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

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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 1 January 2026 (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. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

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.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to consolidate and amend the law relating to the imposition assessment and collection of a tax upon incomes

Part I—Preliminary

1 Short title

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

6 Interpretation

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

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

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

adjusted fringe benefits total, of a taxpayer for a year of income, has the meaning given by clause 4 of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999*.

adjusted taxable income for rebates means adjusted taxable income (within the meaning of the *A New Tax System (Family Assistance) Act 1999*, disregarding clauses 3 and 3A of Schedule 3 to that Act).

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

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agent: this Act applies to some entities (within the meaning of the *Income Tax Assessment Act 1997*) that are not agents in the same way as it applies to agents: see section 960-105 of the *Income Tax Assessment Act 1997*.

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

AMIT (short for ***attribution managed investment trust***) has the same meaning as in the *Income Tax Assessment Act 1997*.

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

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

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

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

approved stock exchange has the same meaning as in the *Income Tax Assessment Act 1997*.

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

assessment means:

(a) the ascertainment:

(i) of the amount of taxable income (or that there is no taxable income); and

(ii) of the tax payable on that taxable income (or that no tax is payable); and

(iii) of the total of a taxpayer's tax offset refunds for a year of income (or that the taxpayer can get no such refunds for the year of income); or

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

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

(c) for a taxpayer that is the trustee of a unit trust that is a public trading trust (within the meaning of section 102R)—the ascertainment:

(i) of the net income of the trust (within the meaning of section 102M) (or that there is no net income); and

(ii) of the tax payable on that net income (or that no tax is payable); and

(iii) of the total of a taxpayer's tax offset refunds for a year of income (or that the taxpayer can get no such refunds for the year of income); or

(d) for a taxpayer that is the trustee of a trust estate (other than a trustee to which paragraph (b) or (c) applies or the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust)—the ascertainment:

(i) of so much of the net income of the trust estate as is net income in respect of which the trustee is liable to pay tax (or that there is no net income in respect of which the trustee is so liable); and

(ii) of the tax payable on that net income (or that no tax is payable); and

(iii) of the total of a taxpayer's tax offset refunds for a year of income (or that the taxpayer can get no such refunds for the year of income); or

(e) the ascertainment of the amount of interest payable under section 102AAM (about distributions from non-resident trust estates); or

(h) the ascertainment of the amount of income tax payable on the no-TFN contributions income as defined by section 295-610

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of the *Income Tax Assessment Act 1997* (or that no tax is payable); or

(j) the ascertainment of the amount payable (or that no amount is payable) under the following:

(i) subsection 276-105(2) of the *Income Tax Assessment Act 1997* (AMIT trustee taxed on amounts attributed to foreign resident members);

(ii) subsection 276-340(2) of that Act (AMIT trustee taxed on trust component deficit of character relating to tax offset);

(iii) subsection 276-405(2) of that Act (AMIT trustee taxed on shortfall in determined member components of character relating to assessable income);

(iv) subsection 276-410(2) of that Act (AMIT trustee taxed on excess in determined member components of character relating to tax offset);

(v) subsection 276-415(2) of that Act (AMIT trustee taxed on amounts of determined trust component that are not reflected in member components);

(vi) subsection 276-420(2) of that Act (AMIT trustee taxed on amounts of under of character relating to assessable income not properly carried forward);

(vii) subsection 276-425(2) of that Act (AMIT trustee taxed on amounts of over of character relating to tax offset not properly carried forward); or

(k) the ascertainment of the amount payable under subsection 177P(1) (diverted profits tax).

attribution managed investment trust: see ***AMIT***.

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

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

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

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

basic income tax liability has the meaning given by section 4-10 of the *Income Tax Assessment Act 1997*.

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

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

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

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

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

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

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

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

Commissioner means the Commissioner of Taxation.

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

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

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

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

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

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

corporate limited partnership has the meaning given by section 94D.

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

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

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

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

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

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

deductible gift recipient has the meaning given by the *Income Tax Assessment Act 1997*.

