time after the application period (but before the start of a later application period) in relation to an amount of expenditure (other than expenditure incurred after the application period) because of which the item is an eligible spectrum licence is an amount equal to:

- the amount that, if not for this paragraph, would be the residual amount at that time in relation to the amount of expenditure under subsection 159GF(6);

reduced by:

- an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period and any prior application period; and

(c) for the purposes of applying Division 40 of the *Income Tax Assessment Act 1997* in relation to an amount of expenditure (other than expenditure incurred after the application period) because of which the item is an eligible spectrum licence at any time after the application period, a deduction under that Division is taken to have been allowed, for the amount of expenditure, of an amount equal to the total notional principal in relation to the amount of expenditure in relation to the application period.

159GK Effect of application of Division on assessability of arrangement payments

(1) Where this Division applies in relation to an item of eligible property in relation to which there is an assessable arrangement payment or assessable arrangement payments in relation to a taxpayer in respect of the application period, there shall be

Authorised Version C2022C00106 registered 10/03/2022

included in the assessable income of the taxpayer so much only of any payment portion of each assessable arrangement payment in relation to an eligible amount as does not exceed the interest amount (if any) in relation to the payment portion.

(2) For the purposes of subsection (1), a reference to the interest amount in relation to a payment portion of an assessable arrangement payment in relation to an eligible amount is a reference to the amount (if any) ascertained in accordance with the formula $A (1 + B)^t – A$, where:

A is the eligible principal in relation to the payment portion;

B is:

(a) where the sum of the payment portions of the likely arrangement payments in relation to the eligible amount in respect of the likely application period (including any notional final payment portion of an arrangement payment) exceeds the residual amount, as ascertained at the commencement of the application period, in relation to the eligible amount—the fraction that is the effective annual interest rate, ascertained at the commencement of the application period referred to in subsection (1), at which the sum of the present values of the payment portions equals the residual amount; and

(b) in any other case—nil; and

t is the number of whole days in the arrangement payment period divided by 365.

(3) For the purposes of subsection (2):

(a) a reference in that subsection to the eligible principal in relation to a payment portion of an arrangement payment in relation to an eligible amount is a reference to:

(i) where the arrangement payment is the first arrangement payment in the likely application period referred to in that subsection—the residual amount in relation to the eligible amount, as ascertained at the commencement of

Authorised Version C2022C00106 registered 10/03/2022

the arrangement payment period in relation to the arrangement payment; and

(ii) in the case of any other arrangement payment—an amount ascertained in accordance with the formula A - B + C, where:

A is the eligible principal in relation to the payment portion of the immediately preceding arrangement payment;

B is the amount of the payment portion of the immediately preceding arrangement payment; and

C is the interest amount in relation to the payment portion of the immediately preceding arrangement payment; and

(b) a reference in that subsection to the arrangement payment period in relation to an arrangement payment is a reference to:

(i) where the arrangement payment is the first arrangement payment liable to be made in respect of the application period referred to in that subsection—the period commencing at the beginning of the application period and ending at the time at which the arrangement payment is liable to be made; and

(ii) in the case of any other arrangement payment—the period commencing at the time at which the immediately preceding arrangement payment was liable to be made and ending at the time at which the arrangement payment concerned is liable to be made.

(4) Where the qualifying arrangement in relation to an item of eligible property in relation to which this Division applies does not provide for the sale or disposal of the item to a person who is a party to the qualifying arrangement or to an associate, for the purposes of this section an arrangement payment (not being an assessable arrangement payment) that includes a payment portion (which portion is in this section referred to as a ***notional final payment portion***) in relation to any eligible amount by reason of which the item is an item of eligible property shall be taken to be liable to be

Authorised Version C2022C00106 registered 10/03/2022

made at the end of the likely application period of an amount equal to:

(a) where the qualifying arrangement is a qualifying arrangement by reason of the application of subparagraph 159GG(1)(a)(i)—so much of the guaranteed residual value referred to in that subparagraph as is attributable to the eligible amount; or

(b) in any other case—the amount that in the opinion of the Commissioner was, or would have been, at the commencement of the application period, the market value at the end of the application period of so much of the item of eligible property as is attributable to the eligible amount.

(5) Where an amount of eligible capital expenditure is incurred in relation to an item of eligible property at any time after this Division commences to apply in relation to the item of eligible property, this section applies in respect of that expenditure as if this Division had commenced to apply in relation to the item of eligible property at the time at which the expenditure was incurred.

(6) In this section:

(a) ***likely application period***, in relation to an application of this Division, means the period that, having regard to the provisions of the qualifying arrangement referred to in section 159GH and to any other relevant circumstances, was, at the time at which that application of this Division commenced, the likely length of the application period; and

(b) ***likely arrangement payment***, in relation to a likely application period, means an arrangement payment that, having regard to the provisions of the qualifying arrangement referred to in section 159GH and to any other relevant circumstances, was, at the time at which the likely application period commenced, likely to become liable to be made during the likely application period.

Authorised Version C2022C00106 registered 10/03/2022

159GL Special provision relating to Division 10C or 10D property

(1) If:

(a) section 159GH applies in relation to an item of Division 10C or 10D property; and

(b) at the time at which that section commenced to apply in relation to the item of property, the sum of the present values of the net Division 16D amounts, for each year of income during which the whole or a part of the likely application period occurs, in relation to an amount of expenditure by reason of which the property is Division 10C or 10D property will be less than the sum of the present values, at that time, of the net Division 10C or 10D amounts for each such year of income in relation to the expenditure;

sections 159GJ and 159GK do not apply in relation to the amount of expenditure in relation to the application period.

(2) In subsection (1):

(a) a reference to the net Division 10C or 10D amounts for a year of income in relation to an amount of expenditure by reason of which an item of property is Division 10C or 10D property is a reference to the sum of the payment portions of any assessable arrangement payments likely to become liable to be made in relation to the amount of expenditure in relation to that year of income reduced by the deduction (if any) that, but for this Division, would be allowable under the former Division 10C or 10D of this Part, or under Division 43 of the *Income Tax Assessment Act 1997*, for the year of income in respect of the amount of expenditure;

(b) a reference to the net Division 16D amounts for a year of income in relation to an amount of expenditure by reason of which an item of property is Division 10C or 10D property is a reference to the sum of so much of the payment portions of any assessable arrangement payments likely to become liable to be made during the year of income in relation to the amount of expenditure as would, but for this section, be included in the assessable income of any taxpayer of the year of income under section 159GK; and

Authorised Version C2022C00106 registered 10/03/2022

(c) ***likely application period*** has the same meaning as in section 159GK.

159GM Special provision where cost of plant etc. is also eligible capital expenditure

Where:

(a) at a particular time (in this section referred to as the ***relevant time***) an item of eligible property is both eligible depreciation property and eligible capital expenditure property; and

(b) the expenditure by reason of which the item of property is eligible capital expenditure property is the amount that:

(i) was the cost of the item of property to the taxpayer who incurred the expenditure for the purpose of the former Subdivision 42-B, or Subdivision 40-C, of the *Income Tax Assessment Act 1997*; or

(ii) would have been the cost to the taxpayer for the purpose of that Subdivision if it applied in relation to the item of property;

for the purpose of ascertaining the residual amount at the relevant time in relation to the amount of expenditure:

(c) if a capital expenditure deduction would, apart from this Division, be allowable to a taxpayer in respect of the amount of eligible capital expenditure in relation to the year of income in which the relevant time occurs—the item of eligible property shall be taken to be at the relevant time an item of eligible capital expenditure property and not an item of eligible depreciation property; and

(d) in any other case—the item of eligible property shall be taken to be at the relevant time an item of eligible depreciation property and not an item of eligible capital expenditure property.

159GN Effect of use of property under qualifying arrangement for producing assessable income

(1) Where:

Authorised Version C2022C00106 registered 10/03/2022

(a) this Division applies in relation to an item of eligible property by reason of the application of subparagraph 159GH(1)(b)(i) in relation to the use by an exempt public body, or the control by an exempt public body of the use, of the item of eligible property under a qualifying arrangement;

(b) the exempt public body jointly uses, or jointly controls the use of, the item of eligible property together with another person, or one or more other persons, who are not exempt public bodies;

(c) the item of eligible property is or will be used during the arrangement period in relation to the qualifying arrangement for producing income of an amount that, having regard to the provisions of the qualifying arrangement and any other relevant circumstances, is not likely to be less than the total amount of the arrangement payments under the qualifying arrangement in relation to the item of eligible property; and

(d) the income, or a part of the income, referred to in paragraph (c) will be included in the assessable income of one or more persons (which person, or each of which persons, is in this subsection referred to as an ***assessable person***);

the following provisions have effect:

(e) where all of the income referred to in paragraph (c) will be included in the assessable income of one or more persons—sections 159GJ and 159GK do not apply in relation to the item of eligible property;

(f) where paragraph (e) does not apply:

(i) there is allowable to a taxpayer so much of any deduction that, but for this section, would not, by reason of the application of section 159GJ, be allowable to the taxpayer in relation to any eligible amount in relation to the item of eligible property in respect of the application period as is ascertained in accordance with the formula AB, where:

Authorised Version C2022C00106 registered 10/03/2022

A is the amount of the deduction that, but for this section would not, by reason of the application of section 159GJ, be allowable to the taxpayer; and

B is the assessable person fraction for the purposes of the application of this Division concerned;

(ii) for the purposes of section 159GJ, a reference in that section to the total notional principal in relation to an eligible amount in relation to the item of eligible property in respect of the application period shall be taken to be a reference to the amount that, but for this subparagraph, would be the total notional principal, as increased by the amount of any deduction allowable under subparagraph (i) of this paragraph in relation to the eligible amount in respect of the application period; and

(iii) for the purposes of the application of section 159GK, any eligible amount in relation to the item of property in respect of the application period shall be ascertained in accordance with the formula AB, where:

A is the amount that, but for this section, would be the eligible amount; and

B is the non-assessable person fraction in relation to the application of this Division concerned.

(2) For the purposes of subsection (1):

(a) a reference in that subsection to the assessable person fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the interest of all of the assessable persons in the income referred to in paragraph (1)(c) expressed as a fraction of the interests of all of the persons entitled to that income; and

(b) a reference in that subsection to the non-assessable person fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the fraction ascertained by subtracting the assessable person fraction in relation to that application of this Division in relation to the item of eligible property from the number 1.

Authorised Version C2022C00106 registered 10/03/2022

(3) Where:

(a) this Division applies in relation to an item of eligible property by reason of the application of subparagraph 159GH(1)(b)(ii) in relation to the use of the item of property outside Australia partly for the purpose of producing exempt income; and

(b) that use is also partly for the purpose of producing assessable income;

the following provisions have effect:

(c) there is allowable to a taxpayer so much of any deduction that, but for this section, would not, by reason of the application of section 159GJ, be allowable to the taxpayer in relation to any eligible amount in relation to the item of eligible property in respect of the application period as is ascertained in accordance with the formula AB, where:

A is the amount of the deduction that, but for this section would not, by reason of the application of section 159GJ, be allowable to the taxpayer; and

B is the assessable income fraction for the purposes of the application of this Division concerned;

(d) for the purposes of section 159GJ, a reference in that section to the total notional principal in relation to an eligible amount in relation to the item of eligible property in respect of the application period shall be taken to be a reference to the amount that, but for this paragraph, would be the total notional principal, as increased by the amount of any deduction allowable under paragraph (c) of this subsection in relation to the eligible amount in respect of the application period; and

(e) for the purposes of the application of section 159GK, any eligible amount in relation to the item of property in respect of the application period shall be ascertained in accordance with the formula AB, where:

A is the amount that, but for this section, would be the eligible amount; and

Authorised Version C2022C00106 registered 10/03/2022

B is the exempt income fraction in relation to the application of this Division concerned.

(4) For the purposes of subsection (3):

(a) a reference in that subsection to the assessable income fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the amount of the assessable income referred to in paragraph (3)(b) expressed as a fraction of the sum of that assessable income and the exempt income referred to in paragraph (3)(a); and

(b) a reference in that subsection to the exempt income fraction in relation to an application of this Division in relation to an item of eligible property is a reference to the fraction ascertained by subtracting the assessable income fraction in relation to that application of this Division in relation to the item of eligible property from the number 1.

159GO Special provisions relating to partnerships

(1) Where:

(a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the ***relevant year of income***), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as the ***relevant year of income***);

(b) either a deduction or an arrangement payment, or both, were taken into account in calculating that net income or partnership loss;

(c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the ***relevant deduction***), or the arrangement payment or a part of the arrangement payment (which arrangement payment or part of the arrangement payment, as the case may be, is referred to in this subsection as the

Authorised Version C2022C00106 registered 10/03/2022

relevant arrangement payment) would not have been taken into account for the purpose of that calculation if this Division applied in relation to the partnership in relation to particular property that is arrangement property in relation to a qualifying arrangement;

(d) this Division does not apply in relation to the partnership in relation to the property by reason only that the qualifying arrangement was entered into before the time (in this subsection referred to as the ***earliest application time***) referred to in whichever subparagraph of paragraph 159GH(1)(b) would be applicable if this Division applied as mentioned in paragraph (c); and

(e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer after the earliest application time;

the following provisions have effect:

(f) there shall be included in the assessable income of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant deduction the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss;

(g) there shall be allowable as a deduction in the assessment of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant arrangement payment the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss.

(2) Where:

(a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the ***relevant year of income***), or the individual interest of a taxpayer in a partnership loss has been

Authorised Version C2022C00106 registered 10/03/2022

allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as the ***relevant year of income***);

(b) either a deduction or an arrangement payment, or both, were taken into account in calculating that net income or partnership loss;

(c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the ***relevant deduction***), or the arrangement payment or a part of the arrangement payment (which arrangement payment or part of the arrangement payment, as the case may be, is referred to in this subsection as the ***relevant arrangement payment***), would not have been taken into account for the purpose of that calculation if this Division applied in relation to the partnership in relation to particular property that is arrangement property in relation to a qualifying arrangement;

(d) this Division does not apply in relation to the partnership in relation to the property by reason only that the qualifying arrangement was entered into before the time (in this subsection referred to as the ***earliest application time***) referred to in whichever subparagraph of paragraph 159GH(1)(b) would be applicable if this Division applied as mentioned in paragraph (c);

(e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer before the earliest application time;

(f) after the earliest application time, the taxpayer made or agreed to make a contribution or contributions (which contribution is or contributions are in this subsection referred to as the ***additional contribution***) to the capital of the partnership in addition to any contribution or contributions to the capital of the partnership that, under a contract or contracts entered into at or before that time, the taxpayer had made or agreed to make; and

(g) by reason of making or agreeing to make the additional contribution, the individual interest of the taxpayer in that net

Authorised Version C2022C00106 registered 10/03/2022

income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss, is greater than it would otherwise have been;

the following provisions have effect:

(h) where a deduction was taken into account in calculating that net income or partnership loss—there shall be included in the assessable income of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula A (B – C);

(j) where an arrangement payment was taken into account in calculating that net income or partnership loss—there shall be allowable as a deduction in the assessment of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula A (B – C);

where:

A is the amount of the relevant deduction or of the relevant arrangement payment, as the case requires;

B is the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss; and

C is the fraction that would be ***B*** if that fraction were ascertained on the basis of the individual interests of the partners immediately before the earliest application time and the net income or partnership loss at that time were equal to the net income or partnership loss of the relevant year of income.

Authorised Version C2022C00106 registered 10/03/2022

Division 16E—Accruals assessability etc. in respect of certain security payments

159GP Interpretation

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

accrual amount has the meaning given by subsection 159GQB(1).

accrual period has the meaning given by section 159GQA.

agreement has the same meaning as in Subdivision D of Division 3.

annuity has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

associate has the same meaning as in Subdivision D of Division 3.

deferred superannuation income stream has the same meaning as in the *Income Tax Assessment Act 1997*.

eligible return has the meaning given by subsection (3).

fixed return security means a qualifying security under which the amount or amounts payable are or consist of:

(a) a specified amount or specified amounts;

(b) an amount or amounts the method of calculation of which does not involve an interest or indexation rate or other factor, being a rate or factor that varies or may vary during the term of the security; or

(c) any combination of amounts referred to in paragraph (a) or (b).

holder, in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be entitled to receive payment of the amount or amounts.

Authorised Version C2022C00106 registered 10/03/2022

implicit interest rate has the meaning given by subsection 159GQB(2).

ineligible annuity means:

(a) an annuity that is issued by a life assurance company to or for the benefit of a natural person other than in the capacity of trustee of a trust estate; or

(b) an annuity that is issued by a life assurance company to a complying superannuation fund if:

(i) the annuity is held by the fund for the sole purpose of meeting its liabilities to provide one or more deferred superannuation income streams to one or more members of the fund; and

(ii) the value of the annuity and the one or more deferred superannuation income streams is the same or substantially the same; and

(iii) the terms on which the annuity and the one or more deferred superannuation income streams are payable are the same or substantially the same; or

(c) an annuity that is issued by a life assurance company to an RSA provider if:

(i) the annuity is held by the RSA provider for the sole purpose of meeting its liabilities to provide one or more deferred superannuation income streams to one or more holders of the RSA; and

(ii) the value of the annuity and the one or more deferred superannuation income streams is the same or substantially the same; and

(iii) the terms on which the annuity and the one or more deferred superannuation income streams are payable are the same or substantially the same.

issue, in relation to a security other than a bill of exchange, means the creation of the liability to pay an amount or amounts under the security.

Authorised Version C2022C00106 registered 10/03/2022

issue price, in relation to a security, means the consideration (if any) for the issue of the security.

issuer, in relation to a security (other than a bill of exchange) at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the amount or amounts.

partial redemption, in relation to a security, means the discharging of a part (other than the final part) of a liability to pay an amount or amounts under the security representing a return of the issue price of the security.

partial redemption payment, in relation to a security, means a payment that has the effect of partially redeeming the security.

qualifying security means any security:

(a) that is issued after 16 December 1984;

(ba) that is not part of an exempt series (see subsection (9A));

(c) the term of which, ascertained as at the time of issue of the security will, or is reasonably likely to, exceed 1 year;

(d) that has an eligible return; and

(e) where the precise amount of the eligible return is able to be ascertained at the time of issue of the security—in relation to which the amount of the eligible return is greater than 1½% of the amount ascertained by multiplying the amount of the payment or the sum of the payments (excluding any periodic interest) liable to be made under the security by the number (including any fraction) of years in the term of the security;

but does not, except as provided by subsection (10), include an annuity.

redemption, in relation to a security, means the discharging of all liability to pay any amount or amounts under the security representing a return of the issue price of the security.

redemption payment, in relation to a security, means any payment that has the effect of redeeming the security.

Authorised Version C2022C00106 registered 10/03/2022

security means:

(a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;

(b) a deposit with a bank or other financial institution;

(c) a secured or unsecured loan; or

(d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

taxpayer's maximum term, in relation to a security held by a taxpayer, means:

(a) if the security was issued to the taxpayer—the term of the security; or

(b) if the security was transferred to the taxpayer—the part of the term remaining after the transfer.

term, in relation to a security, means the period from the issue of the security until the time at which the liability to make the payment or final payment or payments, as the case requires, under the security arises.

transfer, in relation to a security, means transfer, sell, assign or dispose in any way of the security or of the right to receive payment of the amount or amounts payable under the security, but does not include a redemption or partial redemption of the security.

transfer price, in relation to the transfer of a security, means the consideration (if any) for the transfer of the security.

variable return security means a qualifying security that is not a fixed return security.

(2) Where:

(a) the Commissioner, having regard to any connection between the parties to the issue or transfer of a security and to any other relevant circumstances, is satisfied that the parties were not dealing with each other at arm's length in relation to the issue or transfer; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the Commissioner determines that this subsection should apply in relation to the issue or transfer;

then, for the purposes of the application of the definition of ***issue price*** or ***transfer price***, as the case may be, in subsection (1) in relation to the issue or transfer, the consideration for the issue or transfer shall be taken to be equal to:

(c) the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer; or

(d) where, for any reason (including an insufficiency of information available to the Commissioner), it is not possible or not practicable for the Commissioner to ascertain the amount referred to in paragraph (c)—such amount as the Commissioner determines.

(3) For the purposes of this Division, there shall be taken to be an eligible return in relation to a security if at the time when the security is issued it is reasonably likely, by reason that the security was issued at a discount, bears deferred interest or is capital indexed or for any other reason, having regard to the terms of the security, for the sum of all payments (other than periodic interest payments) under the security to exceed the issue price of the security, and the amount of the eligible return is the amount of the excess.

(6) For the purposes of this Division, where an amount of interest is payable under a security, the amount shall be taken to be periodic interest if the period between the commencement of the period in respect of which the interest is expressed to be payable and the time at which the interest is payable is less than or equal to one year.

(7) Where:

(a) but for this subsection, an amount of interest payable under a security would, by reason of the application of subsection (6), be taken, for the purposes of this Division, to be periodic interest; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the Commissioner, having regard to the amount of the interest, considers that it is properly attributable to a period in excess of one year;

then, for purposes of the application of this Division:

(c) the amount of interest shall not be taken to be periodic interest; and

(d) the amount of interest shall be taken to be attributable to the period to which the Commissioner considers it is properly attributable.

(8) Where 2 or more of the amounts payable under a security are payable to different persons and in return for consideration given by different persons, the 2 or more amounts shall, for the purposes of this Division, be taken to be payable under a separate security having such of the terms of the first-mentioned security as are relevant.

(9) For the purposes of the application of this Division in relation to the holding of a security acquired by a taxpayer on transfer, any prior holding of the security by the taxpayer, whether on issue or transfer, shall be disregarded.

(9A) For the purposes of paragraph (ba) of the definition of ***qualifying security*** in subsection (1), if:

(a) after 16 December 1984, a person issues a security (the ***first in the series***) that is not a qualifying security; and

(b) during the period from the end of 16 December 1984 until the issuing of the first in the series, the person did not issue any qualifying security with exactly the same payment dates, payment amounts and other terms as the first in the series; and

(c) after issuing the first in the series, the person issues another security (the ***later security***) with exactly the same payment dates, payment amounts and other terms as the first in the series;

the later security is ***part of an exempt series***.

Authorised Version C2022C00106 registered 10/03/2022

(9B) In determining for the purposes of paragraph (9A)(b) or (c) whether a security has exactly the same other terms as another security, the fact that the first-mentioned security has a different issue price than the second-mentioned security is to be disregarded.

(10) Where:

(a) an annuity is issued on or after 29 October 1987;

(b) the requirements of paragraphs (b) to (e) (inclusive) of the definition of ***qualifying security*** in subsection (1) are satisfied in relation to the annuity; and

(c) the annuity is not an ineligible annuity;

the annuity is a qualifying security for the purposes of this Division.

159GQ Tax treatment of holder of qualifying security

Accrual amounts to be worked out

(1) If a taxpayer holds a qualifying security for all or part of a year of income, the effect on the taxpayer's taxable income is determined by working out the accrual amount (see section 159GQB) for each accrual period (see section 159GQA) in the year of income and then summing the accrual amounts.

Positive sum assessable

(2) If the sum is a positive amount, the amount is included in the assessable income of the taxpayer of the year of income.

Negative sum deductible

(3) If the sum is a negative amount, a deduction of the amount is allowable in the assessment of the taxpayer of the year of income.

Authorised Version C2022C00106 registered 10/03/2022

159GQA Accrual period

Taxpayer's maximum term to be divided into accrual periods

(1) The taxpayer's maximum term for the qualifying security is divided into accrual periods in accordance with this section.

Whole year of income

(2) If a year of income is wholly taken up by any of the taxpayer's maximum term, the year of income is divided into 2 accrual periods of 6 months.

Beginning of taxpayer's maximum term

(3) If the taxpayer's maximum term begins after the beginning of the year of income:
   (a) if it begins less than 6 months after the beginning of the year of income—the period from the beginning of the taxpayer's maximum term until the middle of the year of income is an accrual period and the second 6 months of the year of income is an accrual period; and
   (b) in any other case—the part of the year of income taken up by the taxpayer's maximum term is an accrual period.

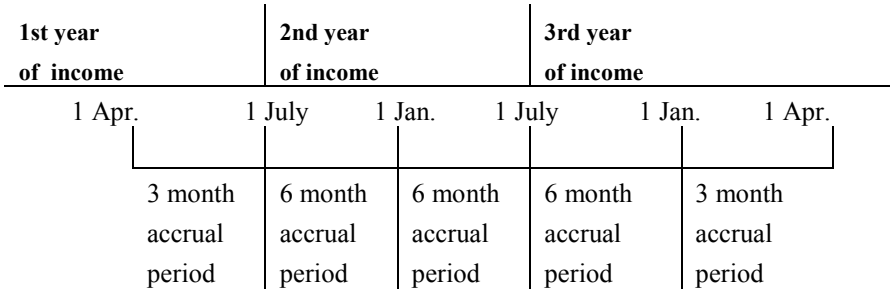
End of taxpayer's maximum term

(4) If the taxpayer's maximum term ends before the end of a year of income:
   (a) if it ends no later than 6 months after the beginning of the year of income—the part of the year of income taken up by the taxpayer's maximum term is an accrual period; and
   (b) in any other case—the first 6 months of the year of income is an accrual period and the period from the middle of the year of income until the end of the taxpayer's maximum term is an accrual period.

Authorised Version C2022C00106 registered 10/03/2022

Example

(5) For example, if the taxpayer's year of income is a financial year and a security with a 2 year term is issued to the taxpayer on 1 April, the accrual periods will be as follows:



159GQB Accrual amount

Formula

(1) The ***accrual amount*** for an accrual period is worked out using the formula:

$$[\text{Implicit interest rate} \times \text{Opening balance}] - \text{Periodic interest etc.}$$

Implicit interest rate

(2) In the formula in subsection (1), ***Implicit interest rate*** means the rate of interest worked out under section 159GQC (for a fixed return security) or 159GQD (for a variable return security), properly adjusted to take account of the case where the accrual period is less than 6 months.

Opening balance

(3) In the formula in subsection (1), ***Opening balance*** means the amount worked out using the formula:

Issue/transfer price + Previous accruals – Payments

where:

Authorised Version C2022C00106 registered 10/03/2022

Issue/transfer price means the issue price or transfer price, as the case requires, of the security; and

Previous accruals means:

(a) if paragraph (b) does not apply—the sum, whether positive or negative, of all accrual amounts for previous accrual periods in the taxpayer's maximum term; or

(b) if the accrual period is the first in the taxpayer's maximum term—nil; and

Payments means all payments (other than of periodic interest) made or liable to be made under the security during all previous accrual periods in the taxpayer's maximum term.

Periodic interest etc.

(4) In the formula in subsection (1), ***Periodic interest etc.*** means the sum of:

(a) all periodic interest payments made or liable to be made under the security during the accrual period, properly adjusted in the case of any payment made other than at the end of the period; and

(b) if any payments (other than of periodic interest) made or liable to be made under the security during the accrual period are made or liable to be made other than at its end—an amount to adjust properly for the making of the payments other than at the end of the period.

159GQC Implicit interest rate for fixed return security

For the purposes of the formula component ***Implicit interest rate*** in subsection 159GQB(1), the rate of interest for a fixed return security in relation to a taxpayer is the rate of compound interest per period of 6 months at which:

(a) the sum of the present values of all amounts payable under the security during the taxpayer's maximum term;

equals:

Authorised Version C2022C00106 registered 10/03/2022

(b) the issue price or the transfer price, as the case requires, of the security.

159GQD Implicit interest rate for variable return security

Implicit interest rate to be recalculated each year etc.

(1) For the purposes of the formula component ***Implicit interest rate*** in subsection 159GQB(1), the rate of interest for a variable return security must be worked out in accordance with subsection (2) separately for each year of income during the taxpayer's maximum term. If there are 2 accrual periods of 6 months in the year of income, the rate is the same for both periods. It is possible for the rate to be negative.

Rate

(2) The rate applicable in relation to a year of income is the rate of compound interest per period of 6 months in the calculation period (see subsection (3)) at which:

(a) the sum of the present values of all amounts payable under the security during the calculation period;

equals:

(b) the opening balance, mentioned in subsection 159GQB(1), for the accrual period that begins the calculation period.

Calculation period

(3) The ***calculation period*** means the part of the taxpayer's maximum term that occurs after the beginning of the year of income.

Where amount payable is not known

(4) For the purposes of paragraph (2)(a), if by the end of the year of income it is not possible to determine whether an amount will be payable, or the size of the amount that will be payable, after the end of the year of income, the determination is to be made by applying subsection (5), (7) or (11), or a combination of those subsections.

Authorised Version C2022C00106 registered 10/03/2022

Assumption of constant level

(5) Subject to subsection (7), if an amount payable is worked out to any extent by reference to the amount or level, at a particular time, of a rate, price, index or other thing, it is to be assumed that the rate, price, index or thing will be the same at all times after the end of the year of income as it was at the end of the year of income (or, if it was not available at the end of the year of income, at the time when it was last available in the year of income).

Examples

(6) For the purposes of subsection (5):

(a) an example of an amount worked out wholly by reference to the amount of a rate at a particular time is an interest payment under a floating rate note. The amount payable is the product of an interest rate indicator (such as the prevailing bank bill rate) and the face or par value of the note; and

(b) an example of an amount worked out wholly by reference to the amount of a price at a particular time is a redemption payment under a commodity linked security where the amount of the payment is the product of the prevailing price of a commodity (such as gold) and the face or par value of the security.

Assumption of continuing rate of change

(7) If an amount payable is worked out to any extent by reference to the amount of change in an index or other thing that occurs during a period, it is to be assumed that the index or other thing will continue to change at the same rate as it did:

(a) if the index or other thing was available at the end of the year of income—during the year of income; or

(b) in any other case—during the period of 12 months in respect of which the index or other thing was last available in the year of income.