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

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

demerger allocation means:

(a) the total market value of the allocation represented by the ownership interests issued by the demerged entity in itself under a demerger to the owners of ownership interests in the head entity of the demerger group; or

(b) the total market value of the allocation represented by the ownership interests disposed of by a member of a demerger group under a demerger to the owners of ownership interests in the head entity; or

(c) the total of both of those market values.

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

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

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

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

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

Deputy Commissioner means a Deputy Commissioner of Taxation.

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

diverted profits tax has the meaning given by the *Income Tax Assessment Act 1997*.

dividend includes:

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

(b) any amount credited by a company to any of its shareholders as shareholders;

but does not include:

(d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company; or

(e) moneys paid or credited, or property distributed, by a company for the redemption or cancellation of a redeemable preference share if:

(i) the company gives the holder of the share a notice when it redeems or cancels the share; and

(ii) the notice specifies the amount paid-up on the share immediately before the cancellation or redemption; and

(iii) the amount is debited to the company's share capital account;

except to the extent that the amount of those moneys or the value of that property, as the case may be, is greater than the amount specified in the notice as the amount paid-up on the share; or

(f) a reversionary bonus on a life assurance policy.

Note: Subsection (4) sets out when paragraph (d) of this definition does not apply.

Division 230 financial arrangement has the same meaning as in the *Income Tax Assessment Act 1997*.

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

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dwelling has the meaning given by the *Income Tax Assessment Act 1997*.

eligible taxable income has the meaning given by section 102AD.

Employment Secretary has the meaning given by the *Income Tax Assessment Act 1997*.

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

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

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

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

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

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

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

Families Secretary has the meaning given by the *Income Tax Assessment Act 1997*.

farm management deposit has the meaning given by the *Income Tax Assessment Act 1997*.

FMD provider has the meaning given by the *Income Tax Assessment Act 1997*.

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

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foreign tax has the meaning given by section 6AB.

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

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

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

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

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

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

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

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

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

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

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

(a) a company;

(c) the trustee of a trust that is a public trading trust in relation to the current year for the purposes of Division 6C of Part III;

(d) the trustee of a complying approved deposit fund or a non-complying approved deposit fund in relation to the current year;

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(e) the trustee of a complying superannuation fund or a non-complying superannuation fund in relation to the current year;

(f) the trustee of a pooled superannuation trust in relation to the current year.

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

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

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

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

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

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

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

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

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

Health Minister has the meaning given by the *Income Tax Assessment Act 1997*.

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

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

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income from personal exertion or ***income derived from personal exertion*** means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, any amount that is included in the assessable income of the taxpayer by reason of section 393-10 of the *Income Tax Assessment Act 1997*, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by the taxpayer for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include:

(a) interest, unless the taxpayer's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to the taxpayer for goods supplied or services rendered by the taxpayer in the course of the taxpayer's business; or

(b) rents, dividends or non-share dividends.

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

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

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

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

industrial, commercial or scientific equipment means industrial, commercial or scientific equipment to the extent that an amount

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paid or credited as consideration for the use of the equipment, or for the right to use the equipment, is not rent from land (including rent from an interest in land or rent from fixtures on land).

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

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

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

(a) money lent, advanced or deposited; or

(b) credit given; or

(c) any other form of debt or liability;

whether security is given or not, other than:

(d) an amount to the extent to which it is a return on an equity interest in a company; or

(e) interest derived by the taxpayer from a transaction directly related to the active conduct of a trade or business; or

(f) interest derived by the taxpayer from carrying on a banking business or any other business whose income is principally derived from the lending of money; or

(g) interest received by the taxpayer during a year of income from a foreign company, where:

(i) at any time during the year of income, the taxpayer had (or would have had, if the taxpayer were a company and a resident), a voting interest, within the meaning of section 334A, amounting to at least 10% of the voting power, within the meaning of that section, in that company; and

(ii) during the year of income or the preceding year of income, the company has not derived an amount of interest income exceeding 10% of the total profits derived by the company during the same year.

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junior minerals exploration incentive tax offset means a tax offset under Subdivision 418-B of the *Income Tax Assessment Act 1997*.

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

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

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

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

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

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

listed public company has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: For the meaning of ***listed public company*** in Schedule 2F to this Act, see section 272-135 in that Schedule.

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

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

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

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

Medicare levy means Medicare levy imposed as such by any Act as assessed under this Act.

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Medicare levy (fringe benefits) surcharge has the meaning given by the *Income Tax Assessment Act 1997*.

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

member of a family tax benefit (Part B) family without shared care: a taxpayer is a ***member of a family tax benefit (Part B) family without shared care*** if:

(a) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), is eligible for family tax benefit at the Part B rate (within the meaning of that Act); and

(b) clause 31 of Schedule 1 to that Act does not apply in respect of the Part B rate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

owner of a farm management deposit has the meaning given by the *Income Tax Assessment Act 1997*.

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

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

paid-up share capital has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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

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

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

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

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

(a) that is capable of delivery under an agreement for its delivery; and

(b) that is not an instrument creating or evidencing a chose in action;

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

(c) of producing or processing the commodity; or

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

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

(a) dividends (within the meaning of this section) and non-share dividends paid to the taxpayer in the year of income; or

(b) unit trust dividends (within the meaning of Division 6C) paid to the taxpayer in the year of income; or

(c) a distribution made to the taxpayer in the year of income that is taken to be a dividend because of section 47; or

(d) an amount that is taken to be a dividend paid to the taxpayer in the year of income because of section 47A or 108 or Division 7A of Part III; or

(e) interest income derived by the taxpayer in the year of income; or

(f) annuities derived by the taxpayer in the year of income; or

(g) income derived by the taxpayer by way of rent (within the meaning of Part X) in the year of income; or

(h) royalties derived by the taxpayer in the year of income; or

(i) an amount derived by the taxpayer in the year of income as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right; or

(j) profits of a capital nature that accrued to the taxpayer in the year of income; or

(k) passive commodity gains that accrued to the taxpayer in the year of income; or

(l) an amount included in the assessable income of the taxpayer of the year of income under section 102AAZD, 456, 457 or 459A;

but does not include:

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(m) an amount that arose from an asset necessarily held by the taxpayer in connection with an insurance business actively carried on by the taxpayer; or

(n) an amount included in the taxpayer's assessable income under Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes).

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

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

(a) in a case where the amount that, if:

(i) the period beginning at the start of the year of income and ending immediately before the company becomes a PDF were a year of income of the company; and

(ii) the period (***the PDF notional year***) beginning when the company becomes a PDF and ending at the end of the year of income were a year of income of the company; and

(iii) paragraph (c) of the definition of ***taxable income*** were omitted;

would be the company's taxable income of the PDF notional year is $1 or more—that amount; or

(b) otherwise—a nil amount.

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

(a) a place where the person is carrying on business through an agent;

(b) a place where the person has, is using or is installing substantial equipment or substantial machinery;

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(c) a place where the person is engaged in a construction project; and

(d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both of those persons—the place where the goods are manufactured, assembled, processed, packed or distributed;

but does not include:

(e) a place where the person is engaged in business dealings through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his or her business as a commission agent or broker and does not receive remuneration otherwise than at a rate customary in relation to dealings of that kind, not being a place where the person otherwise carries on business;

(f) a place where the person is carrying on business through an agent:

(i) who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person; or

(ii) whose authority extends to filling orders on behalf of the person from a stock of goods or merchandise situated in the country where the place is located, but who does not regularly exercise that authority;

not being a place where the person otherwise carries on business; or

(g) a place of business maintained by the person solely for the purpose of purchasing goods or merchandise.

Note: Subsection (6) treats a person as carrying on, at or through a permanent establishment that is a place described in paragraph (d) of this definition, the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person as described in that paragraph.