Authorised Version C2022C00106 registered 10/03/2022

Example

(8) An example for the purposes of subsection (7) is a payment whose amount is the product of the face or par value of a security and the percentage increase in the All Groups Consumer Price Index number (the ***CPI***) during the year ending on 30 June 1995. If the year of income for which the implicit interest rate is being worked out is the 1993-94 year of income and the CPI increases by 2% during the year ending on 31 March 1994 (the date of the last available number during the year of income), the CPI is assumed to increase by 2% during the year ending on 30 June 1995.

Disguised continuing rate of change case

(9) For the purposes of subsection (7), if an amount payable is worked out to any extent by reference to the quotient of:

(a) the amount or level of an index or other thing at a particular time; and

(b) either:

(i) the amount or level of the index or other thing at a different time; or

(ii) another amount that, while not expressed to be the amount or level of the index or other thing at a different time, may reasonably be regarded as representing the amount or level of the index or other thing at a different time;

the amount payable is taken to be worked out to that extent by reference to the amount of change in the index or other thing that occurs during the period between the 2 times.

Example

(10) An example for the purposes of subsection (9) is a payment under a security issued in December 1994 that is worked out by multiplying a number of dollars by the quotient of:

(a) the All Groups Consumer Price Index number in respect of the quarter ending on 31 December 1997; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the number 114.

Assume that the number in paragraph (b) is the same as the All Groups Consumer Price Index number in respect of the quarter ending on 31 December 1994. In this case, it would be reasonable to regard the number as representing the amount of the index at 31 December 1994, and therefore to apply subsection (7).

General assumption

(11) If it is not possible to make the determination mentioned in subsection (4) in respect of the whole or part of any amount by applying subsection (5) or (7), or both, (for example, because no information about a rate, price or index was available during the year of income), the determination in respect of that whole or part is to be made on the basis of what is most likely in the circumstances.

159GR Consequences of actual payments

(1) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income to a taxpayer under a qualifying security:

(a) no amount shall be included in the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ; and

(b) where the taxpayer acquired the qualifying security on transfer—no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ.

159GS Balancing adjustments on transfer of qualifying security

(1) Where there is a profit amount in relation to the transfer of a qualifying security by a taxpayer in a year of income:

(a) if there is a net assessable amount in relation to the transfer and:

Authorised Version C2022C00106 registered 10/03/2022

(i) the profit amount exceeds the net assessable amount—an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income; or

(ii) the net assessable amount exceeds the profit amount—an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income; and

(b) if there is a net deductible amount in relation to the transfer—an amount equal to the sum of that amount and the profit amount shall be included in the assessable income of the taxpayer of the year of income.

(2) Where there is a loss amount in relation to the transfer of a qualifying security by a taxpayer in a year of income and:

(a) there is a net assessable amount in relation to the transfer—an amount equal to the net assessable amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income; or

(b) there is a net deductible amount in relation to the transfer that exceeds the loss amount—an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income.

(3) For the purposes of the application of this section in relation to the transfer (in this subsection referred to as the ***relevant transfer***) of a qualifying security by a taxpayer:

(a) where the transfer price, as increased by the amount of any payments (other than periodic interest payments) made to the taxpayer under the security in respect of the period when the security was held by the taxpayer exceeds:

(i) the issue price of the security; or

(ii) where the security was acquired by the taxpayer on transfer—the transfer price in relation to that transfer;

there shall be taken to be a profit amount in relation to the relevant transfer of an amount equal to the excess;

Authorised Version C2022C00106 registered 10/03/2022

(b) where the issue price of the security or, where the security was acquired by the taxpayer on transfer, the transfer price in relation to that transfer exceeds the sum of the transfer price in relation to the relevant transfer and any payments (other than periodic interest payments) made to the taxpayer under the security in respect of the period when the security was held by the taxpayer, there shall be taken to be a loss amount in relation to the relevant transfer of an amount equal to the excess;

(c) where the sum of all amounts (if any) included under section 159GQ in the assessable income of the taxpayer in respect of the security in respect of the period when the security was held by the taxpayer exceeds the sum of all amounts (if any) allowable under those sections as deductions from the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net assessable amount in relation to the relevant transfer of an amount equal to the excess; and

(d) where the sum of all amounts (if any) allowable under section 159GQ as deductions from the assessable income of the taxpayer in respect of the security in respect of the period when the taxpayer held the security exceeds the sum of all amounts (if any) included under those sections in the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net deductible amount in relation to the relevant transfer of an amount equal to the excess.

159GT Tax treatment of issuer of a qualifying security

(1) Subsections (1A) and (1B) apply if a taxpayer is an issuer of a qualifying security to which this section applies during a period (the ***issuer period***) comprising the whole or part of a year of income.

(1A) If, on the assumptions in subsection (1C), an amount would be included in the taxpayer's assessable income of the year of income in respect of the issuer period, then, subject to this section, the

Authorised Version C2022C00106 registered 10/03/2022

taxpayer is entitled to a deduction in his or her assessment for the year of income equal to that amount.

(1B) If, on the assumptions in subsection (1C), a deduction would be allowable in the taxpayer's assessment for the year of income, then an amount equal to the deduction is included in the taxpayer's assessable income of the year of income.

(1C) For the purposes of subsections (1A) and (1B), the assumptions are that:

(a) the security was issued to the taxpayer (rather than the taxpayer being the issuer of the security); and

(b) the taxpayer held the security during the whole of the issuer period; and

(c) the taxpayer did not transfer the security at the end of the issuer period; and

(d) sections 159GW, 159GX and 159GY were not enacted.

(2) A deduction is not allowable to a taxpayer under subsection (1A) in relation to a qualifying security to which this section applies unless the taxpayer would, but for this Division, be entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* in respect of payments (not being redemption payments, partial redemption payments or periodic interest payments) made or liable to be made under the security in respect of the relevant period referred to in that subsection.

(3) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income by a taxpayer under a qualifying security to which this section applies, no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under this section.

(5) Subject to subsection (6), this section applies to:

(a) any qualifying security issued on or before 22 May 1986; and

(b) any qualifying security issued in Australia after 22 May 1986 other than a negotiable instrument issued payable to bearer.

Authorised Version C2022C00106 registered 10/03/2022

(6) This section does not apply to a qualifying security issued by a taxpayer after 5 o'clock in the evening, by standard time in the Australian Capital Territory, on 23 April 1987:

(a) to, on behalf of or otherwise for the benefit of, a non-resident or a prescribed dual resident associate of the taxpayer; or

(b) subject to an agreement between the taxpayer and an associate of the taxpayer under which the security is or was to be transferred to a non-resident or a prescribed dual resident associate of the taxpayer.

159GU Effect of Division on certain transfer profits and losses

(1) Where, apart from this Division, a profit that is made by a resident taxpayer in relation to a transfer of a qualifying security that does not form part of the trading stock of the taxpayer would be included in the assessable income of the taxpayer of a year of income, the profit shall not be so included in the assessable income of the taxpayer.

(2) Where, apart from this Division, a loss that is incurred by a resident taxpayer in relation to a transfer of a qualifying security that does not form part of the trading stock of the taxpayer would be allowable as a deduction from the assessable income of the taxpayer of a year of income and there is a net deductible amount, within the meaning of section 159GS, in relation to the transfer, so much only of the amount of the loss as exceeds the net deductible amount shall be so allowable as a deduction.

159GV Consequence of variation of terms of security

(1) Where, after 22 May 1986, a material variation is made in the terms of a security, for the purposes of the application of this Division in relation to the security in respect of the period after the variation and before any subsequent material variation:

(a) the security shall be taken to have been issued on the terms on which it was originally issued as varied by the material variation and any prior variation;

Authorised Version C2022C00106 registered 10/03/2022

(b) where consideration for the variation is paid or payable by the holder of the security—the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this subsection increased by the amount of that consideration;

(c) where consideration for the variation is paid or payable by the issuer of the security—the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this subsection reduced by the amount of that consideration; and

(d) paragraph (a) of the definition of ***qualifying security*** in subsection 159GP(1) shall be disregarded.

(2) Where:

(a) subsection (1) applies in relation to a security held by a taxpayer in relation to a material variation in the terms of the security; and

(b) if:

(i) that subsection had effect not only in relation to the period after the variation but also in relation to the whole of the term of the security before the variation; and

(ii) any previous material variations were taken into account but any subsequent material variations were disregarded;

the sum (in this subsection referred to as the ***total notional taxable income***) of the taxable incomes of the taxpayer in respect of the year of income in which the variation is made and all previous years of income would have differed from the sum (in this subsection referred to as the ***total actual taxable income***) of the actual taxable incomes of the taxpayer of those years of income;

the following provisions have effect:

(c) where the total notional taxable income exceeds the total actual taxable income—an amount equal to the excess shall

Authorised Version C2022C00106 registered 10/03/2022

be included in the assessable income of the taxpayer of the year of income in which the variation is made;

(d) where the total actual taxable income exceeds the total notional taxable income—an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the variation is made.

(3) In this section, a reference to a material variation of the terms of a security is a reference to a variation of the terms of the security:

(a) that has the effect that a security that was not a qualifying security before the variation would, if the security had been originally issued with the terms as varied and if paragraph (a) of the definition of ***qualifying security*** in subsection 159GP(1) were disregarded, have been a qualifying security when the security was issued;

(b) that has the effect that a security that is a qualifying security would, if originally issued with the terms as varied, not have been a qualifying security at the time of issue; or

(c) that has the effect that the amount, or time of making, of a payment under the security, or that the holder or issuer of the security, is varied.

(4) Where any right or option under a security to extend the term of, or otherwise vary the effect of, the security is exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the security to provide for the extension or other effect.

159GW Effect of Division in relation to non-residents

(1) Subject to subsection (2), where during the whole or a part of a year of income (which whole or part is in this subsection referred to as the ***period of non-residence***) a taxpayer is not a resident:

(a) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GQ in relation to the period of non-residence; and

Authorised Version C2022C00106 registered 10/03/2022

(c) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GS in relation to any transfer of the security that occurred during the period of non-residence.

(2) Where:

(a) a payment is made or liable to be made under a qualifying security to a resident taxpayer; and

(b) the taxpayer was not a resident for the whole or a part (which whole or part is in this subsection referred to as the ***period of non-residence***) of the period during which the taxpayer held the security;

the following provisions have effect:

(c) there shall be included in the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for subsection (1), would have been included in the assessable income of the taxpayer of any year or years of income under section 159GQ in respect of the payment in respect of the period of non-residence;

(d) there shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for subsection (1), would have been allowable as a deduction from the assessable income of the taxpayer of any year or years of income under section 159GQ in respect of the payment in respect of the period of non-residence.

159GX Effect of Division where certain payments not assessable

Where, but for this section, an amount would be included in, or allowable as a deduction from, the assessable income of a taxpayer of a year of income under section 159GQ in respect of the whole or a part of a payment under a qualifying security, no amount shall be so included or allowable unless the payment or a part of the payment, when actually made or liable to be made, would,

Authorised Version C2022C00106 registered 10/03/2022

disregarding section 128D, be included in the assessable income of the taxpayer of a year of income.

159GY Effect of Division where qualifying security is trading stock

No amount shall be included in, or allowable as a deduction from, the assessable income of a taxpayer:

(a) under section 159GQ in relation to a qualifying security in respect of any year or part of a year of income during which the qualifying security forms part of the trading stock of the taxpayer; or

(c) under section 159GS in relation to the transfer of a qualifying security by the taxpayer where, immediately before the transfer, the qualifying security was or formed part of the trading stock of the taxpayer.

159GZ Stripped securities

(1) Where:

(a) at any time a taxpayer acquires or acquired a security (in this subsection referred to as the ***underlying security***) in relation to which there are or were 2 or more payment rights; and

(b) the taxpayer transfers or transferred one or some but not all of those rights to a particular person or particular persons jointly;

for the purposes of the application of this Division (including any subsequent application of this subsection) in relation to any period after the transfer of the right or rights:

(c) instead of the underlying security, there shall be taken to have been originally issued:

(i) a separate security under which the payment right or payment rights transferred to the person or persons referred to in paragraph (b) were created;

(ii) where at the time at which that right or those rights were transferred, another payment right or other payment rights in relation to the underlying security was or were transferred to another person or to other persons

Authorised Version C2022C00106 registered 10/03/2022

jointly—a separate security under which that other right or those other rights were created; and

(iii) where immediately after the transfer the taxpayer retains or retained any payment right or rights—a separate security under which that right or those rights were created;

(d) where the underlying security was issued to the taxpayer—the issue price of each separate security referred to in paragraph (c) shall be taken to be so much of the issue price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of issue of the underlying security bears to the market value of the underlying security at that time; and

(e) where the underlying security was acquired by the taxpayer on transfer—the transfer price, in relation to that transfer, of each separate security referred to in paragraph (c) shall be taken to be so much of the transfer price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of transfer bears to the market value of the underlying security at that time.

(2) Where, by reason of the application of subsection (1) in relation to the transfer after 16 December 1984 of a payment right or payment rights in relation to a security to a particular person or particular persons jointly, the payment right or rights is or are taken to comprise a separate security, then, for the purposes of the application of this Division in relation to the separate security in relation to any period after the transfer, paragraph (a) of the definition of ***qualifying security*** in subsection 159GP(1) shall be disregarded.

(3) In subsections (1) and (2), ***payment right***, in relation to a security, means a right to receive a particular payment that is liable to be made under the security.

(4) Where:

Authorised Version C2022C00106 registered 10/03/2022

(a) at any time a taxpayer acquires or acquired a security (in this subsection referred to as the ***underlying security***) on issue or transfer;

(b) after 16 December 1984, the taxpayer issues a qualifying security (in this subsection referred to as the ***stripped security***); and

(c) but for this subsection, a deduction of an amount equal to the whole or a part of the issue price or, where the underlying security was acquired on transfer, the transfer price of the underlying security would be allowable from the assessable income of the taxpayer of the year of income in which the taxpayer issues the stripped security in respect of the issue of the stripped security;

the amount of the deduction allowable shall be an amount that bears to the issue price or transfer price, as the case may be, of the underlying security the same proportion as the market value of the stripped security at the time of issue or purchase, as the case may be, bears to the market value of the underlying security at that time.

Authorised Version C2022C00106 registered 10/03/2022

Division 16J—Effect of cancellation of subsidiary's shares in holding company

159GZZZC Interpretation—general

(1) In this Division:

associate has the same meaning as in section 318.

cancellation includes redemption.

disposal includes cancellation.

entity means a company, a partnership or a trust estate.

pre-cancellation period, in relation to a cancellation of shares to which this Division applies, means the period beginning when the holding company concerned became a holding company of the subsidiary concerned and ending at the time of the cancellation.

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

(3) For the purposes of this Division, a company is:

(a) a subsidiary of another company; or

(b) the holding company of another company;

if the first-mentioned company is such for the purposes of the *Corporations Act 2001*.

(4) For the purposes of this Division, a reference to an interest in an entity is a reference to a legal or equitable interest in:

(a) if the entity is a company—shares in the company;

(b) if the entity is a partnership—capital or profits of the partnership;

(c) if the entity is a trust estate—corpus or income of the trust estate; or

(d) in any case—securities issued by the entity.

Authorised Version C2022C00106 registered 10/03/2022

159GZZZD Meaning of *eligible entity*, *eligible interest* and *eligible proportion*

For the purposes of this Division, where a holding company holds interests in a subsidiary of the holding company either directly or indirectly through interposed entities:

(a) a reference to an eligible entity in relation to the holding company and the subsidiary is a reference to the holding company or any of the interposed entities;

(b) a reference to an eligible interest of an eligible entity is a reference to any interest held by the eligible entity directly in the subsidiary or directly in any other eligible entity in relation to the holding company and the subsidiary; and

(c) a reference to the eligible proportion in relation to an eligible interest of an eligible entity is a reference to the proportion of the total interests held directly in the subsidiary by all persons and entities that is represented by:

(i) if the eligible entity holds the eligible interest directly in the subsidiary—the eligible interest; or

(ii) if, by virtue of holding the eligible interest, the eligible entity holds an interest in the subsidiary indirectly through another eligible entity or other eligible entities—that interest in the subsidiary.

159GZZZE Share cancellations to which this Division applies

Where a holding company cancels shares in itself that are held by a subsidiary of that company, this Division applies to the cancellation of the shares.

159GZZZF Effect on subsidiary of share cancellations to which this Division applies

(1) Where:

(a) this Division applies to a cancellation of shares; and

(b) apart from this section, either:

Authorised Version C2022C00106 registered 10/03/2022

(i) the subsidiary concerned would not receive or be entitled to receive any capital proceeds in respect of the cancellation; or

(ii) the capital proceeds that the subsidiary concerned would receive or be entitled to receive in respect of the cancellation would be less than the adjusted market value of the shares;

the following provisions have effect for the purposes of this Act:

(c) where subparagraph (b)(i) applies—the subsidiary shall be taken to have received or to be entitled to receive, as capital proceeds in respect of the cancellation, an amount equal to the adjusted market value of the shares;

(d) where subparagraph (b)(ii) applies—the amount of the capital proceeds that the subsidiary receives or is entitled to receive in respect of the cancellation shall be taken to be increased by an amount so that it equals the adjusted market value of the shares.

(2) For the purposes of subsection (1), the adjusted market value of the shares is the amount that would have been their market value at the time of the cancellation if the cancellation did not occur and was never proposed to occur.

159GZZZG Pre-cancellation disposals of eligible interests

(1) Where:

(a) this Division applies to a cancellation of shares;

(b) during the pre-cancellation period, there is a disposal of an eligible interest held by an eligible entity in relation to the holding company and the subsidiary concerned; and

(c) apart from this section, either:

(i) the eligible entity would not have received or been entitled to receive any capital proceeds in respect of the disposal; or

(ii) the capital proceeds that the eligible entity would have received or been entitled to receive in respect of the

Authorised Version C2022C00106 registered 10/03/2022

disposal would have been less than the adjusted market value of the eligible interest;

the following provisions have effect for the purposes of this Act:

(d) where subparagraph (c)(i) applies—the eligible entity shall be taken to have received or to have been entitled to receive, as capital proceeds in respect of the disposal, an amount equal to the adjusted market value of the eligible interest;

(e) where subparagraph (c)(ii) applies—the amount of the capital proceeds that the eligible entity received or was entitled to receive in respect of the disposal shall be taken to be increased by an amount so that it equals the adjusted market value of the eligible interest.

(2) For the purposes of subsection (1), the adjusted market value of the eligible interest is the amount that would have been its market value at the time of the disposal if the cancellation of the shares to which this Division applies did not occur and was never proposed to occur.

159GZZZH Post-cancellation disposals of eligible interests etc.

(1) Where:

(a) as a result of the application of section 159GZZZF in relation to a cancellation of shares, the subsidiary concerned is taken to have received or to be entitled to receive an amount of capital proceeds or an increase in an amount of capital proceeds (which amount or increase is in this section called the ***cancellation adjustment amount***) in relation to the cancellation of the shares; and

(b) an eligible entity in relation to the holding company and the subsidiary concerned holds an eligible interest at the time of the share cancellation;

then this section applies in relation to the eligible interest.

(2) For the purposes of this Act (other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*):

(a) if the eligible interest is not trading stock—in determining:

Authorised Version C2022C00106 registered 10/03/2022

(i) the amount of any deduction allowed or allowable to the eligible entity in respect of the acquisition of the eligible interest; or

(ii) the amount of any profit included in, or loss allowable as a deduction from, the assessable income of the eligible entity in respect of the acquisition and any subsequent disposal of the eligible interest;

the capital proceeds in respect of the acquisition of the eligible interest shall be taken to have been reduced by the eligible interest's eligible proportion of the cancellation adjustment amount; and

(b) if the eligible interest is trading stock—the capital proceeds in respect of any subsequent disposal of the eligible interest shall be taken to be increased by the eligible interest's eligible proportion of the cancellation adjustment amount.

(3) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, if a CGT event happens in relation to the eligible interest, the cost base and reduced cost base of the eligible interest is reduced by the eligible interest's eligible proportion of the cancellation adjustment amount.

(5) This section applies in relation to the acquisition of the eligible interest held by the eligible entity, and to a CGT event happening in relation to the eligible interest, even if the entity was not an eligible entity, and the interest was not an eligible interest, at the time of the acquisition or CGT event.

159GZZZI Additional application of sections 159GZZZG and 159GZZZH to associates

(1) Subject to this section, where a natural person is an associate of a holding company (otherwise than solely because of being the trustee of a trust estate), sections 159GZZZG and 159GZZZH apply (in addition to any application apart from this application of this section) as if references in those sections to:

(a) an eligible entity in relation to the holding company and the subsidiary concerned;

Authorised Version C2022C00106 registered 10/03/2022

(b) an eligible interest of such an entity; or

(c) the eligible proportion in relation to such an interest;

were references to what would, if the natural person were a holding company in relation to the subsidiary, be respectively:

(d) an eligible entity in relation to the natural person and the subsidiary;

(e) an eligible interest of such an entity; or

(f) the eligible proportion in relation to such an interest.

(2) For the purposes of applying section 159GZZZG or 159GZZZH in accordance with subsection (1):

(a) any interest of an entity that is an eligible interest for the purposes of the application of that section apart from subsection (1) shall be taken not to be an eligible interest; and

(b) any eligible interest of an eligible entity (including the natural person) held in the actual holding company referred to in subsection (1), or in any eligible entity interposed between the natural person and that holding company, shall be taken not to be an eligible interest.

Authorised Version C2022C00106 registered 10/03/2022

Division 16K—Effect of buy-backs of shares

Subdivision AA—Application of Division to non-share equity interests

159GZZZIA Application of Division to non-share dividends

(1) This Division:

(a) applies to a non-share equity interest in the same way as it applies to a share; and

(b) applies to an equity holder in the same way as it applies to a shareholder; and

(c) applies to a non-share dividend in the same way as it applies to a dividend.

(2) Paragraph (1)(a) does not apply to subsection 159GZZZP(1).

Subdivision A—Interpretation

159GZZZJ Interpretation

In this Division:

buy-back has the meaning given by paragraph 159GZZZK(a).

off-market purchase has the meaning given by paragraph 159GZZZK(d).

on-market purchase has the meaning given by paragraph 159GZZZK(c).

purchase price has the meaning given by section 159GZZZM.

seller has the meaning given by paragraph 159GZZZK(b).

Authorised Version C2022C00106 registered 10/03/2022

159GZZZK Explanation of terms

For the purposes of this Division, where a company buys a share in itself from a shareholder in the company:

(a) the purchase is a buy-back; and

(b) the shareholder is the seller; and

(c) if:

(i) the share is listed for quotation in the official list of a stock exchange in Australia or elsewhere; and

(ii) the buy-back is made in the ordinary course of trading on that stock exchange;

the buy-back is an on-market purchase; and

(d) if the buy-back is not covered by paragraph (c)—the buy-back is an off-market purchase.

159GZZZL *Special* buy-backs not made in ordinary course of trading on a stock exchange

For the purposes of this Division, a buy-back is not made in the ordinary course of trading on a stock exchange in Australia if, when reported to the stock exchange, the transaction under which the buy-back is made, is, under the stock exchange's rules, described as ***special***.

159GZZZM Purchase price in respect of buy-back

For the purposes of this Division, the purchase price in respect of a buy-back of a share is:

(a) if the seller has received or is entitled to receive an amount or amounts of money as a result of or in respect of the buy-back—that amount or the sum of those amounts; or

(b) if the seller has received or is entitled to receive property other than money as a result of or in respect of the buy-back—the market value of that property at the time of the buy-back; or

(c) if the seller has received or is entitled to receive both an amount or amounts of money and property other than money

Authorised Version C2022C00106 registered 10/03/2022

as a result of or in respect of the buy-back—the sum of that amount or those amounts and the market value of that property at the time of the buy-back.

Subdivision B—Company buying-back shares

159GZZZN Buy-back and cancellation disregarded for certain purposes

If a company buys-back a share then the buy-back, and any subsequent cancellation of the share, are disregarded for the purposes of:

(a) determining for the purposes of this Act:

(i) whether an amount is included in the assessable income of the company under a provision of this Act (other than a provision of Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)); or

(ii) whether an amount is allowable as a deduction to the company; or

(b) determining whether the company makes a capital gain or capital loss.

Subdivision C—Off-market purchases

159GZZZP Part of off-market purchase price is a dividend

(1) For the purposes of this Act, but subject to subsection (1A), where a buy-back of a share or non-share equity interest by a company is an off-market purchase, the difference between:

(a) the purchase price; and

(b) the part (if any) of the purchase price in respect of the buy-back of the share or non-share equity interest which is debited against amounts standing to the credit of:

(i) the company's share capital account if it is a share that is bought back; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) the company's share capital account or non-share capital account if it is a non-share equity interest that is bought back;

is taken to be a dividend paid by the company:

(c) to the seller as a shareholder in the company; and

(d) out of profits derived by the company; and

(e) on the day the buy-back occurs.

(1A) If the dividend is included to any extent in the seller's assessable income of any year of income, it is not taken into account to that extent under section 118-20 of the *Income Tax Assessment Act 1997*.

(2) The remainder of the purchase price is taken not to be a dividend for the purposes of this Act.

159GZZZQ Consideration in respect of off-market purchase

(1) Subject to this section, if a buy-back of a share is an off-market purchase, then:

(a) in determining, for the purposes of this Act:

(i) whether an amount is included in the assessable income of the seller under a provision of this Act other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or

(ii) whether an amount is allowable as a deduction to the seller; or

(b) whether the seller makes a capital gain or capital loss;

in respect of the buy-back, the seller is taken to have received or to be entitled to receive, as consideration in respect of the sale of the share, an amount equal to the purchase price in respect of the buy-back.

Deemed consideration increased to market value

(2) If apart from this section:

(a) the purchase price in respect of the buy-back;

Authorised Version C2022C00106 registered 10/03/2022

is less than:

(b) the amount that would have been the market value of the share at the time of the buy-back if the buy-back did not occur and was never proposed to occur;

then, subject to subsection (3), in making the determinations mentioned in paragraphs (1)(a) and (b), the amount of consideration that the seller is taken to have received or to be entitled to receive in respect of the sale of the share is equal to the market value mentioned in paragraph (b) of this subsection.

Deemed consideration reduced where dividend assessable etc.

(3) Subject to subsection (8), if there is a reduction amount in respect of the buy-back (see subsection (4)), then, in making the determinations mentioned in paragraphs (1)(a) and (b), the amount of consideration that the seller is taken to have received or to be entitled to receive in respect of the sale of the share, after any application of subsection (2), is reduced by the reduction amount.

Reduction amount

(4) The following steps are to be taken in working out whether there is a reduction amount in respect of the buy-back:

(a) first, work out whether the whole or part of the purchase price in respect of the buy-back is taken to be a dividend by section 159GZZZP;

(b) second, for any amount satisfying paragraph (a), work out whether the whole or part of it is either:

(i) included in the seller's assessable income of any year of income (disregarding section 128D of this Act and section 802-15 of the *Income Tax Assessment Act 1997*); or

(ii) an eligible non-capital amount (see subsection (5)).

The amount worked out is the ***reduction amount*** in respect of the buy-back.

Eligible non-capital amount

Authorised Version C2022C00106 registered 10/03/2022

(5) An amount is an ***eligible non-capital amount*** if it is neither:

(a) debited against a share capital account or a reserve to the extent that it consists of profits from the revaluation of assets of the company that have not been disposed of by the company; nor

(b) attributable, either directly or indirectly, to amounts that were transferred from such an account or reserve of the company.

Debit for deemed dividend

(7) For the purposes of subsection (5), an amount of the purchase price that is taken to be a dividend by section 159GZZZP is taken to have been debited against the account or reserves against which the purchase price was debited, and to the same extent.

Offsetable amount excluded from reduction where loss

(8) If:

(aa) the seller is a corporate tax entity; and

(a) the amount of consideration that the seller is taken by subsection (1) or (2) to have received or to be entitled to receive in respect of the sale of the share is, apart from this subsection, reduced by a reduction amount under subsection (3); and

(b) the dividend mentioned in paragraph (4)(a), so far as it does not exceed the reduction amount, consists to any extent of an offsetable amount (see subsection (9)); and

(c) disregarding this subsection, as a result of the operation of this section:

(i) for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), the seller incurs a capital loss or an increased capital loss (which loss or increase is the ***loss amount***) in respect of the buy-back; or

(ii) a loss, or an increased loss, (which loss or increase is also the ***loss amount***) in respect of the buy-back is allowable as a deduction to the seller under a provision

Authorised Version C2022C00106 registered 10/03/2022

of a Part of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or

(iii) the amount of a deduction allowable from the seller's assessable income of any year of income in respect of the issue or acquisition of the share exceeds, or exceeds by a greater amount, (the excess or increased excess is also the ***loss amount***) the amount included in the seller's assessable income of any year of income in respect of the buy-back of the share;

then the reduction in the amount of the consideration under subsection (3) is instead a reduction equal to:

(d) the reduction amount;

less:

(e) so much of the offsetable amount as does not exceed the loss amount.

Meaning of offsetable amount

(9) For the purposes of subsection (8), if the seller is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* in the seller's assessment for a year of income in respect of the dividend, the dividend consists of an ***offsetable amount*** worked out using the formula:

$$\frac{\text{Amount of offset}}{\text{Corporate tax rate}}$$

Subdivision D—On-market purchases

159GZZZR No part of on-market purchase price is a dividend

For the purposes of this Act, where a buy-back by a company of a share is an on-market purchase, no part of the purchase price in respect of the buy-back of the share is taken to be a dividend.