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

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

post FIF abolition credit means a post FIF abolition credit arising under:

(a) subsection 23AK(6); and

(b) subsection 717-220(2) of the *Income Tax Assessment Act 1997*; and

(c) subsection 717-255(2) of that Act.

post FIF abolition debit means a post FIF abolition debit arising under:

(a) subsection 23AK(2); and

(b) subsection 23B(1); and

(c) subsection 717-220(3) of the *Income Tax Assessment Act 1997*; and

(d) subsection 717-255(3) of that Act.

post FIF abolition surplus has the meaning given by section 23AK.

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

(a) the first condition is that:

(i) the company is a resident of Australia within the meaning of subsection 6(1); and

(ii) there is an agreement (within the meaning of the *International Tax Agreements Act 1953*) in force in respect of a foreign country; and

(iii) the agreement contains a provision that is expressed to apply where, apart from the provision, the company would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and

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(iv) that provision has the effect that the company is, for the purposes of the agreement, a resident solely of the foreign country;

(b) the alternative condition is that the company:

(i) is a resident of Australia within the meaning of subsection 6(1) for no other reason than that it carries on business in Australia and has its central management and control in Australia; and

(ii) it is also a resident of another country; and

(iii) its central management and control is in another country.

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

principal beneficiary of a special disability trust has the same meaning as in the *Income Tax Assessment Act 1997*.

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

proclaimed superannuation standards day means 1 July 1990.

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

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

rebatable benefit has the meaning given by subsection 160AAA(1).

rebate income of an individual for a year of income is the sum of:

(a) the individual's taxable income for the year of income, disregarding the individual's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the year of income; and

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(b) the individual's reportable superannuation contributions for the year of income; and

(c) the individual's total net investment loss for the year of income; and

(d) the individual's adjusted fringe benefits total for the year of income.

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

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

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

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

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

reportable superannuation contributions has the same meaning as in the *Income Tax Assessment Act 1997*.

resident or ***resident of Australia*** means:

(a) a person, other than a company, who resides in Australia and includes a person:

(i) whose domicile is in Australia, unless the Commissioner is satisfied that the person's permanent place of abode is outside Australia;

(ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that the person's usual place of abode is outside Australia and that the person does not intend to take up residence in Australia; or

(iii) who is:

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(A) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or

(B) an eligible employee for the purposes of the *Superannuation Act 1976*; or

(C) the spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B); and

(b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.

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

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

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

royalty or ***royalties*** includes any amount paid or credited, however described or computed, and whether the payment or credit is periodical or not, to the extent to which it is paid or credited, as the case may be, as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade mark, or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in paragraph (a), any such equipment as is mentioned in

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paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);

(da) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:

(i) satellite; or

(ii) cable, optic fibre or similar technology;

(db) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:

(i) satellite; or

(ii) cable, optic fibre or similar technology;

(dc) the use of, or the right to use, some or all of the part of the spectrum (within the meaning of the *Radiocommunications Act 1992*) specified in a spectrum licence issued under that Act;

(e) the use of, or the right to use:

(i) motion picture films;

(ii) films or video tapes for use in connexion with television; or

(iii) tapes for use in connexion with radio broadcasting; or

(f) a total or partial forbearance in respect of:

(i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or any such equipment as is mentioned in paragraph (b);

(ii) the supply of any such knowledge or information as is mentioned in paragraph (c) or of any such assistance as is mentioned in paragraph (d);

(iia) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (da);

(iib) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (db);

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(iic) the use of, or the granting of the right to use, some or all of such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (dc); or

(iii) the use of, or the granting of the right to use, any such property as is mentioned in paragraph (e).

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

Note: That Act defines ***RSA*** as having the meaning given by the *Retirement Savings Accounts Act 1997*.

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

Note: That Act defines ***RSA provider*** as having the same meaning as in the *Retirement Savings Accounts Act 1997*.

Second Commissioner means a Second Commissioner of Taxation.

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

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

shareholder includes member or stockholder.

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

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

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

social security law has the meaning given by the *Social Security Act 1991*.