Authorised Version C2022C00106 registered 10/03/2022

159GZZZS Consideration in respect of on-market purchase

Where a buy-back is an on-market purchase, then:

(a) in determining, for the purposes of this Act:

(i) whether an amount is included in the assessable income of the seller under a provision of this Act other than Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or

(ii) whether an amount is allowable as a deduction to the seller; or

(b) whether the seller makes a capital gain or capital loss;

in respect of the buy-back, the seller is taken to have received or to be entitled to receive, as consideration in respect of the sale of the share, the purchase price in respect of the buy-back of the share.

Authorised Version C2022C00106 registered 10/03/2022

Division 17—Rebates

Subdivision A—Concessional rebates

159H Application

This Subdivision applies in relation to an assessment in respect of the income of a taxpayer if and only if:

(a) the taxpayer is a resident and is not a company, and the assessment is not in respect of income derived by him or her in a representative capacity as an agent or trustee; or

(b) both of the following requirements are satisfied:

(i) the taxpayer is a trustee who is liable to be assessed under section 98 in respect of a share of the net income of a trust estate in respect of a beneficiary;

(ii) the beneficiary is a resident and is not a company.

Subdivision AB—Lump sum payments in arrears

159ZR Interpretation

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

accrual year, in relation to the total arrears amount, means a year of income in which any part of the total arrears amount accrued.

annual arrears amount, in relation to an accrual year, means so much of the total arrears amount as accrued in that year.

associate has the same meaning as in section 318.

BSWAT payment amount means a payment amount paid to a person under the *Business Services Wage Assessment Tool Payment Scheme Act 2015*.

current year means the year of income for which the rebate is being calculated.

Authorised Version C2022C00106 registered 10/03/2022

distant accrual year means an accrual year that is not a recent accrual year.

eligible income means:

(a) salary or wages to the extent to which they accrued during a period ending more than 12 months before the date on which they are paid;

(b) salary or wages paid to a person after re-instatement to duty following a period of suspension of the person from duty, to the extent to which the salary or wages accrued during the period of suspension;

(c) a payment covered by section 12-80 or 12-120 in Schedule 1 to the *Taxation Administration Act 1953*;

(d) a Commonwealth education or training payment (see subsection 6(1));

(e) a payment that is covered by Division 52, 53 or 55 of the *Income Tax Assessment Act 1997*, but that is not exempt from income tax under that Division;

(f) a payment under a law of a foreign country that is similar to a payment covered by paragraph (e);

but does not include so much of any such amount as was taken into account in calculating the amount of a tax reimbursement payment by the Commonwealth that was authorised under section 65 of the *Public Governance, Performance and Accountability Act 2013* (which deals with act of grace payments by the Commonwealth).

eligible lump sum, in relation to a year of income, means a lump sum payment of eligible income received on or after 1 July 1986 that is included in the assessable income of the year of income and accrued, in whole or in part, in an earlier year or years of income.

gross tax means the tax payable before the allowance of any rebates or credits.

law of a foreign country includes a law of any part of, or place in, a foreign country.

Authorised Version C2022C00106 registered 10/03/2022

normal taxable income is the amount that would be the taxable income if:

(a) no amount were included in assessable income under Division 82, section 83-10 or 83-80 or Division 301 or 302 of the *Income Tax Assessment Act 1997* or Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; and

(b) the taxable income were reduced by any above-average special professional income included in the taxable income under section 405-15 of the *Income Tax Assessment Act 1997*; and

(c) no amount were included in assessable income under section 102-5 of the *Income Tax Assessment Act 1997* (about including net capital gains in assessable income).

notional tax amount has the meaning given by sections 159ZRC and 159ZRD.

rebated tax means the tax payable after the allowance of any tax offset under Division 82, 83, 301 or 302 of the *Income Tax Assessment Act 1997*, subsection 392-35(2) of that Act (which allows some primary producers tax offsets) or Division 82 of the *Income Tax (Transitional Provisions) Act 1997*, but before the allowance of any other tax offsets or any credits.

rebate year means a year of income for which the conditions in paragraphs 159ZRA(1)(a) and (b) are satisfied.

recent accrual year, in relation to the total arrears amount, means:

(a) if there are 3 or more accrual years for the total arrears amount—the most recent 2 of those years; or

(b) in any other case—the accrual year, or each of the accrual years, for the total arrears amount.

salary or wages means payments covered by sections 12-35, 12-40 (except payments of remuneration to a director of the company who is also an associate of the company), 12-45, 12-80, 12-110, 12-115 and 12-120 in Schedule 1 to the *Taxation Administration Act 1953*.

Authorised Version C2022C00106 registered 10/03/2022

total arrears amount, in relation to a year of income, means the aggregate of the eligible lump sums included in the assessable income of the year of income to the extent to which those eligible lump sums accrued in an earlier year or years of income.

(2) This Subdivision applies in relation to a BSWAT payment amount as if:

(a) the BSWAT payment amount were an eligible lump sum accrued wholly in an earlier year or years of income; and

(b) the wages by reference to which the BSWAT payment amount was worked out were eligible income accrued in the year of income to which the wages relate.

159ZRA Eligibility for rebate

(1) Where:

(a) the assessable income of the taxpayer of a year of income (in this Subdivision called the ***current year***) includes one or more eligible lump sums; and

(b) the total arrears amount is not less than 10% of the amount (if any) remaining after deducting that total arrears amount from the normal taxable income of the current year;

the taxpayer is entitled to a rebate of tax, in the taxpayer's assessment for the current year, of the amount (if any) calculated in accordance with this Subdivision.

(2) The rebate is only available to a natural person (otherwise than in the capacity of a trustee).

159ZRB Calculation of rebate

The rebate is calculated in accordance with the formula:

Tax on arrears – Notional tax on arrears

where:

Tax on arrears is the amount by which the rebated tax on the taxable income of the current year exceeds the rebated tax on the

Authorised Version C2022C00106 registered 10/03/2022

taxable income of the current year, being that taxable income reduced by the total arrears amount.

Notional tax on arrears is the total of the notional tax amounts for the accrual years.

159ZRC Notional tax amount for recent accrual years

The notional tax amount for a recent accrual year is calculated in accordance with the formula:

Tax on increased income – Tax on actual income

where:

Tax on increased income is the rebated tax on the taxable income of the accrual year, being that taxable income adjusted as follows:

(a) the annual arrears amount for the accrual year is to be added;

(b) if the accrual year is also a rebate year—the total arrears amount for the accrual year is to be deducted; and

(c) if, during the accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the accrual year is to be added.

Tax on actual income is the rebated tax on the taxable income of the accrual year, being that taxable income adjusted as follows (if applicable):

(d) if the accrual year is also a rebate year—the total arrears amount for the accrual year is to be deducted; and

(e) if, during the accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the accrual year is to be added.

159ZRD Notional tax amount for distant accrual years

(1) The notional tax amount for a distant accrual year is calculated in accordance with the formula:

Authorised Version C2022C00106 registered 10/03/2022

Arrears amount × Average tax rate on recent arrears

where:

Arrears amount is the annual arrears amount in relation to the accrual year.

Average tax rate on recent arrears is the average of the rates calculated in accordance with the following formula in respect of each of the recent accrual years:

$$\frac{\text{Increased normal tax - Normal tax}}{\text{Arrears amount}}$$

where:

Increased normal tax is the gross tax on the normal taxable income of the recent accrual year, being that normal taxable income adjusted as follows:

(a) the annual arrears amount for the recent accrual year is to be added;

(b) if the recent accrual year is also a rebate year—the total arrears amount for the recent accrual year is to be deducted; and

(c) if, during the recent accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the recent accrual year is to be added.

Normal tax is the gross tax on the normal taxable income of the recent accrual year, being that normal taxable income adjusted as follows (if applicable):

(d) if the recent accrual year is also a rebate year—the total arrears amount for the recent accrual year is to be deducted; and

(e) if, during the recent accrual year, there accrued an amount that is, or is part of, the total arrears amount for a rebate year before the current year—the amount that so accrued during the recent accrual year is to be added.

Authorised Version C2022C00106 registered 10/03/2022

Arrears amount is the annual arrears amount for the recent accrual year.

(2) A rate calculated for the purposes of subsection (1) in respect of a recent accrual year shall be calculated as a decimal fraction to 3 decimal places.

(3) If a rate so calculated would end with a number greater than 4 if it were calculated to 4 decimal places, the rate shall be increased by 0.001.

Subdivision B—Miscellaneous

160AAAA Tax rebate for low income aged persons and pensioners

(1) Subject to subsection 160AAA(4), a taxpayer who is an individual (other than in the capacity as trustee) is entitled to a rebate of tax in the taxpayer's assessment in respect of income of a year of income of an amount (if any), ascertained in accordance with the regulations, if the taxpayer satisfies the conditions in subsections (2) and (3).

(2) The first condition is that:

(a) on at least one day during the year of income, the taxpayer:

(i) is eligible for a pension, allowance or benefit under the *Veterans' Entitlements Act 1986* (other than Part VII); and

(ii) has reached pension age, within the meaning of that Act; and

(iii) is not in gaol; or

(b) on at least one day during the year of income, the taxpayer:

(i) is qualified for an age pension under the *Social Security Act 1991*; and

(ii) is not in gaol; or

(c) the assessable income of the taxpayer of the year of income includes an amount of:

(i) social security pension or education entry payment (within the meaning of the *Social Security Act 1991*); or

Authorised Version C2022C00106 registered 10/03/2022

(ii) service pension, carer service pension or income support supplement under the *Veterans' Entitlements Act 1986*;

and, on at least one day during the year of income, the taxpayer is not in gaol.

(3) The second condition is that the taxpayer's rebate income for the year of income is less than an amount ascertained in accordance with the regulations.

(4) If the taxpayer is the spouse of another person, the amount applicable to the taxpayer under subsection (3) is half of the sum of:

(a) the taxpayer's rebate income for the year of income; and

(b) the taxpayer's spouse's rebate income for the year of income (reduced by any amount included in the spouse's assessable income under section 100); and

(c) an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 98 in respect of the taxpayer's spouse.

(5) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAAB Tax rebate for low income aged persons and pensioners—trustees assessed under section 98

(1) Subject to subsection 160AAA(4A), a trustee who is liable to be assessed under section 98 in respect of a beneficiary's share of the net income of the trust estate is entitled to a rebate of tax in the trustee's assessment in respect of income of a year of income of an amount (if any), ascertained in accordance with the regulations, if the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that:

(a) on at least one day during the year of income, the beneficiary:

Authorised Version C2022C00106 registered 10/03/2022

(i) is eligible for a pension, allowance or benefit under the *Veterans' Entitlements Act 1986* (other than Part VII); and

(ii) has reached pension age, within the meaning of that Act; and

(iii) is not in gaol; or

(b) on at least one day during the year of income, the beneficiary:

(i) is qualified for an age pension under the *Social Security Act 1991*; and

(ii) is not in gaol; or

(c) the assessable income of the beneficiary of the year of income includes an amount of:

(i) social security pension or education entry payment (within the meaning of the *Social Security Act 1991*); or

(ii) service pension, carer service pension or income support supplement under the *Veterans' Entitlements Act 1986*;

and, on at least one day during the year of income, the beneficiary is not in gaol.

(3) The second condition is that the beneficiary has an amount applicable under subsection (4) or (5) for the year of income less than an amount ascertained in accordance with the regulations.

(4) If the beneficiary is not the spouse of another person, the amount applicable to the beneficiary under subsection (3) is the amount that would be the beneficiary's rebate income for the year of income if the beneficiary's taxable income for that year were the beneficiary's share of the net income of the trust estate.

(5) If the beneficiary is the spouse of another person, the amount applicable to the beneficiary under subsection (3) is half the sum of:

(a) the amount that would be applicable to the beneficiary under subsection (3) if the beneficiary were not the spouse of another person; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the beneficiary's spouse's rebate income for the year of income (reduced by any amount included in the spouse's assessable income under section 100); and

(c) an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 98 in respect of the taxpayer's spouse.

(6) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAA Rebate in respect of certain benefits etc.

(1) In this section:

rebatable benefit means an amount:

(a) paid by way of a benefit under Part 2.11, 2.11A, 2.12, 2.15, 2.23B or 3.15A of the *Social Security Act 1991*; or

(aa) paid by way of parenting payment that is PP (partnered) under the *Social Security Act 1991*, to the extent that the amount is not exempt under Division 52 of the *Income Tax Assessment Act 1997*; or

(ab) paid from the Commonwealth by way of an ex-gratia payment to which subsection (2) applies; or

(b) consisting of a Commonwealth education or training payment (see subsection 6(1)), except where the recipient, or the individual on whose behalf the recipient receives the payment, is an employee of any person who is entitled to a Commonwealth subsidy in respect of the employment; or

(c) paid as a wage to a participant in a project under the Community Development Employment Projects program from the wages component of a grant made under the program; or

(d) paid by way of Northern Territory CDEP transition payment under Part 2.27 of the *Social Security Act 1991*; or

(e) paid by way of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica; or

Authorised Version C2022C00106 registered 10/03/2022

(f) known as an interim income support payment and paid under section 65 of the *Public Governance, Performance and Accountability Act 2013* (which deals with act of grace payments by the Commonwealth); or

(g) known as the Equine Workers Hardship Wage Supplement Payment.

(2) This subsection applies to an ex-gratia payment known as income support allowance for special category visa (subclass 444) holders if the payment is for a disaster:

(a) occurring in Australia during the 2014-15 financial year or a later financial year; and

(b) for which a determination under subsection 36A(1) of the *Social Security Act 1991* has been made.

(3) Subject to subsections (4) and (4A), where the assessable income of a taxpayer of a year of income includes an amount of rebatable benefit, the taxpayer is entitled in the taxpayer's assessment in respect of income of the year of income to a rebate of tax of an amount (if any) ascertained in accordance with the regulations.

(4) Where, apart from this subsection, the taxpayer would be entitled in his or her assessment in respect of income of a year of income to a rebate of tax under both section 160AAAA (Tax rebate for low income aged persons and pensioners) and this section:

(a) if the amounts of the rebates are the same—the taxpayer is entitled to only one of the rebates; and

(b) if the amounts of the rebates are not the same—the taxpayer is not entitled to the lesser of the rebates.

(4A) If, apart from this subsection:

(a) the taxpayer would be entitled in his or her assessment in respect of income of a year of income to a rebate of tax under this section; and

(b) the taxpayer is the beneficiary of a trust; and

(c) the trustee of the trust is entitled to a rebate of tax for the year of income under section 160AAAB in respect of the taxpayer;

Authorised Version C2022C00106 registered 10/03/2022

then:

(d) if the amounts of the rebates are the same, or the amount of the rebate under this section is the lesser amount—the taxpayer is not entitled to the rebate under this section; or

(e) if the amount of the rebate under this section is the greater amount—the trustee is not entitled to the rebate under section 160AAAB.

(5) Regulations made for the purposes of this section may be expressed to apply in relation to a year of income any part of which occurred before the notification of the regulations.

160AAB Rebate in respect of amounts assessable under section 26AH

(1) In this section:

eligible 26AH amount, in relation to a year of income, means an amount included in assessable income under section 26AH in relation to an eligible policy within the meaning of that section issued by:

(a) a life assurance company, not being a life assurance company the whole of the income of which of the year of income is exempt from tax;

(c) the Government Insurance Office of New South Wales;

(d) Suncorp Insurance and Finance, being a body corporate established by a law of Queensland;

(e) the State Government Insurance Commission established by a law of South Australia;

(f) the State Insurance Office established by a law of Victoria; or

(g) the State Government Insurance Corporation established by a law of Western Australia.

statutory percentage means:

(a) if the policy concerned was issued by a friendly society:

(i) if the year of income is earlier than the 2002-03 year of income—33%; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) if the year of income is the 2002-03 year of income or a later year of income—30%; or

(b) otherwise:

(i) if the year of income is earlier than the 2001-02 year of income—39%; or

(ii) if the year of income is the 2001-02 year of income—34%; or

(iii) if the year of income is the 2002-03 year of income or a later year of income—30%.

(2) A taxpayer, not being a taxpayer in the capacity of trustee of a trust estate, is entitled in his or her assessment in respect of income of a year of income to a rebate of tax equal to the statutory percentage of an eligible 26AH amount included in his or her assessable income of the year of income.

(3) Where:

(a) an amount is included under section 97, 98A or 100 in the assessable income of a year of income of a taxpayer being a beneficiary of a trust estate otherwise than in the capacity of trustee of another trust estate; and

(b) the whole or a part of the amount so included (which whole or part is in this subsection referred to as the ***rebatable amount***) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;

the taxpayer is entitled in his or her assessment in respect of income of the year of income to a rebate of tax equal to the statutory percentage of the rebatable amount.

(4) Where:

(a) a taxpayer being the trustee of a trust estate is liable to be assessed and to pay tax in pursuance of section 98 in respect of a share of the net income of the trust estate of a year of income; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the whole or part of that share (which whole or part is in this subsection referred to as the ***rebatable amount***) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;

the taxpayer is entitled in that assessment to a rebate of tax equal to the statutory percentage of the rebatable amount.

(5) Where:

(a) a taxpayer being the trustee of a trust estate is liable to be assessed and to pay tax in pursuance of section 99 or 99A in respect of the whole or a part (which whole or part is in this subsection referred to as the ***relevant trust income***) of the net income of the trust estate of a year of income; and

(b) the whole or a part of the relevant trust income (which whole or part is in this subsection referred to as the ***rebatable amount***) is attributable to an eligible 26AH amount included in the assessable income of the year of income of the trust estate or of another trust estate;

the taxpayer is entitled in that assessment to a rebate of tax equal to the statutory percentage of the rebatable amount.

(5A) A taxpayer being the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust is entitled in the taxpayer's assessment in respect of income of a year of income to a rebate of tax equal to the statutory percentage of any eligible section 26AH amount included in the taxpayer's assessable income of the year of income.

(6) Where an eligible 26AH amount is included in the assessable income of a partnership of a year of income in the calculation of the net income or partnership loss of the partnership of the year of income, a partner in the partnership is entitled in his or her assessment in respect of income of the year of income to a rebate of tax equal to the statutory percentage of the amount by which the taxable income of the partner of the year of income exceeds the amount that could reasonably be expected to be that taxable

Authorised Version C2022C00106 registered 10/03/2022

income if the eligible 26AH amount had not been included in the assessable income of the partnership of the year of income.

160AD Maximum amount of rebates

Notwithstanding anything contained in this or any other Act, the sum of the rebates allowable under this Act shall not exceed the amount of tax which would otherwise be payable by the taxpayer.

160ADA Most tax offsets under the 1997 Assessment Act are treated as rebates

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

Note: If the tax offset provision does correspond to a credit provision, the tax offset is treated as a credit: see section 6D.

Authorised Version C2022C00106 registered 10/03/2022

Part IIIB—Australian branches of foreign banks

Division 1—Preliminary

160ZZVA Object

(1) The object of this Part is:

(a) to assist in calculating that part of a foreign bank's taxable income that is referable to certain activities of its Australian branch; and

(b) to make it clear that withholding tax will apply to amounts that are taken by this Part to be interest paid by the branch to the bank.

Note: This Part also:

(a) applies to foreign entities that are financial entities in the same way as it applies to foreign banks; and

(b) applies to permanent establishments in Australia of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks.

See Division 4.

(2) For the purpose of achieving the object mentioned in subsection (1), this Part requires, in the circumstances stated in this Part and not otherwise, that the Australian branch is to be treated as if it were a separate legal entity from the bank.

160ZZVB Application

(1) It is the intention that, in so far as this Part is to be applied to identify amounts of income and expenditure that are taken into account in calculating that part of a foreign bank's taxable income of a year of income that is referable to certain activities of its Australian branch, the provisions of this Part are to be applied in their entirety.

(2) If, as a result of the application of this Part:

Authorised Version C2022C00106 registered 10/03/2022

(a) the taxable income of a year of income of a foreign bank that is attributable to activities carried on by the bank through its Australian branch is greater than the amount that would be that taxable income if this Part did not apply; or

(b) a foreign bank would be taken not to incur a loss in a year of income in respect of activities carried on by the bank through its Australian branch that it would be taken to have incurred if this Part did not apply; or

(c) the amount of a loss that a foreign bank would be taken to incur in a year of income in respect of activities carried on by the bank through its Australian branch is less than the amount of the loss that it would be taken to have incurred if this Part did not apply;

the bank may elect that this Part is not to apply in the calculation of its taxable income of that year of income.

(3) If a foreign bank makes an election as mentioned in subsection (2):

(a) this Part does not apply in the calculation of the bank's taxable income of the year of income to which the election relates and the bank may furnish returns, and is liable to pay tax, accordingly; but

(b) the election does not affect the operation of this Part in respect of the application of withholding tax to amounts that are taken by this Part to be interest paid by the branch to the bank.

160ZZV Definitions

In this Part, unless the contrary intention appears:

accounting records includes:

(a) invoices, receipts, vouchers and other documents of prime entry; and

(b) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

Authorised Version C2022C00106 registered 10/03/2022

Australian branch, in relation to a foreign bank, means a permanent establishment in Australia through which the bank carries on banking business.

derivative transaction means a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*) that is entered into for the purpose of eliminating, reducing or altering the risk of adverse financial consequences that might result from changes in rates of interest or changes in rates of exchange between currencies, or for the purpose of making a profit from such changes, but does not include a transaction entered into for the provision of finance or a foreign exchange transaction.

foreign bank means a body corporate that is a foreign ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

foreign exchange transaction means a transaction by which different currencies are exchanged.

interest has the same meaning as in Division 11A of Part III.

offshore banking unit has the same meaning as in Division 11A of Part III.

time of establishment, in relation to an Australian branch of a foreign bank, means the time when the bank began to carry on business through the permanent establishment in Australia that constitutes the branch.

160ZZW Certain provisions to apply as if Australian branch of foreign bank were a separate legal entity

(1) Subsections (2), (3), (4) and (5) apply only:

(a) for the purposes of sections 160ZZZ, 160ZZZA, 160ZZZC, 160ZZZE and 160ZZZF as they have effect in the determination under this Act of the liability of a foreign bank to tax (other than withholding tax) in respect of income derived from an Australian branch of the bank; and

Authorised Version C2022C00106 registered 10/03/2022

(b) for the purposes of the provisions of this Act other than this Part as those provisions apply in relation to amounts that are taken by this Part to have been received from a foreign bank by its Australian branch or to have been paid to a foreign bank by its Australian branch; and

(c) for the purposes of section 160ZZZJ as it has effect in determining the liability of a foreign bank to withholding tax in respect of amounts paid to the bank by an Australian branch of the bank.

(1A) To avoid doubt, subsection (2) applies for the purposes of applying Subdivision 230-A of the *Income Tax Assessment Act 1997* to a financial arrangement (within the meaning of that Act).

Note: This means that it is possible for financial arrangements to be entered into between the bank and the branch and for the bank or the branch to have a gain or loss from such an arrangement dealt with under Division 230 of the *Income Tax Assessment Act 1997*.

(2) The branch and the bank are taken to be, and to have been since the time of establishment of the branch, separate legal entities.

Note: For cross-border transfer pricing, the rules in Subdivision 815-B of the *Income Tax Assessment Act 1997* apply to the separate legal entity, rather than the rules for permanent establishments in Subdivision 815-C: see subsection 815-210(3) of that Act.

(3) The branch is taken to be, and to have been since the time of its establishment, a company having a share capital all the shares in which are or were beneficially owned by the bank.

(4) The branch is taken to be a non-resident and to have been a non-resident since the time of its establishment.

Authorised Version C2022C00106 registered 10/03/2022

Division 2—Provisions relating to income tax

160ZZX Income of branch to have Australian source

(1) All income derived by a foreign bank through its Australian branch is taken, for the purposes of this Act, to be income derived from a source in Australia.

(2) All gains from a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*) made by a foreign bank through its Australian branch is taken, for the purposes of this Act, to be from an Australian source.

160ZZZ Notional borrowing by branch from bank

(1) If an amount has been made available by a foreign bank for use by an Australian branch of the bank and is recorded in the branch's accounting records as having been provided by the bank to the branch, that amount is taken, for the purposes of this Act, to have been borrowed by the branch from the bank when the amount became so available and to have been so borrowed in the currency in which the amount became so available.

(2) If an amount has been made available by the branch to the bank in purported repayment of an amount that is taken, under subsection (1), to have been borrowed by the branch from the bank and the amount so made available is recorded in the branch's accounting records as having been repaid by the branch to the bank, the amount that was so taken to have been borrowed is taken, for the purposes of this Act, to have been repaid by the branch to the bank when the amount became so available and to have been so repaid in the currency in which the amount became so available.

160ZZZA Notional payment of interest by branch to bank

(1) If, under section 160ZZZ, an amount is taken, for the purposes of this Act, to have been borrowed (the ***notional borrowing***) in a

Authorised Version C2022C00106 registered 10/03/2022

particular currency from a foreign bank by an Australian branch of the bank, the following provisions have effect:

(a) at any time (the ***relevant time***) when, in respect of the notional borrowing, an amount (the ***notional amount of interest***) is entered in the branch's accounting records as interest for a period fixed by the bank, interest is taken, for the purposes of this Act, to be incurred by the branch, paid by the branch to the bank, and derived by the bank, in respect of the notional borrowing;

(b) subject to the application of paragraph (c), the notional amount of interest is taken, for the purposes of this Act, to be the amount of interest so taken to be paid;

(c) if the interest on the notional borrowing at the relevant time was at a rate of interest that exceeded the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing, there is taken to have been entered in the branch's accounting records at the relevant time, in lieu of the notional amount of interest, the amount that would have been so entered if interest on the notional borrowing for the relevant interest calculation period had been calculated at the LIBOR that was applicable at the beginning of that period.

(2) For the purposes of this section, a reference to the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing is a reference to:

(a) the LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for a term the number of days in which was equal to the number of days in that period; or

(b) if there was no LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for such a term:

(i) the LIBOR applicable at the beginning of that period in respect of advances in that currency for a term the number of days in which most nearly approximated the number of days in that period; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) if there were different LIBORs so applicable for different terms the number of days in each of which could be described as having most nearly approximated the number of days in that period—the LIBOR so applicable for the shorter of those terms.

(3) For the purposes of this section:

(a) a reference to LIBOR, in relation to a particular time, is a reference to the rate of interest applicable at that time in relation to banks in the London inter bank market as determined by reference to the Reuter Monitor Money Rates Service or any other published source; and

(b) a reference to the relevant interest calculation period in relation to a notional borrowing from a foreign bank by an Australian branch of the bank is a reference to the period fixed by the bank for the calculation of the notional amount of interest in respect of the notional borrowing.

160ZZZC Offshore banking units

If:

(a) apart from this section, a foreign bank would be an offshore banking unit under a declaration made under subsection 128AE(2); and

(b) the foreign bank has an Australian branch;

this Act has effect as if the Australian branch were the offshore banking unit under the declaration.

160ZZZE Notional derivative transactions between branch and bank

If the accounting records of an Australian branch of a foreign bank reflect a derivative transaction notionally entered into by the branch with the bank:

(a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and

Authorised Version C2022C00106 registered 10/03/2022

(b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or received by the branch, as the case may be, in respect of the derivative transaction when the amount was so entered.

160ZZZF Notional foreign exchange transactions between branch and bank

If the accounting records of an Australian branch of a foreign bank reflect a foreign exchange transaction notionally entered into by the branch with the bank:

(a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and

(b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or received by the branch, as the case may be, in respect of the foreign exchange transaction when the amount was so entered.

160ZZZG Losses

Subdivision 170-A of the *Income Tax Assessment Act 1997* has effect as if an Australian branch of a foreign bank were a subsidiary of the bank and a resident of Australia.

160ZZZH Net capital losses

Subdivision 170-B of the *Income Tax Assessment Act 1997* (about transfer of net capital losses within wholly-owned groups of companies) has effect as if an Australian branch of a foreign bank were a 100% subsidiary (within the meaning of that Act) of the bank and an Australian resident (within the meaning of that Act).

Authorised Version C2022C00106 registered 10/03/2022

160ZZZI Certain transactions to be disregarded

Any transaction entered into by a foreign bank otherwise than through its Australian branch:

(a) under which finance is provided to the bank; or

(b) that is a derivative transaction or a foreign exchange transaction;

is to be disregarded for the purpose of determining whether a deduction is allowable to the bank under this Act.

Authorised Version C2022C00106 registered 10/03/2022

Division 3—Provisions relating to withholding tax

160ZZZJ Withholding tax on interest paid by branch to bank

(1) If:

(a) an amount of interest is taken under section 160ZZZA to be paid to, and derived by, a foreign bank by an Australian branch of the bank; and

(b) apart from this section, section 128B of this Act, and Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953*, would apply to an amount (the ***taxable amount***) that comprises the whole or a part of the amount so taken to be paid;

the following subsections have effect.

(2) Section 128B of this Act, and Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953*, apply only to the amount worked out using the formula:

$$\frac{\text{Taxable amount}}{2}$$

(3) An amount to which section 128B applies because of subsection (2) of this section is taken, for the purposes of section 128C, to be income that was derived by the bank when the amount of interest referred to in paragraph (1)(a) is taken to have been paid to the bank.

Authorised Version C2022C00106 registered 10/03/2022

Division 4—Extension of Part to Australian branches of foreign financial entities

160ZZZK Treatment like Australian branches of foreign banks

Objects

(1) The main objects of this section are:

(a) to treat foreign entities that are financial entities like foreign banks for the purposes of this Part; and

(b) to treat Australian permanent establishments of foreign entities that are financial entities like Australian branches of foreign banks for the purposes of this Part.

Foreign financial entities treated like foreign banks

(2) This Part (except this Division) applies to a foreign entity that is a financial entity in the same way as this Part applies to a foreign bank.

Australian permanent establishments treated like Australian branches

(3) This Part (except this Division) applies to a permanent establishment in Australia of a foreign entity that is a financial entity in the same way as this Part applies to an Australian branch of a foreign bank.

Definitions

(4) In this section:

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

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

Authorised Version C2022C00106 registered 10/03/2022

Division 5—Modifications relating to hybrid mismatch rules

160ZZZL Certain "hybrid mismatch" deductions denied

(1) Subsection (2) applies if:

(a) either:

(i) an amount of interest (a ***notional payment***) is taken under section 160ZZZA to be incurred by an Australian branch of a foreign bank in respect of a notional borrowing; or

(ii) an amount (also a ***notional payment***) is taken under section 160ZZZE to be an amount paid by an Australian branch of a foreign bank in respect of a notional derivative transaction; and

(b) the amount would, apart from this section, give rise to a deduction for the Australian branch in a year of income; and

(c) the amount of the deduction exceeds the amount worked out under subsection (3).

Neutralising hybrid mismatch outcomes

(2) So much of the deduction as equals the excess worked out under paragraph (1)(c) is not allowable as a deduction for the year of income.

Extent to which notional payment gives rise to a deduction/non-inclusion outcome

(3) For the purposes of paragraph (1)(c), sum the following amounts:

(a) the amount of the notional payment that is subject to foreign income tax;

(b) so much (if any) of the amount of the notional payment as it is reasonable to conclude is effectively funding expenses covered by subsection (4) or (5) (about non-deductible third party expenses);

Authorised Version C2022C00106 registered 10/03/2022

(c) the amount (if any) of income or profits of the Australian branch that is both:

(i) subject to Australian income tax for the purposes of subsection 832-680(1) of the *Income Tax Assessment Act 1997* in the year of income mentioned in paragraph (1)(b); and

(ii) subject to foreign income tax for the purposes of subsection 832-680(1) of the *Income Tax Assessment Act 1997* in the foreign country in which the foreign bank is a resident.

Non-deductible third party expenses

(4) For the purposes of paragraph (3)(b), if:

(a) the notional payment is in respect of a notional borrowing; and

(b) it is reasonable to conclude that the notional borrowing is effectively funded by actual borrowings by the foreign bank;

then the expenses in respect of the actual borrowings are covered by this subsection to the extent (if any) that those expenses do not give rise to foreign income tax deductions.

(5) For the purposes of paragraph (3)(b), if:

(a) the notional payment is in respect of a notional derivative transaction; and

(b) it is reasonable to conclude that the foreign bank has hedged or managed all or part of its risk in relation to the notional derivative transaction by entering into actual transactions;

then the expenses in respect of the actual transactions are covered by this subsection to the extent (if any) that those expenses do not give rise to foreign income tax deductions.

Safe harbour

(6) The deduction is taken for the purposes of paragraph (1)(c) not to exceed the amount worked out under subsection (3) if the foreign bank adopts a recognised transfer pricing methodology in

Authorised Version C2022C00106 registered 10/03/2022

allocating expenditure and income between itself and all its branches.

160ZZZN Adjusting if Australian branch derives dual inclusion income in a later year

(1) There is an adjustment under subsection (2) for the Australian branch in a year of income (the ***adjustment year***) if:

(a) an amount of a deduction was not allowable for the branch in an earlier year of income under subsection 160ZZZL(2); and

(b) this Part applies in the calculation of the foreign bank's taxable income in the adjustment year; and

(c) an amount of income or profits of the Australian branch is:

(i) subject to Australian income tax for the purposes of subsection 832-680(1) of the *Income Tax Assessment Act 1997* in the adjustment year; and

(ii) subject to foreign income tax for the purposes of that subsection in the foreign country in which the foreign bank is a resident.

(2) So much of the amount of income or profits that satisfies paragraph (1)(c) as does not exceed the amount of the deduction that was not allowable is an amount the Australian branch can deduct in the adjustment year.

(3) For the purposes of a later application of this section, treat the amount of the deduction that was not allowable under subsection 160ZZZL(2) as being reduced by the amount deducted under subsection (2).

160ZZZP Dual inclusion income not to be applied more than once

(1) For the purposes of paragraphs 160ZZZL(3)(c) and 160ZZZN(1)(c), an amount of income or profits is to be disregarded if:

(a) the amount is dual inclusion income; and

(b) the amount has been applied by a provision of Division 832 of the *Income Tax Assessment Act 1997*.

Authorised Version C2022C00106 registered 10/03/2022

(2) For the purposes of Division 832 of that Act, an amount of dual inclusion income is not available to be applied by a provision of that Division if it has been taken into account under paragraph 160ZZZL(3)(c) or subsection 160ZZZN(2).

160ZZZR Interpretation

In this Division:

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

foreign income tax deduction has the same meaning as in the *Income Tax Assessment Act 1997*.

subject to Australian income tax has the same meaning as in the *Income Tax Assessment Act 1997*.

subject to foreign income tax has the same meaning as in the *Income Tax Assessment Act 1997*.

Authorised Version C2022C00106 registered 10/03/2022

Part IV—Returns and assessments

161 Annual returns

Requirement to lodge a return

(1) Every person must, if required by the Commissioner by legislative instrument, give to the Commissioner a return for a year of income within the period specified in the instrument.

Note: The Commissioner may defer the time for giving the return: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

(1A) The Commissioner may, in the instrument, exempt from liability to furnish returns such classes of persons not liable to pay income tax as the Commissioner thinks fit, and a person so exempted need not furnish a return unless the person is required by the Commissioner to do so.

(2) If the taxpayer is absent from Australia, or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person duly authorized.

(3) Nothing in this section prevents an approval by the Commissioner of a form of return under section 35D of the *Superannuation Industry (Supervision) Act 1993* from requiring or permitting a return under that section to be attached to, or to form part of, a return under this section.

Note: However, the rules applicable to a return under section 35D of the *Superannuation Industry (Supervision) Act 1993* are those specified in that Act.

161A Form and content of returns

(1) The return must be in the approved form.

Authorised Version C2022C00106 registered 10/03/2022

Electronic returns

(2) An approval given by the Commissioner of a form of return may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

161AA Contents of returns of full self-assessment taxpayers

A full self-assessment taxpayer must, in a return for a year of income, specify:

(a) its taxable income or its net income for that year of income (or that it has no taxable income or net income for that year); and

(b) the amount of the tax payable on that taxable income or net income (or that no tax is payable); and

(ba) the total of its tax offset refunds for that year of income (or that it can get no such refund for that year of income); or

(c) the amount of interest (if any) payable by the taxpayer under section 102AAM for that year of income; and

(d) for a company that is an RSA provider, or a trustee of a superannuation fund in relation to the year of income:

(i) its no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that it has no no-TFN contributions income); and

(ii) the amount of the income tax payable on that income (or that no income tax is payable).

161G Tax agent to give taxpayer copy of notice of assessment

Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

Authorised Version C2022C00106 registered 10/03/2022

162 Further returns and information

A person must, if required by the Commissioner, whether before or after the end of the year of income, give the Commissioner, within the time required and in the approved form:

(a) a return or a further or fuller return for a year of income or a specified period, whether or not the person has given the Commissioner a return for the same period; or

(b) any information, statement or document about the person's financial affairs.

163 Special returns

Every person, whether a taxpayer or not, if required by the Commissioner, shall, in the approved form and within the time required by the Commissioner, furnish any return required by the Commissioner for the purposes of this Act.

166 Assessment

From the returns, and from any other information in the Commissioner's possession, or from any one or more of these sources, the Commissioner must make an assessment of:

(a) the amount of the taxable income (or that there is no taxable income) of any taxpayer; and

(b) the amount of the tax payable thereon (or that no tax is payable); and

(c) the total of the taxpayer's tax offset refunds (or that the taxpayer can get no such refunds).

166A Deemed assessment

(1) Where a taxpayer that is a relevant entity within the meaning of former Division 1B of Part VI furnishes a return in respect of income of a year of income to which that Division applied:

(a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the relevant taxable income or net income, as the case may be, and of the

Authorised Version C2022C00106 registered 10/03/2022

tax payable on that taxable income or net income, being those respective amounts as specified in the return; and

(b) on and after the day on which the Commissioner is deemed to have made the assessment, the return is deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner; and

(c) the notice referred to in paragraph (b) is deemed to have been served on the entity on the day on which the Commissioner is deemed to have made the assessment.

(2) Where:

(aa) at a particular time, a taxpayer to which former Division 1C of Part VI applied gives a return in respect of income of a year of income to which that Division applied; and

(ab) before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income:

the following provisions apply:

(a) the Commissioner is deemed to have made an assessment of the taxable income or net income, and the tax payable on that income, equal to those respective amounts specified in the return;

(b) the assessment is deemed to have been made on the day on which the return is lodged;

(c) on and after the day on which the Commissioner is deemed to have made the assessment, the return is deemed to be a notice of the deemed assessment:

(i) under the hand of the Commissioner; and

(ii) served on the taxpayer on the day on which the Commissioner is deemed to have made the assessment.

(3) If:

(a) at a particular time, a full self-assessment taxpayer gives a return in respect of a year of income for which the taxpayer is a full self-assessment taxpayer; and

Authorised Version C2022C00106 registered 10/03/2022

(b) before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income;

the following provisions apply:

(c) the Commissioner is taken to have made an assessment of:
  (i) the taxable income or net income (or an assessment that there is no taxable income or net income); and
  (ii) the tax payable on that income (or that no tax is payable); and
  (iii) the total of the taxpayer's tax offset refunds for the year of income (or that the taxpayer can get no such refunds);

  in accordance with what the taxpayer specified in the return;

(d) the assessment is taken to have been made on the day on which the return is lodged;

(e) on and after the day on which the Commissioner is taken to have made the assessment, the return is taken to be a notice of the assessment:
  (i) under the hand of the Commissioner; and
  (ii) served on the taxpayer on the day on which the Commissioner is taken to have made the assessment.

167 Default assessment

If:

(a) any person makes default in furnishing a return; or

(b) the Commissioner is not satisfied with the return furnished by any person; or

(c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income;

the Commissioner may make an assessment of the amount upon which in his or her judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of section 166.

Authorised Version C2022C00106 registered 10/03/2022

168 Special assessment

(1) The Commissioner may at any time during any year, or after its expiration, make an assessment of:

(a) the taxable income derived (or that there is no taxable income) in that year or any part of it by any taxpayer; and

(b) the tax payable thereon (or that no tax is payable); and

(c) the total of the taxpayer's tax offset refunds for that year or that part of it (or that the taxpayer can get no such refunds).

(2) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

169 Assessments on all persons liable to tax

Where under this Act any person is liable to pay tax (including a nil liability), the Commissioner may make an assessment of the amount of such tax (or an assessment that no tax is payable).

169AA Consolidated assessments

(1) This section applies if 2 or more persons (the ***recipients***) are in receipt of income, or of profits or gains of a capital nature, for or on behalf of:

(a) a non-resident; or

(b) a person absent from Australia.

(2) The Commissioner may, if it appears to him or her to be expedient to do so:

(a) consolidate all or any of the assessments of the income, profits or gains; and

(b) declare one of the recipients to be the agent of the non-resident or absent person in respect of the consolidated assessment; and

(c) require the agent to pay income tax on the amount assessed.

Authorised Version C2022C00106 registered 10/03/2022

(3) If the Commissioner does so, the agent is liable to pay the tax.

169A Reliance by Commissioner on returns and statements

(1) Where a return of income of a taxpayer of a year of income is furnished to the Commissioner (whether or not by the taxpayer), the Commissioner may, for the purposes of making an assessment in relation to the taxpayer under this Act, accept, either in whole or in part, a statement in the return of the assessable income derived by the taxpayer and of any allowable deductions or rebates to which it is claimed that the taxpayer is entitled and any other statement in the return or otherwise made by or on behalf of the taxpayer.

(2) Despite subsection (1), if, in a document given with a return of income of a taxpayer of a year of income and signed by or on behalf of the taxpayer, a question is raised:

(a) that is relevant to the liability of the taxpayer in respect of the year of income; and

(b) on which the taxpayer is not entitled to apply for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953*;

the Commissioner must give attention to that question.

(3) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.

170 Amendment of assessments

(1) The Commissioner may amend an assessment as follows:

Authorised Version C2022C00106 registered 10/03/2022

Amendment of assessments		
	Time of amendment	**Qualification**
1	The Commissioner may amend an assessment of an individual for a year of income within 2 years after the day on which the Commissioner gives notice of the assessment to the individual.	This item does not apply: (a) if the individual carries on a business at any time in that year unless the individual is a small business entity or medium business entity for that year; or (b) if the individual is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or (c) to an individual in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (d) if the individual is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (e) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the individual obtaining a scheme benefit in relation to income tax from the scheme for that year; or (f) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.

Authorised Version C2022C00106 registered 10/03/2022

Amendment of assessments		
	Time of amendment	**Qualification**
2	The Commissioner may amend an assessment of a company that is a small business entity or medium business entity for the year of income to which the assessment relates within 2 years after the day on which the Commissioner gives notice of the assessment to the company.	This item does not apply: (a) if the company is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or (b) to a company in the capacity of a trustee of a trust estate at any time in that year (see item 3 for this case); or (c) if the company is a beneficiary of a trust estate at any time in that year unless the trust is a small business entity or medium business entity for that year or the trustee of the trust (in that capacity) is a full self-assessment taxpayer for that year; or (d) if it is reasonable to conclude that any person entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the company obtaining a scheme benefit in relation to income tax from the scheme for that year; or (e) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.
3	The Commissioner may amend an assessment of a person (in the capacity of a trustee of a trust estate) for a year of income if the trust is a small business entity or medium business entity for that year. The Commissioner may amend the assessment within 2 years after the day on which he or she gives notice of the assessment to	This item does not apply: (a) if the person (in that capacity) is a partner in a partnership that carries on a business at any time in that year unless the partnership is a small business entity or medium business entity for that year; or (b) if the person (in that capacity) is a beneficiary of another trust estate at any time in that year unless the other trust is a small business entity or medium business entity for that year or the trustee of the other trust (in that capacity) is a full self-assessment taxpayer for that year; or (c) if it is reasonable to conclude that any person

Authorised Version C2022C00106 registered 10/03/2022

Amendment of assessments		
	Time of amendment	**Qualification**
	the person.	entered into or carried out a scheme (either alone or with others) for the sole or dominant purpose of the person (in that capacity) obtaining a scheme benefit in relation to income tax from the scheme for that year; or (d) in any other circumstance prescribed by the regulations. This item is subject to items 5 and 6.
4	If item 1, 2 or 3 does not apply, the Commissioner may amend an assessment within 4 years after the day on which he or she gives notice of the assessment to the taxpayer.	This item is subject to items 5 and 6.
5	The Commissioner may amend an assessment at any time if he or she is of the opinion there has been fraud or evasion.	None.
6	The Commissioner may amend an assessment at any time: (a) to give effect to a decision on a review or appeal; or (b) as a result of an objection made by the taxpayer or pending a review or appeal.	None.

Note 1: This section applies to assessments where no tax is payable: see the definition of ***assessment*** in subsection 6(1).

Note 2: This section also applies to amended assessments: see section 173. However, there are limits on how amended assessments can be amended: see subsections (2) and (3) of this section.

Authorised Version C2022C00106 registered 10/03/2022

Note 3: The amendment period mentioned in item 1, 2, 3 or 4 may be extended: see subsections (5) to (7).

Limit on amending amended assessments under subsection (1)

(2) The Commissioner cannot amend an amended assessment under item 1, 2, 3 or 4 of the table in subsection (1) if the limited amendment period for the original assessment concerned has ended.

Note: The Commissioner can amend amended assessments at any time under item 5 or 6 of the table in subsection (1).

Refreshed amendment period for amending amended assessments

(3) If the Commissioner amends an assessment (the ***earlier assessment***) as set out in column 2 of the following table, he or she may, under this subsection, amend the assessment (the ***later assessment***) that results from that amendment in the way set out in column 3 within:

(a) if item 1, 2 or 3 of the table in subsection (1) applies to the original assessment concerned (which may or may not be the earlier assessment)—2 years after the day on which he or she gives notice of the later assessment to the taxpayer; or

(b) otherwise—4 years after that day.

Amendment of later assessment		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
1	The Commissioner amends the earlier assessment about a particular in a way that reduces a taxpayer's liability and the Commissioner accepts a statement made by the taxpayer in making the amendment	The Commissioner may amend the later assessment about that particular in a way that increases the taxpayer's liability.
2	The Commissioner amends the earlier assessment about a particular in a way that: (a) increases a taxpayer's liability; or	The Commissioner may amend the later assessment about that particular in a way that reduces the taxpayer's

Authorised Version C2022C00106 registered 10/03/2022

Amendment of later assessment		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
	(b) reduces a taxpayer's liability (other than in a case covered by item 1)	liability.

Note 1: The earlier assessment may be the original assessment or an amended assessment.

Note 2: The Commissioner can amend the later assessment at any time under item 5 or 6 of the table in subsection (1).

Note 3: The amendment period mentioned in paragraph (3)(a) or (b) may be extended: see subsections (5) to (7).

(4) The Commissioner cannot amend an assessment under item 2 of the table in subsection (3) about a particular if he or she has previously amended an assessment under item 1 of that table about that particular.

Extensions—applications by taxpayer

(5) The Commissioner may amend an assessment even though the limited amendment period has ended if, before the end of that period, the taxpayer applies for an amendment in the approved form. The Commissioner may amend the assessment to give effect to the decision on the application.

Extensions—giving effect to private rulings

(6) The Commissioner may amend an assessment even though the limited amendment period has ended if:

(a) the taxpayer applies for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953* before the end of that period; and

(b) the Commissioner makes a private ruling under that Division because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

Authorised Version C2022C00106 registered 10/03/2022

Extensions—Federal Court orders or taxpayer consent

(7) If:

(a) the Commissioner has started to examine the affairs of a taxpayer in relation to an assessment; and

(b) the Commissioner has not completed the examination before the end of the limited amendment period or that period as extended;

the limited amendment period may be extended as follows:

Extensions of limited amendment period

	In this case:	the position is:
1	The Commissioner, before the end of the limited amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the limited amendment period	The Court may order an extension of the limited amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the limited amendment period, or that period as extended, because of: (a) any action taken by the taxpayer; or (b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.
2	The Commissioner, before the end of the limited amendment period or that period as extended, requests the taxpayer to consent to extending the limited amendment period	The taxpayer may, by notice in writing, consent to extending the limited amendment period for a specified period.

(8) The limited amendment period for an assessment may be extended more than once under subsection (7).

Other amendment periods

(9) Notwithstanding anything contained in this section, when the assessment of the taxable income of any year includes an estimated amount of income, or of profits or gains of a capital nature, derived

Authorised Version C2022C00106 registered 10/03/2022

by the taxpayer in that year from an operation or series of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than one or parts of more than one year, the Commissioner may at any time within 4 years after ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

(9D) This section does not prevent the amendment of an assessment at any time if the amendment is made, in relation to a contract that after the making of the assessment is found to be void ab initio, to ensure that Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT) is taken always to have applied to the contract as if the contract had never been made.

(10) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of this Act set out in this table.

Item	Provision	Brief description
1	Section 23AB	Income of certain persons serving with an armed force under the control of the United Nations
3	Section 26AG	Certain film proceeds included in assessable income
4	Subsection 47(2B)	Distributions by liquidator
5	Section 51AD	Deductions not allowable in respect of property used under certain leveraged arrangements
6	Section 51AH	Deductions not allowable where expenses incurred by employee are reimbursed
10	Section 78A	Certain gifts not to be allowable deductions
14	Section 82KL	Tax benefit not allowable in respect of certain recouped expenditure
16	Subsection 82SA(2)	Interest on certain convertible notes to be an allowable deduction—where loan made on or after 1 January 1976

Authorised Version C2022C00106 registered 10/03/2022

Item	Provision	Brief description
17	Section 100A	Present entitlement arising from reimbursement agreement
18	Subdivision C of Division 6D of Part III	Trustee beneficiary non-disclosure tax on share of net income
20	Section 105AB	Additional period for distribution by liquidator
21	Section 121AT	Other tax consequences of demutualisation
22	Division 9C of Part III	Assessable income diverted under certain tax avoidance schemes
23	Former Division 10BA of Part III	Australian films
25	Division 16D of Part III	Certain arrangements relating to the use of property
26	Subsection 159GZZZH(2)	Post-cancellation disposals of eligible interests etc.
27	Section 160ABB	Rebate in respect of certain payments by the Commonwealth Savings Bank of Australia
27A	Subsection 170B(7)	Removal of protection relating to discontinued announcement because of later inconsistent return
28	Section 271-105 in Schedule 2F	Amounts subject to family trust distribution tax not assessable

(10AA) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of the *Income Tax Assessment Act 1997* set out in this table.

Amendment of assessments

Item	Provision	Brief description
5	Subsection 26-25(3)	Deduction for interest or royalty if withholding tax paid
15	Subsection 26-25A(2)	Deduction for salary, wages etc. if Seasonal Labour Mobility Program withholding tax paid
22	Section 59-30	Repayment of amounts
23	Subdivision 61-G	Private health insurance offset complementary to Part 2-2 of the *Private Health Insurance Act*

Authorised Version C2022C00106 registered 10/03/2022

Section 170

Amendment of assessments

Item	Provision	Brief description
		2007
26	Section 83A-310	Forfeiture of ESS interests acquired under an employee share scheme
28	Section 83A-340	Rights that become rights to acquire shares
30	Subsection 104-10(3) or (6) Subsection 104-25(2) Subsection 104-45(2) Subsection 104-90(2) Subsection 104-110(2) Subsection 104-205(2) Subsection 104-225(5) Subsection 104-230(5)	The time of a CGT event is decided by there being a contract entered into
40	Paragraph 104-15(4)(a)	CGT event B1: agreement ends without title passing
50	Subsection 104-40(5)	Exception to CGT event D2 where option is exercised
60	Section 108-15	Disposal of collectable that is part of a set
70	Section 108-25	Disposal of personal use asset that is part of a set
80	Section 116-45	Modification to capital proceeds for non-receipt
90	Section 116-50	Modification to capital proceeds for amounts you repay
100	Subsection 122-25(4)	Right or option etc. exercised after roll-over to acquire trading stock
110	Subsection 122-135(4)	Right or option etc. exercised after roll-over to acquire trading stock
120	Subdivision 124-B	Roll-over for assets compulsorily acquired, lost or destroyed
130	Subsection 126-5(3)	CGT event B1: agreement ends without title passing
140	Subsection 126-45(3)	CGT event B1: agreement ends without title passing
150	Subsection 126-50(3)	Right or option etc. exercised after roll-over to acquire trading stock

Authorised Version C2022C00106 registered 10/03/2022

Amendment of assessments

Item	Provision	Brief description
160	Section 126-70	Capital loss disregarded despite choice for no roll-over
165	Subsection 138-15(5)	CGT event B1: agreement ends without title passing
168	Subsection 160-16(1)	Change of a loss carry back choice
170	Subsection 165-115ZA(2)	Reduction in respect of reduced cost base etc. of debt disregarded if commercial debt forgiveness provisions apply
173	Division 250	Asset is put to a tax preferred use by a tax preferred end user
174	Section 295-25	Commissioner makes an assessment as if an entity were a complying superannuation entity or a pooled superannuation trust for the income year and: (a) the entity does not become one; or (b) the Australian Prudential Regulation Authority (APRA) does not receive certain documents about the entity within a specified period
175	Section 295-30	Notice under section 342 of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of that section is revoked, or the decision to give the notice is set aside
176	Subsection 295-195(3)	An amount is excluded from the assessable income of a complying superannuation fund or an RSA provider because of the exercise of an option by the trustee or provider

Authorised Version C2022C00106 registered 10/03/2022

Section 170

Amendment of assessments

Item	Provision	Brief description
177	Section 295-270	Commissioner makes an assessment on the basis of an amount of pre-1 July 88 funding credits being anticipated for an income year and: (a) it becomes clear that those credits will not be available; or (b) APRA does not receive certain documents within a specified period
178	295-490(2)	Deduction is denied because financial assistance funding levy is remitted or there is a refund of an overpayment of the levy
185	Former Subdivision 375-H	Deductions for shares in a film licensed investment company
190	Subdivision 385-E	Primary producer elects to spread or defer tax on profit from forced disposal or death of live stock
200	Section 385-160	Disentitling event happens in relation to your primary production business
210	Division 393	Farm management deposits

(10AB) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of reflecting information contained in an AMMA statement (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the statement is given by an AMIT for a year of income to an entity that is or was a member of the AMIT in respect of the year of income; and

(b) the statement is so given later than 3 months after the end of the year of income.

(11) Nothing in this section prevents the amendment, at any time, of an assessment to decrease the liability of a taxpayer for the purpose of giving effect to section 24 of the *International Tax Agreements Act 1953*.

(12) Nothing in this section prevents the amendment, at any time, of an assessment to increase the liability of a taxpayer if:

Authorised Version C2022C00106 registered 10/03/2022

(a) the Commissioner amends a DPT assessment to decrease the liability of the taxpayer to diverted profits tax; and

(b) that increase is attributable to that decrease.

Definitions

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

DPT assessment has the meaning given by the *Income Tax Assessment Act 1997*.

limited amendment period, for an assessment, means the period within which the Commissioner may amend the assessment:

(a) under item 1, 2, 3 or 4 of the table in subsection (1); or

(b) under paragraph (3)(a) or (b).

medium business entity, for a year of income, means an entity (within the meaning of the *Income Tax Assessment Act 1997*) who:

(a) is not a small business entity for the year of income; and

(b) would be a small business entity for the year of income if:

(i) each reference in Subdivision 328-C (about what is a small business entity) of that Act to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to an entity (within the meaning of that Act) covered by this definition.

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

scheme benefit has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

Authorised Version C2022C00106 registered 10/03/2022

170A Amendment of assessments—interaction with other Acts

Scope

(1) This section applies if a law other than section 170 or this section provides that section 170 does not prohibit the amendment of an assessment if the amendment is made:

(a) for a particular purpose; and

(b) within a particular period (the ***later amendment period***).

Extensions—applications by taxpayer

(2) Section 170 does not prevent the Commissioner amending the assessment even though the later amendment period has ended if the taxpayer applies:

(a) before the end of the later amendment period; and

(b) in the approved form mentioned in subsection 170(5);

for an amendment for the purpose mentioned in paragraph (1)(a) of this section. The Commissioner may amend the assessment to give effect to the decision on the application.

Extensions—giving effect to private rulings

(3) The Commissioner may amend an assessment even though the later amendment period has ended if:

(a) the taxpayer applies for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953*:

(i) before the end of the later amendment period; and

(ii) for the purpose mentioned in paragraph (1)(a); and

(b) the Commissioner makes a private ruling under that Division because of the application.

The Commissioner may amend the assessment to give effect to the ruling.

Extensions—Federal Court orders or taxpayer consent

(4) If:

Authorised Version C2022C00106 registered 10/03/2022

(a) the Commissioner has started to examine the affairs of a taxpayer in relation to an assessment for the purpose mentioned in paragraph (1)(a); and

(b) the Commissioner has not completed the examination before the end of the later amendment period or that period as extended;

the later amendment period may be extended as follows:

Extensions of later amendment period

	In this case:	The position is:
1	The Commissioner, before the end of the later amendment period or that period as extended, applies to the Federal Court of Australia for an order extending the later amendment period	The Court may order an extension of the later amendment period for a specified period if it is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the later amendment period, or that period as extended, because of: (a) any action taken by the taxpayer; or (b) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.
2	The Commissioner, before the end of the later amendment period or that period as extended, requests the taxpayer to consent to extending the later amendment period	The taxpayer may, by notice in writing, consent to extending the later amendment period for a specified period.

(5) The later amendment period for an assessment may be extended more than once under subsection (4).

Authorised Version C2022C00106 registered 10/03/2022

170B Protection for anticipation of certain discontinued announcements

Limit on amending assessments

(1) The Commissioner cannot amend an assessment of a taxpayer about a particular in a way that would produce a less favourable result for the taxpayer if:

(a) the taxpayer has anticipated amendments (see subsection (3)); and

(b) in making the assessment, the particular was ascertained on the basis of the taxpayer's anticipated amendments having been made; and

(c) that way of amending the assessment would instead ascertain the particular on the basis of the anticipated amendments *not* having been made.

Anticipation not to give rise to administrative overpayment

(2) If ascertaining that particular on the basis of the taxpayer's anticipated amendments *not* having been made:

(a) would not result in an amendment of the assessment; but

(b) would, apart from this subsection, result in an amount the Commissioner paid to the taxpayer on the basis of the assessment being an administrative overpayment (within the meaning of section 8AAZN of the *Taxation Administration Act 1953*);

the amount of the administrative overpayment is taken, for the purposes of the taxation law, to be an amount to which the taxpayer is entitled.

*Meaning of **anticipated amendments***

(3) One or more hypothetical amendments of the taxation law, taken together, are ***anticipated amendments*** a taxpayer has if:

(a) the amendments, if made, would reasonably reflect an announcement mentioned in the table in subsection (8); and

(b) a statement made by or on behalf of the taxpayer:

Authorised Version C2022C00106 registered 10/03/2022

(i) is consistent with the amendments having been made; and

(ii) is made in good faith; and

(iii) meets the timing requirement in column 2 of an applicable item of the following table.

Timing requirements for statements

Item	Column 1 In this case:	Column 2 The timing requirement is:
1	The statement is made in a return lodged on or before 14 December 2013	The return: (a) is lodged in the period that the announcement is on foot (see subsection (8)); and (b) was not required to be lodged before the start of that period.
2	The statement is made otherwise than in a return	The statement is made in the period that the announcement is on foot.
3	All of the following apply: (a) the statement is made in a return of the taxpayer lodged after 14 December 2013; (b) the return was not required to be lodged on or before that date; (c) just before the statement is made, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the year of income to which the statement relates	The statement relates to the application of the taxation law (as hypothetically amended by the amendments) to events or circumstances: (a) that happened or existed on or before 14 December 2013; or (b) to the happening or existence of which the taxpayer had definitively committed on or before 14 December 2013.