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special disability trust has the same meaning as in the *Income Tax Assessment Act 1997*.

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

statutory income has the meaning given by the *Income Tax Assessment Act 1997*.

Student Assistance Secretary has the meaning given by the *Income Tax Assessment Act 1997*.

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

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

superannuation fund means:

(a) a scheme for the payment of superannuation benefits upon retirement or death; or

(b) a superannuation fund within the definition of ***superannuation fund*** in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

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

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

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

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

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

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

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

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

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

tax offset refund has the meaning given by the *Income Tax Assessment Act 1997*.

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

this Act includes:

(a) the *Income Tax Assessment Act 1997*; and

(b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to:

(i) this Act or the *Income Tax Assessment Act 1997*; or

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

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

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

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

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

Tribunal means the Administrative Review Tribunal.

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

(a) an executor or administrator, guardian, committee, receiver, or liquidator; and

(b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability;

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

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

VCMP means a venture capital management partnership.

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

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

Veterans' Affairs Secretary means the Secretary of the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*.

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

work and income support related withholding payments and benefits means:

(a) payments from which an amount:

(i) must be withheld under a provision of Subdivision 12-B (other than section 12-55), 12-C or 12-D or Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not withheld); or

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(ii) would be required to be withheld under a provision mentioned in subparagraph (i) (other than section 12-55) apart from subsection 12-1(1A) in Schedule 1 to that Act; and

(b) amounts included in a person's assessable income under section 86-15 of the *Income Tax Assessment Act 1997* in respect of which an amount must be paid under Division 13 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid); and

(c) non-cash benefits in relation to which the provider of the benefit must pay an amount to the Commissioner under Division 14 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not paid).

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

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

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

(1A) Unless the contrary intention appears, a reference in this Act to a failure to do an act or thing includes a reference to a refusal to do the act or thing.

(2AA) A reference in this Act to an accounting period adopted in lieu of a year of income includes a reference to an accounting period:

(a) that commences or ends under section 18A; and

(b) that would, but for that section, form part of an accounting period so adopted.

(2AB) The Commissioner may, by legislative instrument, make a determination modifying the operation of one or more provisions of this Act in relation to limited partnerships whose accounting

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periods commence or end under section 18A of the *Income Tax Assessment Act 1936*.

(2AC) A determination can only be made under subsection (2AB) in order to take account of the fact that such accounting periods are of less than 12 months' duration.

(3) The express references in this Act to companies do not imply that references to persons do not include references to companies.

(4) Paragraph (d) of the definition of ***dividend*** in subsection (1) does not apply if, under an arrangement:

(a) a person pays or credits any money or gives property to the company and the company credits its share capital account with the amount of the money or the value of the property; and

(b) the company pays or credits any money, or distributes property to another person, and debits its share capital account with the amount of the money or the value of the property so paid, credited or distributed.

(6) Where a place is, by virtue of paragraph (d) of the definition of ***permanent establishment*** in subsection (1), a permanent establishment of a person, the person shall, for the purposes of this Act, be deemed to be carrying on at or through that permanent establishment the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person at the place that is that permanent establishment.

6AB Foreign income and foreign tax

(1) A reference in this Act to foreign income is a reference to income (including superannuation lump sums and employment termination payments) derived from sources in a foreign country or foreign countries, and includes a reference to an amount included in assessable income under section 102AAZD, 456, 457 or 459A of this Act, or section 305-70 of the *Income Tax Assessment Act 1997*.

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(1C) A reference in this Act to foreign income includes a reference to an amount included in assessable income under:

(a) Division 301 of the *Income Tax Assessment Act 1997* in its application under section 301-5 of the *Income Tax (Transitional Provisions) Act 1997*; or

(b) Division 302 of the *Income Tax Assessment Act 1997* in its application under section 302-5 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) A reference in this Act to foreign tax is a reference to tax imposed by a law of a foreign country, being:

(a) tax upon income; or

(b) tax upon profits or gains, whether of an income or capital nature; or

(c) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*;

but does not include a unitary tax or a credit absorption tax.