(4) In determining, for the purpose of paragraph (3)(a), whether amendments would reasonably reflect an announcement, have regard to the following:

(a) the terms of the announcement;

Authorised Version C2022C00106 registered 10/03/2022

(b) any related document published after the announcement on behalf of the Commonwealth Government, the Department of the Treasury or the Commissioner;

(c) if the announcement proposes to apply to a particular kind of scheme or practice—that kind of scheme or practice;

(d) existing provisions of the taxation law, if:

(i) the announcement proposes to effect a particular result in relation to the operation of the taxation law; and

(ii) those existing provisions effect that result, or a substantially similar result, in relation to another matter;

(e) any other relevant matter.

Operation of section

(5) Subsections (1) and (2) apply despite any other provision of the taxation law, apart from subsections (6) and (7), (which are about exceptions).

Exceptions

(6) Subsection (1) does not prevent an amendment if:

(a) the taxpayer applies for the amendment; or

(b) the Commissioner may make the amendment in accordance with item 6 (objection, review or appeal) of the table in subsection 170(1).

(7) Subsections (1) and (2) do not apply in relation to a particular ascertained on the basis of a taxpayer's anticipated amendments, in any year of income, if:

(a) the taxpayer makes a statement (in a return of income or otherwise) for a later year of income that is not consistent with the taxpayer's anticipated amendments; and

(b) if the assessment for the later year of income was to be made on the basis of the taxpayer's anticipated amendments, instead of on the basis of the statement, the result would be less favourable to the taxpayer in that year of income.

Authorised Version C2022C00106 registered 10/03/2022

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see item 27A of the table in subsection 170(10)).

Table of discontinued announcements

(8) The following table lists the announcements to which this section applies. An announcement is ***on foot*** during the period:

(a) starting on the day mentioned in column 2 of the table for the announcement; and

(b) ending on 14 December 2013.

Discontinued announcements

Item	Column 1 Announcement	Column 2 Announcement date
1	Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Bad debts—ensuring consistent treatment in related party financing arrangements".	8 May 2012
2	Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Capital gains tax—refinements to the income tax law in relation to deceased estates", second dot point (which is about modifying application dates for 2 minor changes from the 2011-12 Budget).	8 May 2012
3	The following constitute the announcement: (a) Media Release No. 137, issued by the then Assistant Treasurer on 9 October 2011, titled "No Capital Gains Tax for Properties in Natural Disaster Land Swap Programs"; (b) Budget Paper No. 2, Budget Measures 2012-13, Part 1, topic headed "Capital gains tax—broadening relief for taxpayers affected by natural disasters".	9 October 2011
4	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Income tax relief for water reforms".	10 May 2011
5	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Capital gains tax and other roll-overs for	10 May 2011

Authorised Version C2022C00106 registered 10/03/2022

Discontinued announcements		
Item	**Column 1** **Announcement**	**Column 2** **Announcement date**
	amalgamations of indigenous corporations".	
6	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Securities lending arrangements tax rules—extending the scope to address insolvency issues".	10 May 2011
7	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Capital gains tax—exemption for incentives related to renewable resources or for preserving environmental benefits".	10 May 2011
8	Budget Paper No. 2, Budget Measures 2011-12, Part 1, topic headed "Improvements to the company loss recoupment rules", but not the sentence stating "This measure will modify the continuity of ownership test so that ownership does not need to be traced through certain superannuation entities.".	10 May 2011
9	Mid-Year Economic and Fiscal Outlook 2010-11, Appendix A, Part 2, topic headed "Consolidation—operation of the rules following a demerger".	9 November 2010
10	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2009-10, Part 1, topic headed "Uniform capital allowance regime—technical changes"; (b) Media Release No. 048, issued by the then Assistant Treasurer on 12 May 2009, Attachment D headed "Technical changes to uniform capital allowance regime".	12 May 2009
11	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2007-08, Part 1, topic headed "Consolidation—further improvements to the operation of the income tax law for consolidated groups"; (b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May	8 May 2007

Authorised Version C2022C00106 registered 10/03/2022

Discontinued announcements		
Item	**Column 1** **Announcement**	**Column 2** **Announcement date**
	2007, topic headed "Extension of the single entity rule and entry history rule for certain CGT integrity provisions affecting third parties".	
12	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2007-08, Part 1, topic headed "Consolidation—further improvements to the operation of the income tax law for consolidated groups"; (b) Media Release No. 050, issued by the then Minister for Revenue and Assistant Treasurer on 8 May 2007, topic headed "Trusts joining or leaving a consolidated group or MEC group part way through an income year".	8 May 2007
13	The following constitute the announcement: (a) Budget Paper No. 2, Budget Measures 2006-07, Part 1, topic headed "Simplified imputation system—franking credits available to life tenants"; (b) Media Release No. 010, issued by the then Minister for Revenue and Assistant Treasurer on 20 March 2006, titled "Franking credits available to life tenants".	20 March 2006

(9) In this section:

anticipated amendments, in relation to a taxpayer, has the meaning given by subsection (3).

on foot, in relation to an announcement, has the meaning given by subsection (8).

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

Authorised Version C2022C00106 registered 10/03/2022

170C Power of Commissioner to reduce amount of tax payable in certain cases

For the purposes of the making of an assessment on or after 1 July 1966, the Commissioner may reduce by One cent the amount of tax that would, but for this section, be payable by a taxpayer being a person other than a company or being a company in the capacity of a trustee, before deducting any rebate or credit to which the taxpayer is entitled.

171 Where no notice of assessment served

(1) Where a taxpayer has duly furnished to the Commissioner a return of income, or of profits or gains of a capital nature, and no notice of assessment in respect thereof has been served within 12 months thereafter, the taxpayer may in writing by registered post request the Commissioner to make an assessment.

(2) If within 3 months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income, or of those profits or gains, shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the 3 months with a notice of assessment in respect of which income tax was payable on that day.

171A Limited period to make assessments for nil liability returns for the 2003-04 year of income or earlier

(1) If the circumstances set out in column 2 of the following table apply to a taxpayer in relation to the 2003-04 year of income (a ***nil year***) or an earlier year of income (also a ***nil year***), the Commissioner cannot make an original assessment for that taxpayer for that year in the circumstances set out in column 3:

Authorised Version C2022C00106 registered 10/03/2022

Making assessments		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
1	The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following: (a) the taxpayer had an amount of taxable income, and that no tax was payable; (b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income; and the taxpayer did not deduct a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the later of the following: (a) 31 October 2008; (b) the period of 4 years beginning on the day on which the taxpayer lodged the taxpayer's return of income for the nil year.
2	The taxpayer's return of income for a nil year disclosed, or the Commissioner has given the taxpayer a notice for a nil year that stated, either of the following: (a) the taxpayer had an amount of taxable income, and that no tax was payable; (b) the taxpayer had no taxable income because the taxpayer's deductions equalled the taxpayer's assessable income; and the taxpayer did deduct a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: (a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.
3	The taxpayer had a tax loss in a nil year, none of which has been carried forward to the 2004-05 year of income	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the

Authorised Version C2022C00106 registered 10/03/2022

Making assessments		
Column 1 **Item**	**Column 2** **In this case:**	**Column 3** **the position is:**
		following: (a) the day on which the taxpayer lodged the taxpayer's return of income for the 2004-05 year of income or, if the taxpayer is a member of a consolidated group at the end of that year of income, the day on which head company's return of income for that year of income is lodged; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.
4	(a) the taxpayer had a tax loss in a nil year, some or all of which has been carried forward to the 2004-05 year of income; and (b) the taxpayer or, if the taxpayer is a member of a consolidated group at the end of the 2004-05 year of income, the head company notifies the Commissioner, in the approved form, that the taxpayer or the head company had a tax loss in the nil year	The Commissioner cannot make an original assessment for the taxpayer for the nil year after the period of 6 years beginning on the later of the following: (a) the day on which the Commissioner received the notification; (b) the day on which the taxpayer lodged the taxpayer's return of income for the nil year.

(2) Subsection (1) does not apply in relation to a nil year if:

(a) the Commissioner is of the opinion there has been fraud or evasion; or

(b) had the Commissioner made an assessment, in accordance with the taxpayer's return of income, that the taxpayer had no taxable income or that no tax was payable by the taxpayer (assuming that such an assessment could have been made)—this Act would not have prevented the Commissioner amending the assessment at any time.

Authorised Version C2022C00106 registered 10/03/2022

172 Refunds of amounts overpaid

(1) Where, by reason of an amendment of an assessment, a person's liability to tax (the ***earlier liability***) is reduced:

(a) the amount by which the tax is so reduced is taken never to have been payable for the purposes of:

(i) provisions of this Act that apply the general interest charge; and

(ii) Division 280 in Schedule 1 to the *Taxation Administration Act 1953* (which applies the shortfall interest charge); and

(b) the Commissioner must apply the amount of any tax overpaid in accordance with Divisions 3 and 3A of Part IIB of the *Taxation Administration Act 1953*.

(1A) However, if a later amendment of an assessment is made and all or some of the person's earlier liability in relation to a particular is reinstated, paragraph (1)(a) is taken not to have applied, or not to have applied to the extent that the earlier liability is reinstated.

(2) In subsection (1), unless the contrary intention appears, ***tax*** includes the general interest charge under a provision of this Act, additional tax under Part VII and shortfall interest charge.

Note 1: The general interest charge is worked out under of Part IIA of the *Taxation Administration Act 1953*.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the charge.

172A Consequences of amendment of assessments of tax offset refunds

Amendment increases total of tax offset refunds

(1) If, by reason of an amendment of an assessment, the total of a person's tax offset refunds is increased, the Commissioner must apply the amount of the increase in accordance with Divisions 3 and 3A of Part IIB of the *Taxation Administration Act 1953*.

Authorised Version C2022C00106 registered 10/03/2022

Note: Interest on the amount of the increase may be payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

Amendment reduces total of tax offset refunds

(2) If:

(a) by reason of an amendment of an assessment, the total of a person's tax offset refunds is reduced; and

(b) as a result, an amount applied in accordance with Divisions 3 and 3A of Part IIB of the *Taxation Administration Act 1953* before the amendment was excessive;

the person is liable to pay to the Commonwealth the amount of the excess. The amount is due 21 days after the Commissioner gives the person notice of the amended assessment.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) If any of the amount (the ***overpayment***) the person is liable to pay under subsection (2) remains unpaid after the time by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

(a) starts at the beginning of the day on which the overpayment was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the overpayment;

(ii) general interest charge on any of the overpayment.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

173 Amended assessment to be an assessment

Except as otherwise provided every amended assessment shall be an assessment for all the purposes of this Act.

Authorised Version C2022C00106 registered 10/03/2022

174 Notice of assessment

(1) As soon as conveniently may be after any assessment is made, the Commissioner shall serve notice thereof in writing by post or otherwise upon the person liable to pay the tax.

(3) In subsection (1), ***tax*** includes additional tax under Part VII.

175 Validity of assessment

The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

175A Objections against assessments

(1) A taxpayer who is dissatisfied with an assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(2) A taxpayer cannot object under subsection (1) against an assessment ascertaining that:

(a) the taxpayer has no taxable income; or

(b) the taxpayer has an amount of taxable income and no tax is payable.

(3) Subsection (2) does not prevent the taxpayer from objecting against an assessment if the taxpayer is seeking an increase in:

(a) the taxpayer's liability; or

(b) the total of the taxpayer's tax offset refunds.

Authorised Version C2022C00106 registered 10/03/2022

Part IVA—Schemes to reduce income tax

177A Interpretation

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

associate has the same meaning as in Part X.

Australian customer, of a foreign entity, means another entity who:

(a) is in Australia, or is an Australian entity; and

(b) if the foreign entity is a member of a global group—is not a member of that global group.

Australian entity has the same meaning as in Part X.

Australian permanent establishment of an entity means:

(a) if:

(i) the entity is a resident in a country that has entered into an international tax agreement (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*) with Australia; and

(ii) that agreement contains a permanent establishment article (within the meaning of that subsection);

a permanent establishment (within the meaning of that agreement) in Australia; or

(b) otherwise—a permanent establishment of the person in Australia.

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

DPT base amount has the meaning given by subsection 177P(2).

DPT provisions means sections 177H, 177J, 177K, 177L, 177M, 177N, 177P, 177Q and 177R.

Authorised Version C2022C00106 registered 10/03/2022

DPT tax benefit has the meaning given by subsection 177J(1).

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

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

foreign entity participant:

(a) if a beneficiary of a trust estate or a partner in a partnership is a foreign entity, the trust estate or partnership has a ***foreign entity participant***; and

(b) if a trust estate or partnership has a foreign entity participant (including through a previous operation of this paragraph):

(i) a trust of which the trust estate or partnership is a beneficiary also has a ***foreign entity participant***; and

(ii) a partnership in which the trust estate or partnership is a partner also has a ***foreign entity participant***.

foreign income tax offset means a tax offset allowed under Division 770 of the *Income Tax Assessment Act 1997*.

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

global group means a group of entities, at least one of which is a foreign entity, that are consolidated for accounting purposes as a single group.

innovation tax offset means a tax offset allowed under:

(a) Subdivision 61-P (about early stage venture capital limited partnerships) of the *Income Tax Assessment Act 1997*; or

(b) Subdivision 360-A (about early stage investors in innovation companies) of that Act.

non-refundable R&D tax offset means a tax offset allowed under Division 355 of the *Income Tax Assessment Act 1997*, other than a refundable R&D tax offset.

Authorised Version C2022C00106 registered 10/03/2022

refundable R&D tax offset means a tax offset allowed under Division 355 of the *Income Tax Assessment Act 1997* that is subject to the refundable tax offset rules under section 67-30 of that Act.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct.

significant global entity has the meaning given by section 960-555 of the *Income Tax Assessment Act 1997*.

standard corporate tax rate means the rate of tax in respect of the taxable income of a company covered by paragraph 23(2)(b) of the *Income Tax Rates Act 1986*.

supply has the meaning given by section 9-10 of the GST Act, but does not include any of the following, or of any combination of 2 or more of the following:

(a) a supply of an equity interest in an entity;

(b) a supply of a debt interest in an entity;

(c) a supply of an option for:

(i) a supply of a kind referred to in paragraph (a) or (b); or

(ii) any combination of 2 or more such supplies.

taxpayer includes a taxpayer in the capacity of a trustee.

(2) The definition of ***taxpayer*** in subsection (1) shall not be taken to affect in any way the interpretation of that expression where it is used in this Act other than this Part.

(3) The reference in the definition of ***scheme*** in subsection (1) to a scheme, plan, proposal, action, course of action or course of conduct shall be read as including a reference to a unilateral

Authorised Version C2022C00106 registered 10/03/2022

scheme, plan, proposal, action, course of action or course of conduct, as the case may be.

(4) A reference in this Part to the carrying out of a scheme by a person shall be read as including a reference to the carrying out of a scheme by a person together with another person or other persons.

(5) A reference in this Part (other than sections 177DA and 177J) to a scheme or a part of a scheme being entered into or carried out by a person for a particular purpose shall be read as including a reference to the scheme or the part of the scheme being entered into or carried out by the person for 2 or more purposes of which that particular purpose is the dominant purpose.

177B Operation of Part

(1) Nothing in the following limit the operation of this Part:
  (a) the provisions of this Act (other than this Part);
  (b) the *International Tax Agreements Act 1953*.

(2) This Part does not affect the operation of Division 393 of the *Income Tax Assessment Act 1997* (Farm management deposits).

(3) Where a provision of this Act other than this Part is expressed to have effect where a deduction would be allowable to a taxpayer but for or apart from a provision or provisions of this Act, the reference to that provision or to those provisions, as the case may be, shall be read as including a reference to subsection 177F(1).

(4) Where a provision of this Act other than this Part is expressed to have effect where a deduction would otherwise be allowable to a taxpayer, that provision shall be deemed to be expressed to have effect where a deduction would, but for subsection 177F(1), be otherwise allowable to the taxpayer.

Authorised Version C2022C00106 registered 10/03/2022

177C Tax benefits

(1) Subject to this section, a reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as a reference to:

(a) an amount not being included in the assessable income of the taxpayer of a year of income where that amount would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out; or

(b) a deduction being allowable to the taxpayer in relation to a year of income where the whole or a part of that deduction would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out; or

(ba) a capital loss being incurred by the taxpayer during a year of income where the whole or a part of that capital loss would not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out; or

(baa) a loss carry back tax offset being allowable to the taxpayer where the whole or a part of that loss carry back tax offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out; or

(bb) a foreign income tax offset being allowable to the taxpayer where the whole or a part of that foreign income tax offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out; or

(bbaa) an innovation tax offset being allowable to the taxpayer where the whole or a part of that innovation tax offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out; or

Authorised Version C2022C00106 registered 10/03/2022

(bba) an exploration credit being issued to the taxpayer where the whole or a part of that exploration credit would not have been issued, or might reasonably be expected not to have been issued, to the taxpayer if the scheme had not been entered into or carried out; or

(bc) the taxpayer not being liable to pay withholding tax on an amount where the taxpayer either would have, or might reasonably be expected to have, been liable to pay withholding tax on the amount if the scheme had not been entered into or carried out; or

(bd) a refundable R&D tax offset, or a non-refundable R&D tax offset, being allowable to the taxpayer in relation to a year of income where the whole or a part of the offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out;

and, for the purposes of this Part, the amount of the tax benefit shall be taken to be:

(c) in a case to which paragraph (a) applies—the amount referred to in that paragraph; and

(d) in a case to which paragraph (b) applies—the amount of the whole of the deduction or of the part of the deduction, as the case may be, referred to in that paragraph; and

(e) in a case to which paragraph (ba) applies—the amount of the whole of the capital loss or of the part of the capital loss, as the case may be, referred to in that paragraph; and

(ea) in a case where paragraph (baa) applies—the amount of the whole of the loss carry back tax offset or of the part of the loss carry back tax offset, as the case may be, referred to in that paragraph; and

(f) in a case where paragraph (bb) applies—the amount of the whole of the foreign income tax offset or of the part of the foreign income tax offset, as the case may be, referred to in that paragraph; and

(faa) in a case where paragraph (bbaa) applies—the amount of the whole of the innovation tax offset or of the part of the

Authorised Version C2022C00106 registered 10/03/2022

innovation tax offset, as the case may be, referred to in that paragraph; and

(fa) in a case where paragraph (bba) applies—the amount of the whole of the exploration credit or of the part of the exploration credit, as the case may be, referred to in that paragraph; and

(g) in a case to which paragraph (bc) applies—the amount referred to in that paragraph; and

(h) in a case to which paragraph (bd) applies—the amount of the whole of the offset or of the part of the offset, as the case may be, referred to in that paragraph.

(2) A reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as not including a reference to:

(a) the assessable income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out where:

(i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B, 170-B or 960-D of the *Income Tax Assessment Act 1997*; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(b) a deduction being allowable to the taxpayer in relation to a year of income the whole or a part of which would not have been, or might reasonably be expected not to have been,

Authorised Version C2022C00106 registered 10/03/2022

allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out where:

(i) the allowance of the deduction to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act or the *Income Tax Assessment Act 1997*, except one under Subdivision 960-D of the *Income Tax Assessment Act 1997*; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(c) a capital loss being incurred by the taxpayer during a year of income the whole or part of which would not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out where:

(i) the incurring of the capital loss by the taxpayer is attributable to the making of a declaration, agreement, choice, election or selection, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B, 170-B or 960-D of the *Income Tax Assessment Act 1997*; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, notice or option to be made, given or exercised, as the case may be; or

(ca) a loss carry back tax offset being allowable to the taxpayer the whole or a part of which would not have been, or might

Authorised Version C2022C00106 registered 10/03/2022

reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where:

(i) the allowance of the loss carry back tax offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(d) a foreign income tax offset being allowable to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where:

(i) the allowance of the foreign income tax offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(e) an innovation tax offset being allowable to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where:

Authorised Version C2022C00106 registered 10/03/2022

(i) the allowance of the innovation tax offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(f) a refundable R&D tax offset, or a non-refundable R&D tax offset, being allowable to the taxpayer in relation to a year of income the whole or a part of which offset would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out, where:

(i) the allowance of the offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.

(2A) A reference in this Part to the obtaining by a taxpayer of a tax benefit in connection with a scheme is to be read as not including a reference to:

(a) the assessable income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the

Authorised Version C2022C00106 registered 10/03/2022

assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out where:

(i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act; and

(ii) the scheme consisted solely of the making of the agreement or election; or

(b) a capital loss being incurred by the taxpayer during a year of income the whole or part of which would not have been, or might reasonably be expected not to have been, incurred by the taxpayer during the year of income if the scheme had not been entered into or carried out where:

(i) the incurring of the capital loss by the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act; and

(ii) the scheme consisted solely of the making of the agreement or election; or

(c) an exploration credit being issued to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, issued to the taxpayer if the scheme had not been entered into or carried out, where:

(i) the issuing of the exploration credit to the taxpayer is attributable to the making of a choice under Division 418 of the *Income Tax Assessment Act 1997*; and

(ii) the scheme consisted solely of the making of the choice.

(3) For the purposes of subparagraph (2)(a)(i), (b)(i), (c)(i), (ca)(i), (d)(i), (e)(i) or (f)(i) or (2A)(a)(i), (b)(i) or (c)(i):

(a) the non-inclusion of an amount in the assessable income of a taxpayer; or

(b) the allowance of a deduction to a taxpayer; or

(c) the incurring of a capital loss by a taxpayer; or

Authorised Version C2022C00106 registered 10/03/2022

(ca) the allowance of a foreign income tax offset to a taxpayer; or

(caa) the allowance of an innovation tax offset to a taxpayer; or

(cab) the allowance of a loss carry back tax offset to a taxpayer; or

(cb) the issuing of an exploration credit to a taxpayer; or

(cc) the allowance of a refundable R&D tax offset, or a non-refundable R&D tax offset, to a taxpayer;

is taken to be attributable to the making of a declaration, election, agreement or selection, the giving of a notice or the exercise of an option where, if the declaration, election, agreement, selection, notice or option had not been made, given or exercised, as the case may be:

(d) the amount would have been included in that assessable income; or

(e) the deduction would not have been allowable; or

(f) the capital loss would not have been incurred; or

(fa) the loss carry back tax offset would not have been allowable; or

(g) the foreign income tax offset would not have been allowable; or

(ga) the innovation tax offset would not have been allowable; or

(h) the exploration credit would not have been issued; or

(i) the refundable R&D tax offset, or non-refundable R&D tax offset, would not have been allowable.

(4) To avoid doubt, paragraph (1)(a) applies to a scheme if:

(a) an amount of income is not included in the assessable income of the taxpayer of a year of income; and

(b) an amount would have been included, or might reasonably be expected to have been included, in the assessable income if the scheme had not been entered into or carried out; and

(c) instead, the taxpayer or any other taxpayer makes a discount capital gain (within the meaning of the *Income Tax Assessment Act 1997*) for that or any other year of income.

(5) Subsection (4) does not limit the generality of any other provision of this Part.

Authorised Version C2022C00106 registered 10/03/2022

177CB The bases for identifying tax benefits

(1) This section applies to deciding, under section 177C, whether any of the following (***tax effects***) would have occurred, or might reasonably be expected to have occurred, if a scheme had not been entered into or carried out:

(a) an amount being included in the assessable income of the taxpayer;

(b) the whole or a part of a deduction not being allowable to the taxpayer;

(c) the whole or a part of a capital loss not being incurred by the taxpayer;

(ca) the whole or a part of a loss carry back tax offset not being allowable to the taxpayer;

(d) the whole or a part of a foreign income tax offset not being allowable to the taxpayer;

(daa) the whole or a part of an innovation tax offset not being allowable to the taxpayer;

(da) the whole or a part of an exploration credit not being issued to the taxpayer;

(e) the taxpayer being liable to pay withholding tax on an amount;

(f) the whole or a part of a refundable R&D tax offset, or of a non-refundable tax offset, not being allowable to the taxpayer.

(2) A decision that a tax effect would have occurred if the scheme had not been entered into or carried out must be based on a postulate that comprises only the events or circumstances that actually happened or existed (other than those that form part of the scheme).

(3) A decision that a tax effect might reasonably be expected to have occurred if the scheme had not been entered into or carried out must be based on a postulate that is a reasonable alternative to entering into or carrying out the scheme.

Authorised Version C2022C00106 registered 10/03/2022

(4) In determining for the purposes of subsection (3) whether a postulate is such a reasonable alternative:

(a) have particular regard to:

(i) the substance of the scheme; and

(ii) any result or consequence for the taxpayer that is or would be achieved by the scheme (other than a result in relation to the operation of this Act); but

(b) disregard any result in relation to the operation of this Act that would be achieved by the postulate for any person (whether or not a party to the scheme).

(5) Subsection (4) applies in relation to the scheme as if references in that subsection to the operation of this Act included references to the operation of any foreign law relating to taxation:

(a) if this Part applies to the scheme because of section 177DA or 177J; or

(b) for the purposes of determining whether this Part applies to the scheme because of section 177DA or 177J.

177D Schemes to which this Part applies

Scheme for purpose of obtaining a tax benefit

(1) This Part applies to a scheme if it would be concluded (having regard to the matters in subsection (2)) that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for the purpose of:

(a) enabling a taxpayer (a ***relevant taxpayer***) to obtain a tax benefit in connection with the scheme; or

(b) enabling the relevant taxpayer and another taxpayer (or other taxpayers) each to obtain a tax benefit in connection with the scheme;

whether or not that person who entered into or carried out the scheme or any part of the scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers.

Authorised Version C2022C00106 registered 10/03/2022

Have regard to certain matters

(2) For the purpose of subsection (1), have regard to the following matters:

(a) the manner in which the scheme was entered into or carried out;

(b) the form and substance of the scheme;

(c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;

(d) the result in relation to the operation of this Act that, but for this Part, would be achieved by the scheme;

(e) any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the scheme;

(f) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant taxpayer, being a change that has resulted, will result or may reasonably be expected to result, from the scheme;

(g) any other consequence for the relevant taxpayer, or for any person referred to in paragraph (f), of the scheme having been entered into or carried out;

(h) the nature of any connection (whether of a business, family or other nature) between the relevant taxpayer and any person referred to in paragraph (f).

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

Tax benefit

(3) Despite subsection (1), this Part applies to the scheme only if the relevant taxpayer has obtained, or would but for section 177F obtain, a tax benefit in connection with the scheme.

When schemes entered into etc.

(4) Despite subsection (1), this Part applies to the scheme only if:

Authorised Version C2022C00106 registered 10/03/2022

(a) the scheme has been or is entered into after 27 May 1981; or
(b) the scheme has been or is carried out or commenced to be carried out after that day (and is not a scheme that was entered into on or before that day).

Schemes outside Australia

(5) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia or partly in Australia and partly outside Australia.

177DA Schemes that limit a taxable presence in Australia

Scheme for a purpose including obtaining a tax benefit etc.

(1) Without limiting section 177D, this Part also applies to a scheme if:
(a) under, or in connection with, the scheme:
(i) a foreign entity makes a supply to an Australian customer of the foreign entity; and
(ii) activities are undertaken in Australia directly in connection with the supply; and
(iii) some or all of those activities are undertaken by an Australian entity who, or are undertaken at or through an Australian permanent establishment of an entity who, is an associate of or is commercially dependent on the foreign entity; and
(iv) the foreign entity derives ordinary income, or statutory income, from the supply; and
(v) some or all of that income is not attributable to an Australian permanent establishment of the foreign entity; and
(b) it would be concluded (having regard to the matters in subsection (2)) that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a principal purpose of, or for more than one principal purpose that includes a purpose of:

Authorised Version C2022C00106 registered 10/03/2022

(i) enabling a taxpayer (a ***relevant taxpayer***) to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of the relevant taxpayer's liabilities to tax under a foreign law, in connection with the scheme; or

(ii) enabling the relevant taxpayer and another taxpayer (or other taxpayers) each to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of their liabilities to tax under a foreign law, in connection with the scheme;

whether or not that person who entered into or carried out the scheme or any part of the scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers; and

(c) the foreign entity is a significant global entity for a year of income in which the relevant taxpayer, or one or more other taxpayers, would (but for this Part):

(i) obtain a tax benefit; or

(ii) reduce one or more of their liabilities to tax under a foreign law;

in connection with the scheme.

Have regard to certain matters

(2) For the purposes of paragraph (1)(b), have regard to the following matters:

(a) the matters in subsection 177D(2);

(b) the extent to which the activities that contribute to bringing about the contract for the supply are performed, and are able to be performed, by:

(i) the foreign entity; or

(ii) another entity referred to in subparagraph (1)(a)(iii); or

(iii) any other entities;

(c) the result, in relation to the operation of any foreign law relating to taxation, that (but for this Part) would be achieved by the scheme.

Authorised Version C2022C00106 registered 10/03/2022

Deferral of foreign tax liabilities

(3) For the purposes of paragraph (1)(b), a deferral of a taxpayer's liabilities to tax under a foreign law is taken to be a reduction of those liabilities, unless there are reasonable commercial grounds for the deferral.

Tax benefit

(4) Despite subsection (1), this Part applies to the scheme because of this section only if the relevant taxpayer has obtained, or would but for section 177F obtain, a tax benefit in connection with the scheme.

Commissioner not required to enquire into foreign tax matters

(5) The Commissioner is required to have regard to a matter referred to in paragraph (2)(c) only so far as information relevant to that matter is available to the Commissioner, and is not required to acquire further information in order to have regard to that matter.

Schemes outside Australia

(6) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia or partly in Australia and partly outside Australia.

Income from supply by trust estate or partnership

(7) Subsection (8) applies if:

(a) both of the following conditions are satisfied:

(i) a trust estate or partnership makes a supply to an entity;

(ii) that entity would be an Australian customer of the trust estate or partnership if the trust estate or partnership were a foreign entity; and

(b) because of the supply, an amount of ordinary income, or statutory income, is included in the assessable income of the trust estate or partnership (as worked out for the purposes of working out its net income for a year of income); and

Authorised Version C2022C00106 registered 10/03/2022

(c) the trust estate or partnership has a foreign entity participant at any time in that year of income; and

(d) any of the following conditions are satisfied at the time the supply is made:

(i) the trust estate or partnership is connected with (within the meaning of the *Income Tax Assessment Act 1997*) a foreign entity;

(ii) the trust estate or partnership would be an affiliate (within the meaning of that Act) of a foreign entity if the trust estate or partnership were an individual or a company;

(iii) the trust estate or partnership and a foreign entity are members of the same global group.

(8) For the purposes of this section:

(a) treat the foreign entity mentioned in paragraph (7)(d) as having made the supply; and

(b) treat the entity mentioned in subparagraph (7)(a)(ii) as being an Australian customer of the foreign entity; and

(c) treat the foreign entity as having derived the ordinary income, or statutory income, from the supply.

177E Stripping of company profits

(1) Where:

(a) as a result of a scheme that is, in relation to a company:

(i) a scheme by way of or in the nature of dividend stripping; or

(ii) a scheme having substantially the effect of a scheme by way of or in the nature of a dividend stripping;

any property of the company is disposed of;

(b) in the opinion of the Commissioner, the disposal of that property represents, in whole or in part, a distribution (whether to a shareholder or another person) of profits of the company (whether of the accounting period in which the disposal occurred or of any earlier or later accounting period);

Authorised Version C2022C00106 registered 10/03/2022

(c) if, immediately before the scheme was entered into, the company had paid a dividend out of profits of an amount equal to the amount determined by the Commissioner to be the amount of profits the distribution of which is, in his or her opinion, represented by the disposal of the property referred to in paragraph (a), an amount (in this subsection referred to as the ***notional amount***) would have been included, or might reasonably be expected to have been included, by reason of the payment of that dividend, in the assessable income of a taxpayer of a year of income; and

(d) the scheme has been or is entered into after 27 May 1981, whether in Australia or outside Australia;

the following provisions have effect:

(e) the scheme shall be taken to be a scheme to which this Part applies;

(f) for the purposes of section 177F, the taxpayer shall be taken to have obtained a tax benefit in connection with the scheme that is referable to the notional amount not being included in the assessable income of the taxpayer of the year of income; and

(g) the amount of that tax benefit shall be taken to be the notional amount.

(2) Without limiting the generality of subsection (1), a reference in that subsection to the disposal of property of a company shall be read as including a reference to:

(a) the payment of a dividend by the company;

(b) the making of a loan by the company (whether or not it is intended or likely that the loan will be repaid);

(c) a bailment of property by the company; and

(d) any transaction having the effect, directly or indirectly, of diminishing the value of any property of the company.

(2A) This section:

(a) applies to a non-share equity interest in the same way as it applies to a share; and

Authorised Version C2022C00106 registered 10/03/2022

(b) applies to an equity holder in the same way as it applies to a shareholder; and

(c) applies to a non-share dividend in the same way as it applies to a dividend.

(3) In this section, ***property*** includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

177EA Creation of franking debit or cancellation of franking credits

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

relevant circumstances has a meaning affected by subsection (17).

relevant taxpayer has the meaning given by subsection (3).

scheme for a disposition, in relation to membership interests or an interest in membership interests, has a meaning affected by subsection (14).

(2) An expression used in this section that is defined in the *Income Tax Assessment Act 1997* has the same meaning as in that Act, except to the extent that its meaning is extended by subsection (16), (18) or (19), or affected by subsection (15).

Application of section

(3) This section applies if:

(a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and

(b) either:

(i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or

(ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person

Authorised Version C2022C00106 registered 10/03/2022

in respect of the interest in membership interests, as the case may be; and

(c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and

(d) except for this section, the person (the ***relevant taxpayer***) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and

(e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

Bare acquisition of membership interests or interest in membership interests

(4) It is not to be concluded for the purposes of paragraph (3)(e) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired membership interests, or an interest in membership interests, in the entity.

Commissioner to determine franking debit or deny franking credit

(5) The Commissioner may make, in writing, either of the following determinations:

(a) if the corporate tax entity is a party to the scheme, a determination that a franking debit or exempting debit of the entity arises in respect of each distribution made to the relevant taxpayer or that flows indirectly to the relevant taxpayer;

(b) a determination that no imputation benefit is to arise in respect of a distribution or a specified part of a distribution that is made, or that flows indirectly, to the relevant taxpayer.

A determination does not form part of an assessment.

Authorised Version C2022C00106 registered 10/03/2022

Notice of determination

(6) If the Commissioner makes a determination under subsection (5), the Commissioner must:

(a) in respect of a determination made under paragraph (5)(a)—serve notice in writing of the determination on the corporate tax entity; or

(b) in respect of a determination made under paragraph (5)(b)—serve notice in writing of the determination on the relevant taxpayer.

Publication in national newspaper of determination in relation to listed public company denying imputation benefit

(7) If the Commissioner makes a determination under paragraph (5)(b), in respect of a distribution made by a listed public company, the Commissioner is taken to have served notice in writing of the determination on the relevant taxpayer if the Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

Objections

(9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Effect of determination of franking debit or exempting debit

(10) If the Commissioner makes a determination under paragraph (5)(a):

(a) on the day on which notice in writing of the determination is served on the entity, a franking debit or exempting debit of the corporate tax entity arises in respect of the distribution; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the amount of the franking debit or exempting debit is such amount as is stated in the Commissioner's determination, being an amount that:

(i) the Commissioner considers reasonable in the circumstances; and

(ii) does not exceed the amount of the franking debit or exempting debit of the entity arising under item 1 of the table in section 205-30 of the *Income Tax Assessment 1997* or item 2 of the table in section 208-120 of that Act in respect of the distribution.

Effect of determination that no imputation benefit is to arise

(11) If the Commissioner makes a determination under paragraph (5)(b), the determination has effect according to its terms.

Application of section to non-share dividends

(12) This section:

(a) applies to a non-share equity interest in the same way as it applies to a membership interest; and

(b) applies to an equity holder in the same way as it applies to a member; and

(c) applies to a non-share dividend in the same way as it applies to a distribution.

Meaning of ***interest in membership interests***

(13) A person has an interest in membership interests if:

(a) the person has any legal or equitable interest in the membership interests; or

(b) the person is a partner in a partnership and:

(i) the assets of the partnership include, or will include, the membership interests; or

(ii) the partnership derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests; or

Authorised Version C2022C00106 registered 10/03/2022

(c) the person is a beneficiary of a trust (including a potential beneficiary of a discretionary trust) and:

(i) the membership interests form, or will form, part of the trust estate; or

(ii) the trust derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests.

Meaning of ***scheme for a disposition***

(14) A scheme for a disposition of membership interests or an interest in membership interests includes, but is not limited to, a scheme that involves any of the following:

(a) issuing the membership interests or creating the interest in membership interests;

(b) entering into any contract, arrangement, transaction or dealing that changes or otherwise affects the legal or equitable ownership of the membership interests or interest in membership interests;

(c) creating, varying or revoking a trust in relation to the membership interests or interest in membership interests;

(d) creating, altering or extinguishing a right, power or liability attaching to, or otherwise relating to, the membership interests or interest in membership interests;

(e) substantially altering any of the risks of loss, or opportunities for profit or gain, involved in holding or owning the membership interests or having the interest in membership interests;

(f) the membership interests or interest in membership interests beginning to be included, or ceasing to be included, in any of the insurance funds of a life assurance company.

(15) In determining whether a distribution flows indirectly to a person, assume that the following provisions of the *Income Tax Assessment Act 1997* had not been enacted:

(a) section 295-385 (about income from assets set aside to meet current pension liabilities), section 295-390 (about income

Authorised Version C2022C00106 registered 10/03/2022

from other assets used to meet current pension liabilities) and 295-400 (about income of a PST attributable to current pension liabilities); or

(b) paragraph 320-37(1)(a) (about segregated exempt assets) or paragraph 320-37(1)(d) (about income bonds, funeral policies and scholarship plans).

When imputation benefit is received

(16) A taxpayer to whom a distribution flows indirectly receives an ***imputation benefit*** as a result of the distribution if:

(a) the taxpayer is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* as a result of the distribution; or

(b) where the taxpayer is a corporate tax entity—a franking credit would arise in the franking account of the taxpayer as a result of the distribution.

Note: Where the distribution is made directly to the taxpayer, see subsection 204-30(6) of the *Income Tax Assessment Act 1997* for a definition of ***imputation benefit***.

Meaning of ***relevant circumstances*** *of scheme*

(17) The ***relevant circumstances*** of a scheme include the following:

(a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests, or having interests in membership interests, in the corporate tax entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the relevant taxpayer or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests, or interests in membership interests, in the corporate tax entity);

(b) whether the relevant taxpayer would, in the year of income in which the distribution is made, or if the distribution flows indirectly to the relevant taxpayer, in the year in which the

Authorised Version C2022C00106 registered 10/03/2022

distribution flows indirectly to the relevant taxpayer, derive a greater benefit from franking credits than other entities who hold membership interests, or have interests in membership interests, in the corporate tax entity;

(c) whether, apart from the scheme, the corporate tax entity would have retained the franking credits or exempting credits or would have used the franking credits or exempting credits to pay a franked distribution to another entity referred to in paragraph (b);

(d) whether, apart from the scheme, a franked distribution would have flowed indirectly to another entity referred to in paragraph (b);

(e) if the scheme involves the issue of a non-share equity interest to which section 215-10 of the *Income Tax Assessment Act 1997* applies—whether the corporate tax entity has issued, or is likely to issue, equity interests in the corporate tax entity:

(i) that are similar, from a commercial point of view, to the non-share equity interest; and

(ii) distributions in respect of which are frankable;

(f) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the relevant taxpayer in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the imputation benefits to be received by the relevant taxpayer;

(g) whether a deduction is allowable or a capital loss is incurred in connection with a distribution that is made or that flows indirectly under the scheme;

(ga) whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is sourced, directly or indirectly, from unrealised or untaxed profits;

(h) whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is equivalent to the receipt by the relevant taxpayer of interest or of an amount in the nature of, or similar to, interest;

Authorised Version C2022C00106 registered 10/03/2022

(i) the period for which the relevant taxpayer held membership interests, or had an interest in membership interests, in the corporate tax entity;

(j) any of the matters referred to in subsection 177D(2).

Meaning of ***greater benefit from franking credits***

(18) The following subsection lists some of the cases in which a taxpayer to whom a distribution flows indirectly receives a ***greater benefit from franking credits*** than an entity referred to in paragraph (17)(b). It is not an exhaustive list.

(19) A taxpayer to whom a distribution flows indirectly receives a ***greater benefit from franking credits*** than an entity referred to in paragraph (17)(b) if any of the following circumstances exist in relation to that entity in the year of income in which the distribution giving rise to the benefit is made, and not in relation to the taxpayer if:

(a) the entity is not an Australian resident; or

(b) the entity would not be entitled to any tax offset under Division 207 of the *Income Tax Assessment Act 1997* because of the distribution; or

(c) the amount of income tax that would be payable by the entity because of the distribution is less than the tax offset to which the entity would be entitled; or

(d) the entity is a corporate tax entity at the time the distribution is made, but no franking credit arises for the entity as a result of the distribution; or

(e) the entity is a corporate tax entity at the time the distribution is made, but cannot use franking credits received on the distribution to frank distributions to its own members because:

(i) it is not a franking entity; or

(ii) it is unable to make frankable distributions.

Note: Where the distribution is made directly to the taxpayer, see subsections 204-30(7), (8), (9) and (10) of the *Income Tax Assessment Act 1997* for a list of circumstances in which the taxpayer will be

Authorised Version C2022C00106 registered 10/03/2022

treated as deriving a greater benefit from franking credits than another entity.

177EB Cancellation of franking credits—consolidated groups

Expressions to have same meanings as in section 177EA and Income Tax Assessment Act 1997

(1) Unless the contrary intention appears, expressions used in this section:

(a) if those expressions are defined in section 177EA—have the same meanings as in that section (subject to subsection (10) of this section); and

(b) otherwise—have the same meanings as in the *Income Tax Assessment Act 1997*.

This section and section 177EA do not limit each other

(2) This section does not limit the operation of section 177EA, and section 177EA does not limit the operation of this section.

Application of section

(3) This section applies if:

(a) there is a scheme for a disposition of membership interests in an entity (the ***joining entity***); and

(b) as a result of the disposition, the joining entity becomes a subsidiary member of a consolidated group; and

(c) a credit arises in the franking account of the head company of the group because of the joining entity becoming a subsidiary member of the group; and

(d) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the credit referred to in paragraph (c) to arise in the head company's franking account.

Authorised Version C2022C00106 registered 10/03/2022

Bare acquisition of membership interests

(4) It is not to be concluded for the purposes of paragraph (3)(d) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired membership interests in the joining entity.

Commissioner to determine no franking credit

(5) The Commissioner may make, in writing, a determination that no credit is to arise in the head company's franking account because of the joining entity becoming a subsidiary member of the consolidated group. A determination does not form part of an assessment.

Effect of determination

(6) A determination under subsection (5) has effect according to its terms.

Notice of determination

(7) If the Commissioner makes a determination under subsection (5), the Commissioner must serve notice in writing of the determination on the head company.

Objections

(9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Relevant circumstances

(10) The ***relevant circumstances*** of a scheme include the following:

(a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests in the joining entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the head

Authorised Version C2022C00106 registered 10/03/2022

company or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests in the joining entity);

(b) whether the head company, or a person holding membership interests in the head company, would, in the year of income in which the joining entity became a subsidiary member of the group or any later year of income, derive a greater benefit from franking credits than other persons who held membership interests in the joining entity immediately before it became a subsidiary member of the group;

(c) the extent (if any) to which the joining entity was able to pay a franked dividend or distribution immediately before it became a subsidiary member of the group;

(d) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the head company in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the franking credit benefits to be received by the head company;

(e) the period for which the head company held membership interests in the joining entity;

(f) any of the matters referred to in subsection 177D(2).

Section to apply to exempting credits

(11) This section applies to exempting credits arising in the exempting account of the head company of a consolidated group in the same way that it applies to credits arising in the head company's franking account.

177F Cancellation of tax benefits etc.

(1) Where this Part applies to a scheme in connection with which a tax benefit has been obtained, or would but for this section be obtained, the Commissioner may:

(a) in the case of a tax benefit that is referable to an amount not being included in the assessable income of the taxpayer of a

Authorised Version C2022C00106 registered 10/03/2022

year of income—determine that the whole or a part of that amount shall be included in the assessable income of the taxpayer of that year of income; or

(b) in the case of a tax benefit that is referable to a deduction or a part of a deduction being allowable to the taxpayer in relation to a year of income—determine that the whole or a part of the deduction or of the part of the deduction, as the case may be, shall not be allowable to the taxpayer in relation to that year of income; or

(c) in the case of a tax benefit that is referable to a capital loss or a part of a capital loss being incurred by the taxpayer during a year of income—determine that the whole or a part of the capital loss or of the part of the capital loss, as the case may be, was not incurred by the taxpayer during that year of income; or

(ca) in the case of a tax benefit that is referable to a loss carry back tax offset, or a part of a loss carry back tax offset, being allowable to the taxpayer—determine that the whole or a part of the loss carry back tax offset, or the part of the loss carry back tax offset, as the case may be, is not to be allowable to the taxpayer; or

(d) in the case of a tax benefit that is referable to a foreign income tax offset, or a part of a foreign income tax offset, being allowable to the taxpayer—determine that the whole or a part of the foreign income tax offset, or the part of the foreign income tax offset, as the case may be, is not to be allowable to the taxpayer; or

(da) in the case of a tax benefit that is referable to an innovation tax offset, or a part of an innovation tax offset, being allowable to the taxpayer—determine that the whole or a part of the innovation tax offset, or the part of the innovation tax offset, as the case may be, is not to be allowable to the taxpayer; or

(e) in the case of a tax benefit that is referable to an exploration credit, or a part of an exploration credit, being issued to the taxpayer—determine that:

Authorised Version C2022C00106 registered 10/03/2022

(i) the whole or a part of a junior minerals exploration incentive tax offset that would otherwise be allowable to the taxpayer in relation to the exploration credit, or the part of the exploration credit, as the case may be, is not to be allowable to the taxpayer; or

(ii) the whole or a part of a franking credit that would otherwise arise in the franking account of the taxpayer in relation to the exploration credit, or the part of the exploration credit, as the case may be, is not to arise in the franking account of the taxpayer; or

(f) in the case of a tax benefit that is referable to:

(i) a refundable R&D tax offset; or

(ii) a non-refundable R&D tax offset; or

(iii) a part of a refundable R&D tax offset; or

(iv) a part of a non-refundable R&D tax offset;

being allowable to the taxpayer in relation to a year of income—determine that the whole or a part of the offset, or the part of the offset, as the case may be, is not to be allowable to the taxpayer in relation to that year of income;

and, where the Commissioner makes such a determination, he or she shall take such action as he or she considers necessary to give effect to that determination.

(2) Where the Commissioner determines under paragraph (1)(a) that an amount is to be included in the assessable income of a taxpayer of a year of income, that amount shall be deemed to be included in that assessable income by virtue of such provision of this Act as the Commissioner determines.

(2A) Where a tax benefit that is covered by paragraph 177C(1)(bc) has been obtained, or would but for this section be obtained, by a taxpayer in connection with a scheme to which this Part applies:

(a) the Commissioner may determine that the taxpayer is subject to withholding tax under section 128B on the whole or a part of that amount; and

Authorised Version C2022C00106 registered 10/03/2022

(b) if the Commissioner makes such a determination, he or she must take such action as he or she considers necessary to give effect to that determination.

(2B) A determination under paragraph (1)(c) or subsection (2A) must be in writing.

(2C) Notice of the determination must be given to the taxpayer and, in the case of a determination under subsection (2A), to the person who paid the amount.

(2E) A failure to comply with subsection (2C) does not affect the validity of a determination.

(2F) If the Commissioner makes a determination under subsection (2A), the amount that the Commissioner determines is taken to be subject to withholding tax is taken to have been subject to withholding tax at all times by virtue of such provision of section 128B as the Commissioner determines.

(2G) If the taxpayer is dissatisfied with a determination under paragraph (1)(c) or subsection (2A), the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(3) Where the Commissioner has made a determination under subsection (1) or (2A) in respect of a taxpayer in relation to a scheme to which this Part applies, or the Commissioner has made a DPT assessment in respect of a taxpayer in relation to a scheme to which this Part applies, the Commissioner may, in relation to any taxpayer (in this subsection referred to as the ***relevant taxpayer***):

(a) if, in the opinion of the Commissioner:

(i) there has been included, or would but for this subsection be included, in the assessable income of the relevant taxpayer of a year of income an amount that would not have been included or would not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income if the scheme had not been entered into or carried out; and

Authorised Version C2022C00106 registered 10/03/2022

(ii) it is fair and reasonable that that amount or a part of that amount should not be included in the assessable income of the relevant taxpayer of that year of income;

determine that that amount or that part of that amount, as the case may be, should not have been included or shall not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income; or

(b) if, in the opinion of the Commissioner:

(i) an amount would have been allowed or would be allowable to the relevant taxpayer as a deduction in relation to a year of income if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, but for this subsection, be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; and

(ii) it is fair and reasonable that that amount or a part of that amount should be allowable as a deduction to the relevant taxpayer in relation to that year of income;

determine that that amount or that part, as the case may be, should have been allowed or shall be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; or

(c) if, in the opinion of the Commissioner:

(i) a capital loss would have been incurred by the relevant taxpayer during a year of income if the scheme had not been entered into or carried out, being a capital loss that was not incurred or would not, but for this subsection, be incurred, as the case may be, by the relevant taxpayer during that year of income; and

(ii) it is fair and reasonable that the capital loss or a part of that capital loss should be incurred by the relevant taxpayer during that year of income;

determine that the capital loss or the part, as the case may be, should be incurred by the relevant taxpayer during that year of income; or

(ca) if, in the opinion of the Commissioner:

Authorised Version C2022C00106 registered 10/03/2022

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a loss carry back tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a loss carry back tax offset to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a loss carry back tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a loss carry back tax offset to the relevant taxpayer; or

(d) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a foreign income tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a foreign income tax offset to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a foreign income tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a foreign income tax offset to the relevant taxpayer; or

(da) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as an innovation tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as an innovation tax offset to the relevant taxpayer; and

Authorised Version C2022C00106 registered 10/03/2022

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as an innovation tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as an innovation tax offset to the relevant taxpayer; or

(e) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a junior minerals exploration incentive tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a junior minerals exploration incentive tax offset to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a junior minerals exploration incentive tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as an exploration development incentive tax offset to the relevant taxpayer; or

(f) if, in the opinion of the Commissioner:

(i) an amount of a franking credit would have arisen, or would arise, in the franking account of the relevant taxpayer in relation to an exploration credit, being an amount that did not arise, or would not, apart from this subsection, have arisen, as the case may be, in the franking account of the relevant taxpayer in relation to the exploration credit; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should arise, in the franking account of the relevant taxpayer in relation to the exploration credit;

determine that that amount or that part, as the case may be, should have arisen, or arises, as the case may be, in the franking account of the relevant taxpayer in relation to the exploration credit or

Authorised Version C2022C00106 registered 10/03/2022

(g) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a refundable R&D tax offset, or a non-refundable R&D tax offset, in relation to a year of income if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a refundable R&D tax offset, or a non-refundable R&D tax offset, as the case may be, to the relevant taxpayer in relation to that year of income; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a refundable R&D tax offset, or a non-refundable R&D tax offset, as the case may be, to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a refundable R&D tax offset, or a non-refundable R&D tax offset, as the case may be, to the relevant taxpayer in relation to that year of income;

and the Commissioner shall take such action as he or she considers necessary to give effect to any such determination.

(4) Where the Commissioner makes a determination under subsection (3) by virtue of which an amount is allowed as a deduction to a taxpayer in relation to a year of income, that amount shall be deemed to be so allowed as a deduction by virtue of such provision of this Act as the Commissioner determines.

(5) Where, at any time, a taxpayer considers that the Commissioner ought to make a determination under subsection (3) in relation to the taxpayer in relation to a year of income, the taxpayer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that subsection.

(5A) Subsection (5B) applies if the taxpayer considers that the Commissioner ought to make the determination under

Authorised Version C2022C00106 registered 10/03/2022

subsection (3) because the Commissioner has made a DPT assessment in respect of a taxpayer in relation to a scheme to which this Part applies.

(5B) Despite subsection (5), the request may be posted to or lodged with the Commissioner only after the end of the period of review (within the meaning of section 145-15 in Schedule 1 to the *Taxation Administration Act 1953*) for the DPT assessment.

(6) The Commissioner shall consider the request and serve on the taxpayer, by post or otherwise, a written notice of the Commissioner's decision on the request.

(7) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

177G Amendment of assessments

Nothing in section 170 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection 177F(3).

177H Diverted profits tax—objects

(1) The primary objects of the DPT provisions are:

(a) to ensure that the Australian tax payable by significant global entities properly reflects the economic substance of the activities that those entities carry on in Australia; and

(b) to prevent those entities from reducing the amount of Australian tax they pay by diverting profits offshore through contrived arrangements between related parties.

(2) In addition, the DPT provisions (in combination with Division 145 in Schedule 1 to the *Taxation Administration Act 1953*) have the object of encouraging significant global entities to provide sufficient information to the Commissioner to allow for the timely resolution of disputes about Australian tax.

Authorised Version C2022C00106 registered 10/03/2022

177J Diverted profits tax—application

Scheme for a purpose including obtaining a tax benefit etc.

(1) This Part also applies to a scheme, in relation to a tax benefit (the ***DPT tax benefit***) if:

(a) a taxpayer (a ***relevant taxpayer***) has obtained, or would but for section 177F obtain, the DPT tax benefit in connection with the scheme, in a year of income; and

(b) it would be concluded (having regard to the matters in subsection (2)) that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a principal purpose of, or for more than one principal purpose that includes a purpose of:

(i) enabling the relevant taxpayer to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of the relevant taxpayer's liabilities to tax under a foreign law, in connection with the scheme; or

(ii) enabling the relevant taxpayer and another taxpayer (or other taxpayers) each to obtain a tax benefit, or both to obtain a tax benefit and to reduce one or more of their liabilities to tax under a foreign law, in connection with the scheme;

whether or not that person who entered into or carried out the scheme or any part of the scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers; and

(c) the relevant taxpayer is a significant global entity for the year of income mentioned in paragraph (a); and

(d) a foreign entity is an associate (within the meaning of section 318) of the relevant taxpayer at any time in the year of income mentioned in paragraph (a); and

(e) that foreign entity:

(i) is the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme; or

(ii) is otherwise connected with the scheme or any part of the scheme; and

(f) the relevant taxpayer is not any of the following:

Authorised Version C2022C00106 registered 10/03/2022

(i) a managed investment trust (within the meaning of the *Income Tax Assessment Act 1997*);

(ii) an entity covered by paragraph 275-20(4)(f) of that Act (foreign collective investment vehicle with a wide membership);

(iii) an entity covered by paragraph 275-20(4)(h) of that Act (entity owned by foreign government etc.) that is a foreign entity;

(iv) a complying superannuation entity (within the meaning of that Act);

(v) a foreign pension fund (within the meaning of that Act); and

(g) it is reasonable to conclude that none of the following sections apply in relation to the relevant taxpayer, in relation to the DPT tax benefit:

(i) section 177K ($25 million income test);

(ii) section 177L (sufficient foreign tax test);

(iii) section 177M (sufficient economic substance test).

Have regard to certain matters

(2) For the purposes of paragraph (1)(b), have regard to the following matters:

(a) the matters in subsection 177D(2);

(b) without limiting subsection 177D(2), the extent to which non-tax financial benefits that are quantifiable have resulted, will result, or may reasonably be expected to result, from the scheme;

(c) the result, in relation to the operation of any foreign law relating to taxation, that (but for this Part) would be achieved by the scheme;

(d) the amount of the tax benefit mentioned in paragraph (1)(b).

Deferral of foreign tax liabilities

(3) For the purposes of paragraph (1)(b), a deferral of a taxpayer's liabilities to tax under a foreign law is taken to be a reduction of

Authorised Version C2022C00106 registered 10/03/2022

those liabilities, unless there are reasonable commercial grounds for the deferral.

Modification where thin capitalisation provisions apply

(4) Subsection (5) applies if:

(a) Division 820 of the *Income Tax Assessment Act 1997* (about thin capitalisation) applies to the relevant taxpayer for the year of income mentioned in paragraph (1)(a); and

(b) the DPT tax benefit includes all or part of a debt deduction (within the meaning of that Act); and

(c) the calculation of the amount of the DPT tax benefit involves applying a rate to a debt interest (within the meaning of that Act).

(5) For the purposes of the DPT provisions, in calculating the amount of the DPT tax benefit, apply the rate to the debt interest the entity actually issued (rather than the debt interest that would have existed if the scheme had not been entered into or carried out).

Modification where foreign entity is CFC

(6) Subsection (6A) applies if:

(a) the foreign entity mentioned in paragraph (1)(d) is a CFC (within the meaning of Part X); and

(b) an amount of attributable income (within the meaning of that Part) of the foreign entity has been included as a result of the operation of that Part in the assessable income of:

(i) the relevant taxpayer; or

(ii) an associate (within the meaning given by section 318) of the relevant taxpayer, if the associate is a Part X Australian resident (within the meaning of that Part) and is not a trust or partnership.

(6A) For the purposes of the DPT provisions, reduce the DPT tax benefit to the extent to which the amount included in assessable income as mentioned in paragraph (6)(b):

Authorised Version C2022C00106 registered 10/03/2022

(a) would not have been so included if the scheme had not been entered into or carried out; and

(b) is directly referable to the DPT tax benefit.

Schemes outside Australia

(7) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia or partly in Australia and partly outside Australia.

Non-limitation in relation to other provisions in this Part

(8) This section:

(a) does not limit section 177D, 177DA, 177E, 177EA or 177EB; and

(b) is not limited by those sections.

177K Diverted profits tax—$25 million income test

(1) This section applies in relation to the relevant taxpayer, in relation to the DPT tax benefit, if the sum of the following does not exceed $25 million:

(a) the assessable income of the relevant taxpayer for the year of income mentioned in paragraph 177J(1)(a);

(b) the exempt income of the relevant taxpayer for that year of income;

(c) the non-assessable non-exempt income of the relevant taxpayer for that year of income;

(d) the assessable income of each entity covered by subsection (2) for that year of income;

(e) if the DPT tax benefit is a tax benefit mentioned in paragraph 177C(1)(a)—the amount of the DPT tax benefit.

(2) An entity is covered by this subsection if for the year of income mentioned in paragraph 177J(1)(a):

(a) the entity is an associate (within the meaning given by section 318) of the relevant taxpayer; and

(b) both the entity and the relevant taxpayer:

Authorised Version C2022C00106 registered 10/03/2022

(i) are members of the same global group; and
(ii) are significant global entities because they are members of that group.

177L Diverted profits tax—sufficient foreign tax test

(1) This section applies in relation to the relevant taxpayer, in relation to the DPT tax benefit, if the amount worked out under subsection (2) (foreign tax liability) equals or exceeds 80% of the amount worked out under subsection (6) (reduced Australian tax liability).

Foreign tax liability

(2) The amount is the total of the increases in liability for foreign income tax (within the meaning of the *Income Tax Assessment Act 1997*) of each entity covered by subsection (5) that results, will result, or may reasonably be expected to result, from the scheme during a foreign tax period that corresponds to the year of income mentioned in paragraph 177J(1)(a).

(3) The regulations may provide for a method of working out increases in foreign tax liability for the purposes of subsection (2):
(a) for all situations; or
(b) for specified situations.

(4) If the regulations provide for such a method, apply that method in working out increases in foreign tax liability for the purposes of subsection (2) in relevant situations.

(5) An entity is covered by this subsection if:
(a) the entity is a foreign entity; and
(b) the entity is the relevant taxpayer or an associate (within the meaning given by section 318) of the relevant taxpayer; and
(c) the entity:
(i) is the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme; or

Authorised Version C2022C00106 registered 10/03/2022

(ii) is otherwise connected with the scheme or any part of the scheme.

Reduced Australian tax liability

(6) The amount is:

(a) if the DPT tax benefit is a tax benefit mentioned in paragraph 177C(1)(a), (b), (ba) or (bc)—the amount of the tax benefit multiplied by the standard corporate tax rate; or

(b) otherwise—the amount of the DPT tax benefit.

(7) If the relevant taxpayer must withhold an amount in respect of withholding tax as a result of the tax benefit, reduce the amount worked out under subsection (6) by the amount withheld.

177M Diverted profits tax—sufficient economic substance test

(1) This section applies in relation to the relevant taxpayer, in relation to the DPT tax benefit, if the profit made as a result of the scheme by each entity covered by subsection (2) reasonably reflects the economic substance of the entity's activities in connection with the scheme.

(2) This subsection covers an entity if:

(a) the entity is the relevant taxpayer or an associate (within the meaning given by section 318) of the relevant taxpayer; and

(b) any of the following apply:

(i) the entity entered into or carried out the scheme or any part of the scheme;

(ii) the entity is otherwise connected with the scheme or any part of the scheme.

(3) However, subsection (2) does not cover an entity if the entity's role in the scheme is minor or ancillary.

(4) In determining whether the profit made as a result of the scheme by an entity reasonably reflects the economic substance of the entity's activities in connection with the scheme, have regard to:

Authorised Version C2022C00106 registered 10/03/2022

(a) the functions that the entity performs in connection with the scheme, taking into account assets used and risks assumed by the entity in connection with the scheme; and

(b) the documents covered by section 815-135 of the *Income Tax Assessment Act 1997*, to the extent that they are relevant to the matters mentioned in paragraph (a) or to any other aspect of the determination; and

(c) any other relevant matters.

177N Diverted profits tax—consequences

If this Part applies to a scheme because of section 177J:

(a) section 177P applies to the relevant taxpayer mentioned in section 177J; and

(b) the Commissioner cannot make a determination under subsection 177F(1) or (2A) in relation to the scheme merely because of section 177J.

177P Diverted profits tax—liability

(1) The relevant taxpayer is liable to pay tax at the rate declared by the Parliament on:

(a) if this Part applies to a scheme in respect of the relevant taxpayer for the year of income mentioned in paragraph 177J(1)(a), in relation to one DPT tax benefit—the DPT base amount for that DPT tax benefit; or

(b) if this Part applies to a scheme in respect of the relevant taxpayer for the year of income mentioned in paragraph 177J(1)(a), in relation to more than one DPT tax benefit—the sum of the DPT base amounts for those DPT tax benefits.

Note: The tax is imposed by the *Diverted Profits Tax Act 2017* and the rate of the tax is set out in that Act.

(2) The ***DPT base amount*** for a DPT tax benefit is:

Authorised Version C2022C00106 registered 10/03/2022

(a) if the DPT tax benefit is a tax benefit mentioned in paragraph 177C(1)(a), (b), (ba) or (bc)—the amount of the DPT tax benefit; or

(b) otherwise—the amount of the DPT tax benefit divided by the standard corporate tax rate.

(3) The tax is due and payable at the end of 21 days after the Commissioner gives the relevant taxpayer notice of the assessment of the amount of the tax for the year of income mentioned in paragraph 177J(1)(a).

Note: For assessments of the amount of the tax see Divisions 145 and 155 in Schedule 1 to the *Taxation Administration Act 1953*.

177Q Diverted profits tax—general interest charge on unpaid diverted profits tax or shortfall interest charge

If an amount of diverted profits tax or shortfall interest charge that an entity is liable to pay remains unpaid after the time by which it is due to be paid, the entity is liable to pay the general interest charge on the unpaid amount for each day in the period that:

(a) starts at the beginning of the day by which the amount was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the diverted profits tax or shortfall interest charge;

(ii) general interest charge on any of the diverted profits tax or shortfall interest charge.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

177R Diverted profits tax—when shortfall interest charge is payable

An amount of shortfall interest charge that an entity is liable to pay under section 280-102C in Schedule 1 to the *Taxation Administration Act 1953* is due and payable 21 days after the day on which the Commissioner gives the entity notice of the charge.

Authorised Version C2022C00106 registered 10/03/2022

Part VA—Tax file numbers

Division 1—Preliminary

202 Objects of this Part

The objects of this Part are, by means of the establishment of a system of tax file numbers:

(a) to increase the effectiveness and efficiency of the matching of information contained in reports given to the Commissioner under this Act or the regulations with information disclosed in income tax returns by taxpayers; and

(b) to prevent evasion of liability to taxation under the laws of the Commonwealth relating to income tax; and

(c) to facilitate the administration of any legislation enacted by the Parliament under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respect of the costs of courses of study provided by institutions of higher education or vocational education and training, or in respect of the costs of other services and amenities available to students in connection with such institutions; and

(d) to facilitate the administration of any legislation enacted by the Parliament to impose charge equal to any shortfall in the amount spent by employers on training employees; and

(e) to facilitate the administration of a provision of an Act, being a provision which authorises the collection of a tax file number as a condition to the giving of personal assistance within the meaning of the *Data-matching Program (Assistance and Tax) Act 1990*; and

(f) to facilitate the administration of the *Data-matching Program (Assistance and Tax) Act 1990*; and

(g) to facilitate the administration of any legislation enacted by the Parliament in relation to the imposition of charge on an employer's superannuation guarantee shortfall; and

Authorised Version C2022C00106 registered 10/03/2022

(ga) to facilitate the administration of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*; and

(gaa) to facilitate the administration of Part 2 of the *Student Assistance Act 1973*, which deals with ABSTUDY student start-up loans and debts in relation to those loans; and

(h) to facilitate the administration of Division 6 of Part 4A of the *Student Assistance Act 1973*; and

(hab) to facilitate the administration of Chapter 2AA of the *Social Security Act 1991*, which deals with student start-up loans and debts in relation to those loans; and

(hac) to facilitate the administration of the *Trade Support Loans Act 2014*; and

(ha) to facilitate the administration of:

(i) Part 2B.3 of the *Social Security Act 1991*; or

(ii) a provision of an instrument under Chapter 2B of the *Social Security Act 1991* (as in force before the commencement of Schedule 2 to the *Youth Allowance Consolidation Act 2000*) establishing a Student Financial Supplement Scheme, being a provision relating to the recovery through the taxation system of a student's outstanding indebtedness in respect of financial supplement paid to the student in accordance with the Scheme; and

(hb) to facilitate the administration of Part 3.18 of the *Social Security Act 1991*; and

(hc) to facilitate the administration of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986*; and

(i) to facilitate:

(i) the administration of Part 25A of the *Superannuation Industry (Supervision) Act 1993* in relation to individuals; and

(ii) the administration of that Act in relation to superannuation entities (within the meaning of that Act) or regulated exempt public sector superannuation

Authorised Version C2022C00106 registered 10/03/2022

schemes (within the meaning of Part 25A of that Act); and

(ia) to facilitate the administration of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (including the administration of registers by State or Territory authorities (within the meaning of that Act) in accordance with section 18 of that Act); and

(j) to facilitate the administration of the *Small Superannuation Accounts Act 1995*; and

(ka) to facilitate:

(i) the administration of Part 11 of the *Retirement Savings Accounts Act 1997* in relation to individuals; and

(ii) the administration of that Act in relation to RSA providers; and

(l) to facilitate the administration of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; and

(la) to facilitate the administration of the *Paid Parental Leave Act 2010*; and

(m) to facilitate the administration of the *A New Tax System (Family Assistance) (Administration) Act 1999* and section 5 of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*; and

(o) to facilitate the administration of section 204A of the *Social Security (Administration) Act 1999*; and

(p) to facilitate the administration of the fuel tax law (within the meaning of section 110-5 of the *Fuel Tax Act 2006*); and

(q) to facilitate the administration of Division 2AA of Part II of the *Banking Act 1959*; and

(r) to facilitate investigations under the *Inspector-General of Taxation Act 2003* (and provisions of the *Ombudsman Act 1976* to the extent that they are applied by the *Inspector-General of Taxation Act 2003*); and

Authorised Version C2022C00106 registered 10/03/2022

(s) to facilitate the administration of Subdivision 14-D in Schedule 1 to the *Taxation Administration Act 1953*; and

(sa) to facilitate the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(t) to facilitate the administration of the *Migration Act 1958*; and

(u) to facilitate the administration of Part 9.1A of the *Corporations Act 2001* and Part 6-7A of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

202A Interpretation

In this Part, unless the contrary intention appears:

alienated personal services payment has the meaning given by section 13-10 in Schedule 1 to the *Taxation Administration Act 1953*.

applicant, in relation to an application for the issue of a tax file number, means the person specified in the application as the person by whom or on whose behalf the issue of a tax file number is sought.

bank means:

(a) the Reserve Bank of Australia;

(b) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

child means a person who is less than 16 years of age.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

Authorised Version C2022C00106 registered 10/03/2022

eligible PAYG payment means:

(a) a payment from which an amount must be withheld under Subdivision 12-B (other than section 12-55), Subdivision 12-C or Subdivision 12-D in Schedule 1 to the *Taxation Administration Act 1953*; or

(aa) an alienated personal services payment in respect of which Division 13 in Schedule 1 to the *Taxation Administration Act 1953* requires an amount to be paid to the Commissioner; or

(b) a non-cash benefit in respect of which an amount is payable to the Commissioner under section 14-5 in Schedule 1 to the *Taxation Administration Act 1953* because of the application of that section in relation to Subdivision 12-B, 12-C or 12-D of that Schedule;

and has a meaning affected by section 202AA.

entity means a body corporate or unincorporated association, but does not include a natural person or a partnership.

financial institution means:

(a) a bank; or

(b) a co-operative housing society.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

interest-bearing account means any facility, other than an RSA, by which a financial institution:

(a) does any one or more of the following:

(i) accepts deposits of money to the credit of a person;

(ii) allows withdrawals from the money deposited;

(iii) pays cheques or payment orders drawn on the institution by, or collects cheques or payment orders on behalf of, the person; and

(b) pays or credits interest, or amounts in the nature of interest, on the balance standing to the credit of the person from time to time.

Authorised Version C2022C00106 registered 10/03/2022

interest-bearing deposit means a deposit of money, other than into an RSA, with a financial institution, in consideration of which the financial institution pays or credits interest, or amounts in the nature of interest, to a person.

investment body means a person who is an investment body within the meaning of section 202D.

investment to which this Part applies means an investment of a kind mentioned in section 202D.

investor means a person who is an investor within the meaning of section 202D.

payer means:

(a) a person who makes an eligible PAYG payment (other than an alienated personal services payment), or is likely to make such a payment; or

(b) a person who receives an alienated personal services payment, or is likely to receive such a payment.

person includes a partnership, a company and a person in the capacity of trustee of a trust estate.

public company means a public company within the meaning of the *Corporations Act 2001*.

recipient means:

(a) a person who receives an eligible PAYG payment (other than an alienated personal services payment), or is likely to receive such a payment; or

(b) a person in relation to whose personal services income (within the meaning of the *Income Tax Assessment Act 1997*) a payer receives an alienated personal services payment, or is likely to receive such a payment.

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

Authorised Version C2022C00106 registered 10/03/2022

solicitor means a solicitor, barrister and solicitor or legal practitioner of the High Court or of the Supreme Court of a State or Territory.

tax file number, in relation to a person, means a number issued to the person by the Commissioner, being a number that is either:

(a) a number issued to the person under Division 2; or

(aa) a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*; or

(b) a number notified, before the commencement of this section, to the person as the person's income tax file number.

TFN declaration means a declaration made for the purposes of section 202C.

unit trust means a trust to which a unit trust scheme relates, and includes:

(a) a cash management trust;

(b) a property trust;

(c) an arrangement declared by the Minister under section 202AB to be a unit trust for the purposes of this definition;

but does not include any arrangement declared by the Minister under section 202AB not to be a unit trust for the purposes of this definition.

unit trust scheme means an arrangement made for the purpose, or having the effect, of providing, for a person who has funds available for investment, facilities for participation by the person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust.

202AA Definition of *eligible PAYG payment*

In applying the definition of ***eligible PAYG payment*** in section 202A:

Authorised Version C2022C00106 registered 10/03/2022

(a) a requirement to withhold a nil amount is treated as a requirement to withhold an amount; and

(b) a requirement to pay a nil amount to the Commissioner is treated as a requirement to pay an amount to the Commissioner; and

(c) the following provisions in Schedule 1 to the *Taxation Administration Act 1953* are to be disregarded, namely: section 12-1, subsection 12-45(2), subsection 12-110(2) and subsection 12-115(2).

202AB Declaration that an arrangement is, or is not, a unit trust

The Minister may, by legislative instrument, declare that an arrangement is, or is not, a ***unit trust*** for the purposes of the definition of that term in section 202A.

Authorised Version C2022C00106 registered 10/03/2022

Division 2—Issuing of tax file numbers

202B Application for tax file number

(1) A person may apply to the Commissioner for the issue of a tax file number.

(2) An application must be in the approved form. The approved form may require the application to include documentary evidence of the applicant's identity.

202BA Issuing of tax file numbers

(1) Subject to subsection (3), if, on an application for a tax file number, the Commissioner is satisfied that the applicant's identity has been established, the Commissioner shall issue a tax file number to the applicant.

(2) If, on such an application, the Commissioner is not satisfied as to the applicant's true identity, the Commissioner may refuse the application.

(3) If, on such an application, the Commissioner is satisfied that:

(a) the applicant already has a tax file number; or

(b) a notice under section 202BD in relation to the applicant is in force;

the Commissioner shall refuse the application.

(4) The Commissioner may, without an application being made, issue a tax file number to a person whenever it is necessary to do so in connection with the performance of a function of the Commissioner under a law of the Commonwealth relating to taxation.

(5) The Commissioner shall issue a tax file number to a person by giving the person a written notice of the number.

Authorised Version C2022C00106 registered 10/03/2022

(6) The Commissioner shall refuse an application for a tax file number by giving the applicant a written notice of the refusal and of the reasons for the refusal.

202BB Current tax file number

On the issue of a tax file number to a person, any tax file number previously issued to the person and not already cancelled or withdrawn ceases to have effect.

202BC Deemed refusal by Commissioner

(1) If the Commissioner has not decided an application for a tax file number within 28 days after the application is made, the applicant may, at any time, give to the Commissioner written notice that the applicant wishes to treat the application as having been refused.

(2) If in the application the applicant has stated the name and address of one or more payers of the applicant, subsection (1) does not apply at a particular time if at that time a notice has been issued to each such payer under section 202BD in relation to the applicant and each such notice is in force.

(3) For the purposes of Division 6, where an applicant gives notice under subsection (1), the Commissioner shall be taken to have refused the application for a tax file number on the day on which the notice was given.

202BD Interim notices

(1) Where an application for a tax file number states the name and address of a payer of the applicant, the Commissioner may give to the payer a notice under this section in relation to the applicant.

(2) The notice remains in force for the period of 28 days commencing on the day specified in the notice.

(3) The notice shall specify:

(a) the applicant's name as shown in the application; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the last day of the period for which the notice remains in force.

(4) On giving the notice, the Commissioner shall inform the applicant that the notice has been given.

(5) The notice may be given to take effect on the expiration of a notice previously given to the payer under this section in relation to the applicant.

(6) Where, while an application for a tax file number is pending, the applicant notifies the Commissioner, in writing, of the name and address of a payer of the applicant (being a payer whose name and address is not stated on the application), the payer's name and address shall, at the end of the period of 7 days after the notification, be taken to have been stated on the application.

202BE Cancellation of tax file numbers

(1) Where the Commissioner concludes that a tax file number was issued to a person under an identity that is not the person's true identity, the Commissioner may, by written notice given to the person, cancel the tax file number.

(2) The Commissioner shall set out in the notice the reasons for the Commissioner's conclusion.

202BF Alteration of tax file numbers

The Commissioner may, at any time, by written notice given to a person who has a tax file number:

(a) withdraw that number; and

(b) issue to the person a new tax file number in place of the withdrawn number.

Authorised Version C2022C00106 registered 10/03/2022

Division 3—Quotation of tax file numbers by recipients of eligible PAYG payments

202C TFN declarations by recipients of eligible PAYG payments

(1) A person who is a recipient of a payer, or expects to become a recipient of a payer, may make a TFN declaration in relation to the payer.

(2) To be effective, the declaration must be made to the payer or the Commissioner, and must be made in the approved form.

202CA Operation of TFN declaration

(1) Subject to this Division, a TFN declaration commences to have effect when it is made.

Note: Under section 202CB, a TFN declaration is not effective unless the tax file number of the recipient is stated in the declaration.

(1A) A TFN declaration ceases to have effect when the recipient makes another TFN declaration in relation to the payer.

(1B) A TFN declaration ceases to have effect 12 months after it is made if no eligible PAYG payment is made by the payer to the recipient during that 12 month period.

(1C) If:

(a) the payer makes an eligible PAYG payment to the recipient after the TFN declaration is made; and

(b) a period of 12 months then elapses without any further eligible PAYG payment being made by the payer to the recipient;

then the TFN declaration ceases to have effect at the end of that period of 12 months.

(2) A TFN declaration to which a determination under subsection (3) applies ceases to have effect at the end of the day fixed by the determination.

Authorised Version C2022C00106 registered 10/03/2022

(3) The Commissioner may, by legislative instrument, determine that:
   (a) all TFN declarations; or
   (b) a specified class of TFN declarations;
shall cease to have effect at the end of the day specified in the determination.

202CB Quotation of tax file number in TFN declaration

(1) Subject to subsections (2) and (4) and subsection 202CE(2), a TFN declaration is not effective for the purposes of this Part unless the tax file number of the recipient is stated in the declaration.

(2) For the purposes of this Part, a recipient is taken to have stated his or her tax file number in a TFN declaration if the declaration includes a statement:
   (a) that an application by the recipient for a tax file number is pending; or
   (b) that the recipient has a tax file number but does not know what it is and has asked the Commissioner to inform him or her of the number.

(3) Where:
   (a) a TFN declaration includes such a statement; and
   (b) the recipient who made the declaration fails to inform the payer of the recipient's tax file number within 28 days after making the declaration;
subsection (2) does not apply to the declaration in respect of any time after the end of the period of 28 days.

(4) For the purposes of this Part, a recipient is taken to have stated his or her tax file number in a TFN declaration in relation to a payer while a notice under section 202BD given to the payer in relation to the recipient is in force.

(5) If:
   (a) the tax file number of a recipient is withdrawn under section 202BF; and

Authorised Version C2022C00106 registered 10/03/2022

(b) at the time of the withdrawal, the number is stated in a TFN declaration;

the declaration is taken to state the tax file number of the recipient in spite of the withdrawal of the number.

(6) Subsections (2) to (4) do not apply to a TFN declaration given to the Student Assistance Secretary, to the Employment Secretary or to the Chief Executive Centrelink:

(a) by a person who is an applicant for an austudy payment, a CDEP Scheme Participant Supplement, a jobseeker payment or a youth allowance under the *Social Security Act 1991*; or

(aaa) by a person who is not a member of a couple and is an applicant for a parenting payment under the *Social Security Act 1991*; or

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a payment referred to in paragraph (a).

Persons receiving benefits under Veterans' Entitlements Act

(7) Subsections (2) to (4) do not apply to a TFN declaration given to the Veterans' Affairs Secretary:

(a) by a person who is an applicant for a pension or allowance under the *Veterans' Entitlements Act 1986*; or

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a pension, veteran payment (within the meaning of that Act) or allowance under that Act.

Persons receiving benefits under Military Rehabilitation and Compensation Act

(8) Subsections (2) to (4) do not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:

(a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or

Authorised Version C2022C00106 registered 10/03/2022

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

202CC Making a replacement TFN declaration in place of an ineffective declaration

Nothing in this Division prevents a recipient making a new TFN declaration in place of a TFN declaration that is ineffective under subsection 202CB(1).

202CD Sending of TFN declaration to Commissioner

(1) Where a recipient gives a payer a TFN declaration, the payer shall:

(a) countersign the original of the declaration;

(b) within 14 days after the declaration is made, send the original to the office of a Deputy Commissioner; and

(c) retain the copy of the declaration in accordance with subsection (6).

Penalty: 10 penalty units.

(4) If:

(a) a TFN declaration, when given to a payer, does not quote the recipient's tax file number; and

(b) before the payer sends the declaration to the Deputy Commissioner, the recipient informs the payer of the recipient's tax file number;

the payer shall write the number on the declaration and on the copy.

Penalty: 10 penalty units.

(5) Where a tax file number has been written on a declaration under subsection (4), the declaration shall be regarded as stating that number as the tax file number of the recipient who made the declaration.

Authorised Version C2022C00106 registered 10/03/2022

(5A) A payer who fails to comply with subsection (1) or (4) is liable to pay to the Commissioner a penalty of 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to civil penalties.

(6) The payer shall retain the copy of a TFN declaration until the second 1 July after the day on which the declaration ceases to have effect.

202CE Effect of incorrect quotation of tax file number

(1) If the Commissioner is satisfied:

(a) that the tax file number stated in a TFN declaration:

(i) has been cancelled or withdrawn since the declaration was given; or

(ii) is otherwise wrong; and

(b) that the recipient has a tax file number;

the Commissioner may give to the payer concerned written notice of the incorrect statement and the recipient's tax file number.

(2) If a notice is given under subsection (1), the TFN declaration shall be regarded, for the purposes of this Part, as having always stated the recipient's tax file number.

(3) If:

(a) the Commissioner is satisfied that the tax file number stated in a TFN declaration:

(i) has been cancelled since the declaration was given; or

(ii) is for any other reason not the recipient's tax file number; and

(b) the Commissioner is not satisfied that the recipient has a tax file number;

the Commissioner may, by written notice given to the payer, inform the payer accordingly.

Authorised Version C2022C00106 registered 10/03/2022

(4) A notice under subsection (3) takes effect on the day specified in the notice, being a day not earlier than the day on which a copy of the notice is given to the recipient under subsection (5).

(5) The Commissioner shall give a copy of any notice under subsection (3) to the recipient concerned, together with a written statement of the reasons for the decision to give the notice.

(6) On and from the day on which a notice under subsection (3) takes effect, the TFN declaration concerned shall be taken not to state the tax file number of the recipient concerned.

(7) Subsection (6) does not apply to a TFN declaration given to the Employment Secretary or to the Chief Executive Centrelink:

(a) by a person who is an applicant for an austudy payment, a CDEP Scheme Participant Supplement, a jobseeker payment or a youth allowance under the *Social Security Act 1991*; or

(aaa) by a person who is not a member of a couple and is an applicant for a parenting payment under the *Social Security Act 1991*; or

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a payment referred to in paragraph (a).

Persons receiving benefits under Veterans' Entitlements Act

(8) Subsection (6) does not apply to a TFN declaration given to the Veterans' Affairs Secretary:

(a) by a person who is an applicant for a pension or allowance under the *Veterans' Entitlements Act 1986*; or

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, a pension, veteran payment (within the meaning of that Act) or allowance under that Act.

(9) Subsection (6) does not apply to a TFN declaration given to the Military Rehabilitation and Compensation Commission:

Authorised Version C2022C00106 registered 10/03/2022

(a) by a person who is an applicant for compensation or an allowance under the *Military Rehabilitation and Compensation Act 2004*; or

(b) by a person who is a recipient for the purposes of this Part because the person receives, or expects to receive, such compensation or allowance.

202CEA Validation notices

(1) The Commissioner may give a payer a notice under subsection (2) if:

(a) the payer gives the Commissioner information that the payer believes to be:

(i) the full name, tax file number and date of birth of a person; or

(ii) the full name, tax file number, date of birth and address of a person; and

(b) the Commissioner is satisfied that:

(i) the person is a recipient of the payer; and

(ii) the recipient has made a TFN declaration in relation to the payer; and

(c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.

(2) The notice must state whether or not the Commissioner is able to validate the information given.

(3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under subsection 202CE(3).

(4) If a person states his or her tax file number in a TFN declaration in relation to the payer, the payer may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner to validate information about the person under this section.

Authorised Version C2022C00106 registered 10/03/2022

202CF Payer must notify Commissioner if no TFN declaration by recipient

(1) If, after the commencement of this section, a person (the ***payer***) commences a relationship with another person under which, or as a result of which, the payer will make (or will be likely to make) eligible PAYG payments to a person (the ***recipient***), whether or not the recipient is a party to the relationship, the payer must give notice to the Commissioner in the approved form, within 14 days after the commencement of the relationship, unless a TFN declaration made by the recipient to the payer is in effect at the end of that 14 day period.

(1A) However, subsection (1) does not apply if the recipient's tax file number has been disclosed to the payer under section 202CG before the end of that 14 day period.

(2) If, at the commencement of this section, a person (the ***payer***) has a relationship with another person under which, or as a result of which, the payer will make (or will be likely to make) eligible PAYG payments to a person (the ***recipient***), whether or not the recipient is a party to the relationship, the payer must give notice to the Commissioner in the approved form, not later than 31 October 2000, unless a TFN declaration made by the recipient to the payer is in effect on 31 October 2000.

(3) A payer who fails to comply with subsection (1) or (2) is liable to pay to the Commissioner a penalty of 10 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 in Schedule 1 to the *Taxation Administration Act 1953* contains machinery provisions relating to civil penalties.

202CG Disclosing recipients' tax file numbers to payers

A taxation officer (within the meaning of the *Income Tax Assessment Act 1997*) may disclose a recipient's tax file number to a payer of the recipient if:

Authorised Version C2022C00106 registered 10/03/2022

(a) the recipient provided the number in a TFN declaration to the Commissioner in relation to the payer; or

(b) the recipient made a TFN declaration to the Commissioner in relation to the payer that included a statement referred to in subsection 202CB(2).

Authorised Version C2022C00106 registered 10/03/2022

Division 4—Quotation of tax file numbers in connection with certain investments

202D Explanation of terms: investment, investor, investment body

(1A) This section:

(a) applies to a non-share equity interest in the same way as it applies to a share; and

(b) applies to an equity holder in the same way as it applies to a shareholder.

(1) Investments of the kinds mentioned in column 1 of the following table are investments to which this Part applies, whether or not the investments come into existence before the commencement of this section.

Table

Item No.	Column 1 Investment	Column 2 Investor	Column 3 Investment body
1	Interest-bearing account with a financial institution	The person in whose name the account is held	The financial institution
2	Interest-bearing deposit (other than a deposit to the credit of an account) with a financial institution	The person in whose name the deposit is made	The financial institution
3	Loan of money to a government body or to a body corporate (other than a deposit to the credit of an account referred to in item 1, a deposit to which item 2 applies or a loan made in the ordinary course of the business of providing	The person in whose name the money is lent	The government body or body corporate

Authorised Version C2022C00106 registered 10/03/2022

Item No.	Column 1 Investment	Column 2 Investor	Column 3 Investment body
	business or consumer finance by a person who carries on that business)		
4	Deposit of money with a solicitor for the purpose of: (a) being invested by the solicitor; or (b) being lent under an agreement to be arranged by or on behalf of the solicitor	The person for whose benefit the money is to be invested or lent	The solicitor
5	Units in a unit trust	The person in whose name the units are held	The manager of the unit trust
6	Shares in a public company	The shareholder	The company
7	An investment-related betting chance	The betting investor	The betting investment body

(2) In relation to an investment of a kind mentioned in column 1 of an item in the table in subsection (1):
  (a) the investor is the person specified in column 2 of the item; and
  (b) the investment body is the person specified in column 3 of the item.

(3) Where:
  (a) by virtue of subsection (2), a body corporate other than an entrepot nominee company is the investor in relation to an investment; and
  (b) another person is entitled to receive from the body corporate all or part of the income from the investment;

Authorised Version C2022C00106 registered 10/03/2022

the person's right to receive the income or part of the income is an investment to which this Part applies.

(3A) In the case of an investment that is a relevant Part VA investment for the purposes of section 221YHZLA, subsection (3) does not apply to a person's right to receive income if:

(a) the body corporate concerned has received a payment of the kind referred to in paragraph 221YHZLA(2)(a); and

(b) the circumstances referred to in subparagraph 221YHZLA(2)(c)(i) or (ii) in relation to an applicant exist in relation to the body corporate.

(4) In relation to an investment referred to in subsection (3):

(a) the person entitled to receive income is the investor; and

(b) the body corporate is the investment body.

(5) Subsection (4) does not affect a person's status or obligations as an investor by virtue of subsection (2).

(6) In determining whether a person in the capacity of trustee of a trust estate is an investor in relation to an investment, it is irrelevant that the name of the trust estate, the name of any actual or potential beneficiary or any other indication of trust is shown on any documentation in connection with the investment.

(7) Subsection (6) is enacted for the guidance and information of investors and investment bodies and does not, by implication, affect the meaning of other provisions of this Act dealing with trustees and trust estates.

(8) If subparagraph 26AJ(1)(a)(ii) and paragraphs 26AJ(1)(b), (c), (d), (e), (f) and (g) apply in relation to the payment or crediting of an amount to a person, being the taxpayer referred to in subsection 26AJ(1), then:

(a) for the purposes of this section:

(i) the betting chance referred to in paragraph 26AJ(1)(c) is an investment-related betting chance; and

(ii) the person is the betting investor in relation to the investment-related betting chance; and

Authorised Version C2022C00106 registered 10/03/2022

(iii) the investment body referred to in paragraph 26AJ(1)(c) is the betting investment body in relation to the investment-related betting chance; and

(b) for the purposes of this Part, and for the purposes of Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*:

(i) the betting chance referred to in paragraph 26AJ(1)(c) is taken to be an investment; and

(ii) the amount paid or credited is taken to be income in respect of the investment.

(9) For the purposes of subsection (3), an entrepot nominee company is a body corporate that is:

(a) controlled solely by a securities dealer or by 2 or more persons each of whom is a securities dealer; and

(b) operated for the sole purpose of facilitating settlement of security transactions.

202DB Quotation of tax file numbers in connection with investments

(1) A person who is an investor in relation to an investment to which this Part applies may quote the person's tax file number to the investment body in connection with the investment.

(2) Where:

(a) a person holds an investment on behalf of another person; and

(b) the first-mentioned person does not have a tax file number in his or her capacity of trustee of a trust estate in relation to the investment;

the first-mentioned person may quote his or her tax file number to the investment body in connection with the investment and, for the purposes of this Part, that person is to be taken to have quoted the investor's tax file number in connection with the investment.

Authorised Version C2022C00106 registered 10/03/2022

202DC Method of quoting tax file number

(1) A person quotes a tax file number to an investment body by informing the body of the number in a manner approved by the Commissioner.

(2) The investment body may be so informed by the person or by another person acting for that person.

(3) If a person becomes an investor as a result of a transaction carried out through a securities dealer, the person shall be taken to have quoted the person's tax file number to the investment body concerned if the dealer is informed of the number.

202DD Investor excused from quoting tax file number in certain circumstances

Where:

(a) at a particular time a person becomes an investor in relation to an investment to which this Part applies by virtue of acquiring shares in a public company; and

(b) at that time, the person has quoted, or is taken to have quoted, a tax file number in connection with an existing investment consisting of a shareholding in that company; and

(c) the company has not, since the quotation of the number in connection with the existing investment, informed the person that the company has lost the person's tax file number;

the person is to be taken to have quoted a tax file number in connection with the first-mentioned investment.

202DDB Quotation of tax file number in connection with indirectly held investment

(1) If, apart from this section:

(a) either of the following subparagraphs applies:

(i) both of the following conditions are satisfied:

(A) a body corporate (in this section called the ***interposed entity***) is the investor in relation to

Authorised Version C2022C00106 registered 10/03/2022

an investment (in this section called the ***secondary investment***) with an investment body (in this section called the ***secondary investment body***);

(B) another person (in this section called the ***primary investor***) is entitled to receive from the interposed entity all or part of the income from the secondary investment (which right to receive the income or part of the income is in this section called ***primary investment***);

(ii) both of the following conditions are satisfied:

(A) a person (in this section also called the ***primary investor***) is the investor in relation to an investment (in this section also called the ***primary investment***) covered by item 4 in the table in subsection 202D(1), being a deposit of money with a solicitor (in this section also called the ***interposed entity***);

(B) as a result of carrying out the purpose for which that investment was made, the interposed entity is the investor in relation to another investment (in this section also called the ***secondary investment***) with an investment body (in this section also called the ***secondary investment body***); and

(b) either:

(i) the secondary investment has a descriptive title which identifies all the primary investors; or

(ii) the conditions set out in the regulations are satisfied;

the following provisions have effect for the purposes of this Part and Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*:

(c) the primary investor may quote his or her tax file number under section 202DB to the secondary investment body in connection with the secondary investment as if he or she were the investor in relation to the secondary investment;

Authorised Version C2022C00106 registered 10/03/2022

(d) if the primary investor quotes his or her tax file number as mentioned in paragraph (c)—the interposed entity is taken to have quoted his or her tax file number to the secondary investment body in connection with the secondary investment;

(e) the interposed entity is not entitled to actually quote his or her tax file number to the secondary investment body in connection with the secondary investment;

(f) the interposed entity is taken not to be an investment body in relation to the primary investment.

(2) If there are 2 or more primary investors in relation to a primary investment, all the primary investors are taken to have quoted their tax file numbers as mentioned in paragraph (1)(c) if, and only if:

(a) all of those primary investors are persons who, for the purposes of this Part, are taken, by section 202EE, to have quoted their tax file numbers under this Division in connection with the primary investment; or

(b) if:

(i) paragraph (a) does not apply; and

(ii) all of those primary investors are covered by any or all of the following categories:

(A) persons who, for the purpose of this Part, are taken, under section 202EE, to have quoted their tax file numbers under this Division in connection with the primary investment;

(B) persons to whom section 202EB applies;

(C) entities mentioned in paragraph 202EC(1)(a); and

(iii) all of the following conditions are satisfied in relation to at least one of those primary investors:

(A) the primary investor is covered by sub-subparagraph (ii)(B) or (C);

(B) the primary investor gives to the secondary investment body the information mentioned in subsection 202EB(1) or 202EC(1) as if the

Authorised Version C2022C00106 registered 10/03/2022

primary investor were the investor in relation to the secondary investment;

(C) as a result of the giving of that information, the primary investor would be taken, under section 202EB or 202EC, to have quoted his or her tax file number under this Division in connection with the secondary investment; or

(c) at least one of those primary investors:

(i) has a tax file number; and

(ii) has quoted that number under section 202DB to the secondary investment body in connection with the secondary investment as if he or she were the investor in relation to the secondary investment.

202DE Securities dealer to inform the investment body of tax file number

Where:

(a) a person becomes an investor as a result of a transaction carried out through a securities dealer; and

(b) the person informs the dealer of the person's tax file number;

the dealer shall inform the investment body concerned of the person's tax file number.

202DF Effect of incorrect quotation of tax file number

(1) If the Commissioner is satisfied:

(a) that the tax file number quoted to an investment body in relation to an investment:

(i) has been cancelled or withdrawn since it was quoted; or

(ii) is otherwise wrong; and

(b) that the investor has a tax file number;

the Commissioner may give to the investment body concerned notice of the incorrect statement and the investor's tax file number.

Authorised Version C2022C00106 registered 10/03/2022

(2) If a notice is given under subsection (1), the investor shall be regarded, for the purposes of this Part, as having always stated the investor's tax file number in connection with the investment.

(3) If:

(a) the Commissioner is satisfied that the tax file number quoted to an investment body in relation to an investment:

(i) has been cancelled since it was quoted; or

(ii) is for any other reason not the investor's tax file number; and

(b) the Commissioner is not satisfied that the investor has a tax file number;

the Commissioner may, by written notice given to the investment body concerned, inform the investment body accordingly.

(4) A notice under subsection (3) takes effect on the day specified in the notice, being a day not earlier than the day on which a copy of the notice is given to the investor under subsection (5).

(5) The Commissioner shall give a copy of any notice under subsection (3) to the investor concerned, together with a written statement of the reasons for the decision to give the notice.

(6) On and from the day on which a notice under subsection (3) takes effect, the investor concerned shall be taken not to have quoted the investor's tax file number in connection with the investment.

202DG Investments held jointly

(1) Where 2 persons are jointly entitled to the property or rights that constitute an investment to which this Part applies, neither person shall be taken to have quoted the person's tax file number in connection with the investment unless both persons have quoted their tax file numbers under this Division in connection with the investment.

(2) Where more than 2 persons are jointly entitled to the property or rights that constitute an investment to which this Part applies, all of

Authorised Version C2022C00106 registered 10/03/2022

the persons are to be taken to have quoted their tax file numbers in connection with the investment if and only if:

(a) where one of those persons has a tax file number and is not an exempt person in relation to the investment—that person has quoted that number, and at least one of the other persons is, for the purposes of this Part, to be taken to have quoted his or her tax file number, under this Division in connection with the investment; or

(b) where 2 or more of those persons have tax file numbers and are not exempt persons in relation to the investment—at least 2 of those persons have quoted their own tax file numbers under this Division in connection with the investment; or

(c) in any other case—at least 2 of those persons are, for the purposes of this Part, to be taken to have quoted their tax file numbers under this Division in connection with the investment.

(2A) A reference in subsection (2) to an exempt person in relation to an investment is a reference to a person who, for the purposes of this Part, is to be taken to have quoted his or her tax file number under this Division in connection with the investment although the person has not actually done so.

(3) This section does not apply in relation to persons who are jointly entitled to property or rights merely because they are partners in a partnership.

(4) This section does not apply in relation to investments covered by section 202DDB.

202DH Tax file number quoted for superannuation or surcharge purposes taken to be quoted for purposes of the taxation of eligible termination payments

(1) If a person (the ***first person***) who is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or

Authorised Version C2022C00106 registered 10/03/2022

possible future operation of the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* or the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*, the first person is taken, so long as he or she continues to be such a beneficiary, to have made a TFN declaration in relation to the trustee that has effect under Division 3.

(2) In this section and section 202DHA:

eligible superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated exempt public sector superannuation scheme has the same meaning as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

202DHA Tax file number quoted for Division 3 purposes taken to have been quoted for superannuation purposes

If:

(a) a person has on or after 1 July 2007 made a TFN declaration in relation to a payer; and

(b) the person is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme or is an RSA holder; and

(c) the payer makes a contribution to the person's eligible superannuation entity or regulated exempt public sector superannuation scheme or RSA for the benefit of the person;

the person is taken to have authorised the payer to inform the trustee of the superannuation entity or scheme or the RSA provider of the person's tax file number.

Authorised Version C2022C00106 registered 10/03/2022

202DI Tax file number quoted for RSA purposes taken to be quoted for purposes of the taxation of superannuation benefits

If a person (the ***first person***) who is the holder of an RSA has quoted his or her tax file number to the provider of the RSA in connection with the operation or possible future operation of the *Retirement Savings Accounts Act 1997*, the first person is taken, so long as he or she continues to be the holder of the RSA, to have made a TFN declaration in relation to the provider of the RSA that has effect under Division 3.

202DJ Tax file number quoted for purposes of taxation of superannuation benefits taken to be quoted for surcharge purposes

(1) If a person who is:

(a) a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; or

(b) a member of a constitutionally protected superannuation fund; or

(c) the holder of an RSA;

has made a TFN declaration in relation to the trustee of the entity, scheme or fund, or the RSA provider, that states his or her tax file number, and has effect under Division 3 (except a declaration that includes a statement mentioned in subsection 202CB(2)), the person is taken, so long as he or she continues to be such a beneficiary, member or holder, to have quoted that tax file number to the trustee of the entity, scheme or fund or to the RSA provider, as the case may be, in connection with the operation or possible future operation of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

(2) In this section:

Authorised Version C2022C00106 registered 10/03/2022

constitutionally protected superannuation fund has the same meaning as ***constitutionally protected fund*** has in the *Income Tax Assessment Act 1997*.

eligible superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated exempt public sector superannuation scheme has the same meaning as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

Authorised Version C2022C00106 registered 10/03/2022

Division 4A—Quotation of tax file numbers in connection with farm management deposits

202DL Quotation of tax file number

A depositor of a farm management deposit ***quotes*** the owner's tax file number to the FMD provider in connection with the deposit by:

(a) stating the number in the form mentioned in subsection 393-20(2) of the *Income Tax Assessment Act 1997* in relation to the deposit; or

(b) informing the FMD provider of the number in any other manner approved by the Commissioner in connection with the deposit.

Note: If a farm management deposit was made by a trustee on behalf of a beneficiary who was under a legal disability when the deposit was made, and the beneficiary is no longer under a legal disability, this Division applies as if the beneficiary had made the deposit: see section 393-28 of the *Income Tax Assessment Act 1997*.

202DM Effect of incorrect quotation of tax file number

Commissioner may notify FMD provider of correct tax file number

(1) If the Commissioner is satisfied:

(a) that the tax file number quoted to an FMD provider in connection with a farm management deposit:

(i) has been cancelled or withdrawn since it was quoted; or

(ii) is otherwise wrong; and

(b) that the owner has a tax file number;

the Commissioner may give the FMD provider notice in writing of the owner's correct tax file number.

Authorised Version C2022C00106 registered 10/03/2022

Commissioner may notify FMD provider if owner does not have a tax file number etc.

(3) If:

(a) the Commissioner is satisfied that the tax file number quoted to an FMD provider in connection with a farm management deposit:

(i) has been cancelled since it was quoted; or

(ii) is for any other reason not the owner's tax file number; and

(b) the Commissioner is not satisfied that the owner has a tax file number;

the Commissioner may give the FMD provider notice in writing accordingly.

Commissioner to give owner copy of notice

(4) If a notice is given under subsection (3), the Commissioner must give the depositor a copy of the notice, together with a written statement of the reasons for the decision to give the notice.

Notice takes effect when given to owner

(5) The notice takes effect on the day specified in the notice, being a day not earlier than the day on which the copy of the notice is given to the depositor.

Tax file number deemed not quoted

(6) On and from the day on which the notice takes effect, the depositor is taken not to have quoted the owner's tax file number in connection with the deposit.

Authorised Version C2022C00106 registered 10/03/2022

Division 4B—Quotation of tax file numbers in connection with certain closely held trusts

202DN Application of Division

This Division applies to both the trustee of a trust and to a beneficiary of the trust, if:

(a) paragraph 12-175(1)(c) in Schedule 1 to the *Taxation Administration Act 1953* applies to the trust; and

Note: That paragraph applies to certain closely held trusts.

(b) paragraph 12-175(1)(d) in that Schedule applies to the beneficiary.

202DO Quotation of tax file numbers

(1) The beneficiary may quote the beneficiary's tax file number to the trustee.

(2) The beneficiary ***quotes*** the beneficiary's tax file number to the trustee if the beneficiary, or another person acting for the beneficiary, informs the trustee of the number in a manner approved by the Commissioner.

202DP Trustee must report quoted tax file numbers

(1) The trustee must report the beneficiary's tax file number to the Commissioner, in the approved form, if:

(a) the beneficiary quotes the beneficiary's tax file number to the trustee during a quarter (within the meaning of the *Income Tax Assessment Act 1997*); and

(b) the beneficiary has not quoted the beneficiary's tax file number to the trustee in connection with an investment to which this Part applies; and

(c) the trustee has not reported, and is not required to report, the beneficiary's tax file number to the Commissioner under

Authorised Version C2022C00106 registered 10/03/2022

Division 6D of Part III of this Act (about trustee beneficiary non-disclosure tax).

(2) The trustee must give the report to the Commissioner within:
  (a) one month after the end of the quarter to which it relates; or
  (b) within such further time as the Commissioner allows.

(3) The Commissioner may, by notice in writing given to the trustee, inform the trustee that the period specified in the notice (being a period greater than 3 months) is to be the trustee's reporting period for the purposes of this section. If the Commissioner does so, a reference in this section to a quarter is taken to be a reference to the period specified in the notice.

(4) For the purposes of this section, disregard subsection 202DR(3).

Note: Refusal or failure to report to the Commissioner as required by this section is an offence under section 8C of the *Taxation Administration Act 1953*.

202DR Effect of incorrect quotation of tax file number

Commissioner may notify trustee of correct tax file number

(1) If the Commissioner is satisfied:
  (a) that the tax file number quoted to the trustee:
    (i) has been cancelled or withdrawn since it was quoted; or
    (ii) is otherwise wrong; and
  (b) that the beneficiary has a tax file number;
the Commissioner may give the trustee notice in writing of the beneficiary's correct tax file number.

(2) The notice given under subsection (1) is taken to have taken effect on the day on which the cancelled or withdrawn tax file number was quoted to the trustee as mentioned in paragraph (1)(a).

(3) On and from the day on which the notice given under subsection (1) took effect, the beneficiary is taken to have quoted the beneficiary's correct tax file number to the trustee.

Authorised Version C2022C00106 registered 10/03/2022

Commissioner may notify trustee if beneficiary does not have a tax file number etc.

(4) If:

(a) the Commissioner is satisfied that the tax file number quoted to the trustee:

(i) has been cancelled or withdrawn since it was quoted; or

(ii) is for any other reason not the beneficiary's tax file number; and

(b) the Commissioner is not satisfied that the beneficiary has a tax file number;

the Commissioner must give the trustee written notice accordingly.

(5) The Commissioner must give the beneficiary a copy of the notice given under subsection (4), together with a written statement of the reasons for the decision to give the notice.

(6) The notice given under subsection (4) takes effect on the day specified in the notice, being a day not earlier than the day on which the copy of the notice is given to the beneficiary.

(7) On and from the day on which the notice given under subsection (4) takes effect, the beneficiary is taken not to have quoted the beneficiary's tax file number to the trustee.

Note: The trustee may be required to withhold an amount from a payment to the beneficiary if the beneficiary has not quoted the beneficiary's tax file number to the trustee at the time the payment is made: see sections 12-175 and 12-180 in Schedule 1 to the *Taxation Administration Act 1953*.

As such, the trustee may be required to withhold if a notice under subsection (4) of this section is in effect on the day on which the payment is made.

Authorised Version C2022C00106 registered 10/03/2022

Division 5—Exemptions

202EA Persons receiving certain pensions etc.—employment

(1) Nothing in this Part shall be taken to provide for a person who is a recipient because the person receives, or expects to receive, a pension or benefit referred to in subsection (5) to make a TFN declaration, or to quote his or her tax file number, in connection with the payment of that pension, benefit or allowance.

(2) For the purposes of this Part, a person who is being paid a pension or benefit referred to in subsection (5) shall be taken to have quoted his or her tax file number in a TFN declaration given to a payer of the person if a statement is made in the declaration to the effect that the person is being paid such a pension or benefit.

(3) A person who, as a person who is being paid a pension or benefit referred to in subsection (5), is taken, because of this section, to have quoted his or her tax file number in a TFN declaration shall continue to be taken to have, because of this section, quoted the number in the declaration until the Commissioner gives a written notice to the person to the effect that the person is no longer entitled to exemption under this section.

(4) The Commissioner may not give a notice under subsection (3) until the person has ceased to be paid any pension or benefit referred to in subsection (5).

(5) This section applies in relation to the following:

(a) an age pension under Part 2.2 of the *Social Security Act 1991*;

(b) a disability support pension under Part 2.3 of that Act;

(d) a carer payment under Part 2.5 of that Act;

(fa) a parenting payment that is a pension PP (single) under Part 2.10 of that Act;

(g) a special benefit under Part 2.15 of that Act;

(h) a special needs pension under Part 2.16 of that Act;

Authorised Version C2022C00106 registered 10/03/2022

(i) a pension under Part III of the *Veterans' Entitlements Act 1986*;

(ia) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

202EB Persons receiving certain pensions etc.—investments

(1) For the purposes of this Part, a person to whom this section applies shall be taken to have quoted his or her tax file number under Division 4 in connection with the investment if the investment body concerned is given the following information by the person in a manner approved by the Commissioner:

(a) the person's full name;

(b) the nature of the pension, benefit or allowance by virtue of the payment of which the person is a person to whom this section applies.

(3) A person who, as a person to whom this section applies, is taken, because of this section, to have quoted his or her tax file number in connection with an investment shall continue to be taken to have, because of this section, quoted the number in connection with the investment until the Commissioner gives a written notice to the person to the effect that the person is no longer entitled to exemption under this section.

(4) The Commissioner may not give a notice under subsection (3) until the person has ceased to be a person to whom this section applies.

(5) A person to whom this section applies is a person who is being paid:

(a) one of the following:

(i) an age pension under Part 2.2 of the *Social Security Act 1991*;

(ii) a disability support pension under Part 2.3 of that Act;

(iv) a carer payment under Part 2.5 of that Act;

(via) a parenting payment that is a pension PP (single) under Part 2.10 of that Act;

(vii) a special benefit under Part 2.15 of that Act;

Authorised Version C2022C00106 registered 10/03/2022

(viii) a special needs pension under Part 2.16 of that Act; or

(c) a pension under Part III of the *Veterans' Entitlements Act 1986*; or

(d) income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

202EC Entities not required to lodge income tax returns

(1) For the purposes of this Part, where:

(a) an entity that is not required to furnish to the Commissioner a return under section 161 in respect of a year of income is, at any time during that year, an investor in relation to an investment to which this Part applies; and

(b) the entity does not have a tax file number;

the entity shall be taken to have quoted its tax file number in connection with the investment if the investment body concerned is given the following information by the eligible representative in a manner approved by the Commissioner:

(c) the name and address of the entity;

(d) the reason why the entity is not obliged to furnish to the Commissioner a return under section 161 in respect of the year of income.

(3) An entity that, as an entity that is not required to furnish to the Commissioner a return under section 161 in respect of a year of income, is to be taken, because of this section, to have quoted its tax file number in connection with an investment shall continue to be taken to have, because of this section, quoted the number in connection with the investment until 2 months after the end of the first year of income, following the time at which the entity is to be taken to have quoted the number, in respect of which the entity is required so to furnish a return.

(4) Where an entity in respect of which information has been given to an investment body under subsection (1) in connection with an investment becomes obliged under section 161 to furnish a return in respect of a year of income, the person who is the public officer of the entity for the purposes of this Act commits an offence if:

Authorised Version C2022C00106 registered 10/03/2022

(a) the entity is, at the end of the year of income, still an investor in relation to the investment; and
(b) the investment body is not, within 2 months after the end of the year of income, informed of the entity's tax file number or informed that the entity is obliged to furnish the return.

Penalty: 10 penalty units.

(5) For the purposes of this section, a person is an eligible representative of an entity if the person is:
(a) where the entity is a body corporate—a person who is any one or more of the following:
(i) the public officer of the body corporate for the purposes of this Act;
(ii) an officer of the body corporate within the meaning of section 8Y of the *Taxation Administration Act 1953*;
(iii) a receiver of property of the body corporate, whether appointed by a court or otherwise and whether or not also a manager;
(iv) a liquidator of the body corporate appointed by a court;
(v) in the case of a foreign company within the meaning of the *Corporations Act 2001*—a local agent of the company within the meaning of that Act;
(vi) an employee of the body corporate in relation to whom there is in force a written authorisation to act as an eligible representative of the body corporate, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the body corporate by virtue of one or more of the preceding subparagraphs; or
(b) where the entity is an unincorporated association—a person who is any one or more of the following:
(i) the public officer of the unincorporated association for the purposes of this Act;
(ii) a director, secretary, office-holder, liquidator, receiver or trustee of the association;

Authorised Version C2022C00106 registered 10/03/2022

(iii) an employee or member of the unincorporated association in relation to whom there is in force a written authorisation to act as an eligible representative of the unincorporated association, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the unincorporated association by virtue of either or both of the preceding subparagraphs.

202EE Non-residents

(1) For the purposes of this Part, where:

(a) a non-resident is an investor in relation to an investment to which this Part applies; and

(b) at a particular time, the investment body pays an amount to the non-resident by way of income derived from the investment;

the non-resident is taken to have quoted the non-resident's tax file number in connection with the investment at that time if:

(c) the investment body is required:

(i) to withhold an amount under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953* from the payment; or

(ii) to pay the Commissioner an amount under Subdivision 12A-C in that Schedule in respect of the payment; or

(d) the investment body would have been required to withhold such an amount but for the operation of paragraph 128B(3)(a), (ga) or (jb) or subparagraph 128B(3)(h)(iv) of this Act or subsection 802-15(1) of the *Income Tax Assessment Act 1997*.

(2) If:

(a) a person who was a non-resident and an investor in relation to an investment to which this Part applies becomes a resident of Australia at a particular time; and

Authorised Version C2022C00106 registered 10/03/2022

(b) the person is, at that time, still an investor in relation to the investment; and

(c) the investment body concerned is not, within one month after that time, informed of the person's tax file number or informed that the person has become such a resident;

the person commits an offence.

Penalty: 10 penalty units.

(3) Nothing in this section affects the person's liability to pay withholding tax.

202EG Manner of completing declarations

Where a person is unable to make a declaration under this Division, the declaration may be made by another person on behalf of the first-mentioned person.

202EH Declarations under this Division to be retained in certain circumstances

The Commissioner may, by legislative instrument, direct an investment body to retain declarations, or declarations of a particular kind, made under this Division for such time as is specified in the direction.

Authorised Version C2022C00106 registered 10/03/2022

Division 6—Review of decisions

202F Review of decisions

(1) Applications may be made to the Tribunal for review of the following decisions of the Commissioner:

(a) a decision refusing an application for the issue of a tax file number under section 202BA (including a decision that is to be taken to have been made by virtue of section 202BC);

(b) a decision to cancel a tax file number under section 202BE;

(c) a decision to give a notice under subsection 202CE(3);

(d) a decision to give a notice under subsection 202DF(3);

(da) a decision to give a notice under subsection 202DM(3);

(db) a decision to give a notice under subsection 202DR(4);

(e) a decision to give a notice under subsection 202EB(3);

(fa) a decision to give a notice under subsection 190-15(1) or (1A) of the *Higher Education Support Act 2003*;

(fb) a decision to give a notice under subsection 190-20(1) or (1A) of the *Higher Education Support Act 2003*;

(fc) a decision to give a notice under subsection 1061ZVJD(1) of the *Social Security Act 1991*;

(fd) a decision to give a notice under subsection 1061ZVJF(1) of the *Social Security Act 1991*;

(fe) a decision to give a notice under subsection 11D(1) of the *Student Assistance Act 1973*;

(ff) a decision to give a notice under subsection 11F(1) of the *Student Assistance Act 1973*;

(fg) a decision to give a notice under subsection 68(1) of the *Trade Support Loans Act 2014*;

(fh) a decision to give a notice under subsection 70(1) of the *Trade Support Loans Act 2014*;

(g) a decision stated by the regulations to be a reviewable decision for the purposes of this section.

Authorised Version C2022C00106 registered 10/03/2022

(2) Where an application has been made to the Tribunal for review of a decision referred to in paragraph (1)(a), the orders that may be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* include an order that the Commissioner issue a tax file number to the applicant pending the determination of the application for review.

(3) A tax file number issued in accordance with an order referred to in subsection (2) ceases to have effect when the application is finally disposed of.

(4) When a tax file number ceases to have effect under subsection (3), this Part (other than this section) applies as if the number had been cancelled.

202FA Statements to accompany notification of decisions

(1) Where a decision of a kind referred to in section 202F is made and notice in writing of the decision is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

(2) A failure to comply with subsection (1) does not affect the validity of the decision.

Authorised Version C2022C00106 registered 10/03/2022

Division 8—Tax file number sharing and verification

203 Verification of tax file numbers

(1) This section applies if an Agency (within the meaning of the *Public Service Act 1999*) obtains or has obtained, in accordance with a law of the Commonwealth, a number that any of the following (the ***relevant official***) believes to be the tax file number of a person (the ***relevant person***):

(a) the Agency Head (within the meaning of that Act);

(b) an SES employee, or acting SES employee, in the Agency.

Note: For example, the Agency may have received the number in a TFN declaration made by the relevant person in relation to an assistance payment, or from another person in accordance with a law that provides for an official to ask the other person to provide the relevant person's tax file number.

(2) The relevant official may give the Commissioner a notice, in writing, asking the Commissioner to verify the number under this section.

(3) A notice under subsection (2):

(a) must include the number; and

(b) must include the full name and date of birth of the relevant person; and

(c) may include any other information that the relevant official considers may assist in identifying the relevant person.

(4) If the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the number, that it is reasonable to do so, the Commissioner may give the Agency a notice, in writing, that states whether or not the Commissioner is able to verify the information given.

(5) If:

(a) the Commissioner is not satisfied that the number is the tax file number of the relevant person; but

Authorised Version C2022C00106 registered 10/03/2022

(b) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the number, that another number (the ***correct number***) is the tax file number of the relevant person;

the notice under subsection (4) may state the correct number.

(6) If the notice under subsection (4) states the correct number, the correct number is taken to be the number that was obtained by the Agency as mentioned in subsection (1).

(7) This section does not limit, and is not limited by, section 202CEA or any other provision, in this or any other law of the Commonwealth, that provides for the sharing or verification of tax file numbers.

Notices are not legislative instruments

(8) A notice given under subsection (2) or (4) is not a legislative instrument.

204 Disclosure of tax file numbers to certain registrars

(1) If:

(a) the Commissioner is appointed as the Commonwealth Registrar (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); and

(b) no other person or body is appointed as that registrar;

the Commissioner may disclose the tax file number of a person to that registrar if the disclosure is made for the purposes of facilitating the administration of Part 6-7A of that Act.

(2) If:

(a) the Commissioner is appointed as the Registrar (within the meaning of the *Corporations Act 2001*); and

(b) no other person or body is appointed as that registrar;

the Commissioner may disclose the tax file number of a person to that registrar if the disclosure is made for the purposes of facilitating the administration of Part 9.1A of that Act.

Authorised Version C2022C00106 registered 10/03/2022

(2A) The Commissioner may disclose the tax file number of a person to a registrar specified in subsection 355-67(2) in Schedule 1 to the *Taxation Administration Act 1953* if:

(a) the Commissioner is appointed as that registrar; and

(b) no other person or body is appointed as that registrar; and

(c) the disclosure is made through use of a computer application or system that is used for the performance of functions, or the exercise of powers, of both the Commissioner and that registrar; and

(d) use of the application or system by that registrar is on the condition that tax file numbers disclosed through use of the application or system are only to be recorded, used, divulged, disclosed or communicated to the extent reasonably necessary for the application or system to be used for the performance of that registrar's functions, or the exercise of that registrar's powers.

(3) To avoid doubt, subsection (1), (2) or (2A) applies to the disclosure of the person's tax file number whether or not that registrar has requested the person, or the Commissioner, to give the tax file number to that registrar.

Authorised Version C2022C00106 registered 10/03/2022