(5B) This section applies to a non-share dividend in the same way as it applies to a dividend.

(6) In this section:

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

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

unitary tax means tax imposed by a law of a foreign country, being a law which, for the purposes of taxing income, profits or gains of a company derived from sources within that country, takes into account, or is entitled to take into account, income, losses, outgoings or assets of the company (or of a company that for the purposes of that law is treated as being associated with the

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company) derived, incurred or situated outside that country, but does not include tax imposed by that law if that law only takes those matters into account:

(a) if such an associated company is a resident for the purposes of that law; or

(b) for the purposes of granting any form of relief in relation to tax imposed on dividends received by one company from another company.

6B Income beneficially derived

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

(a) if the person derived the amount of income by reason of being the beneficial owner of the share in respect of which the dividend was paid; or

(b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to the dividend or to an amount that is deemed, by any application or successive applications of this subsection, to be an amount of income attributable to the dividend.

(1A) For the purposes of this Act, an amount of income derived by a person, being income other than passive income, is to be taken to be income attributable to passive income:

(a) if the person derived the amount of income by reason of being beneficially entitled to an amount representing passive income; or

(b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to passive income or to an amount that is taken, by any application or successive applications of this subsection, to be an amount of income attributable to passive income.

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(2) For the purposes of this Act, an amount of income derived by a person, being income other than interest income, shall be deemed to be income attributable to interest income:

(a) if the person derived the amount of income by reason of being beneficially entitled to an amount representing interest income; or

(b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to interest income or to an amount that is deemed, by any application or successive applications of this subsection, to be an amount of income attributable to interest income.

(2A) For the purposes of this Act, an amount of income derived by a person shall be deemed to be income derived from a particular source:

(a) except where paragraph (b) applies:

(i) if the person derived the amount of income by reason of being beneficially entitled to an amount that is derived from that source; or

(ii) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to income derived from that source or to an amount that is deemed, by any other application or applications of this subsection, to be an amount that is income derived from that source; or

(b) if the income so derived is, by virtue of subsection (1), (1A) or (2), attributable to a dividend, passive income or interest income derived from that source.

(3) Where a beneficiary in a trust estate is presently entitled to income of the trust estate, that income shall, for the purposes of this section, be deemed to be an amount of income derived by the person.

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

6BA Taxation treatment of certain shares

(1) This section applies if a shareholder holds shares in a company (the ***original shares***) and the company issues other shares (the ***bonus shares***) in respect of the original shares.

(2) If the bonus shares are a dividend, or taken to be a dividend (including as a result of section 45C), the consideration for the acquisition of the shares for the purposes of this Act is so much of the dividend as is:
  (a) included in the taxpayer's assessable income; and
  (b) is not rebatable under section 46A.

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

any amounts paid or payable by the taxpayer in respect of the original shares (whether on purchase of the shares, on application

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

(4) A company issues shares for no consideration if:

(a) it credits its capital account with profits in connection with the issue of the shares; or

(b) it credits its capital account with the amount of any dividend to a shareholder and the shareholder does not have a choice whether to be paid the dividend or to be issued with the shares.

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

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

(5) Subject to subsection (6), if a shareholder has a choice whether to be paid a dividend or to be issued shares and the shareholder chooses to be issued with shares:

(a) the dividend is taken to be credited to the shareholder; and

(b) the dividend is taken to have been paid out of profits; and

(c) subsections (2) and (3) apply in working out the consideration for the acquisition of the shares for the purposes of this Act.

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

(6) Subsection (5) does not apply if:

(a) a shareholder in a listed public company has a choice whether to be paid a dividend (other than a minimally franked dividend within the meaning of subsection 45(3)) or to be issued shares and the shareholder chooses to be issued with shares; and

(b) the company does not credit the share capital account in connection with the issue of those shares.

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

(7) This section (other than subsection (6)):

(a) applies to a non-share equity interest in the same way as it applies to a share; and

(b) applies to an equity holder in the same way as it applies to a shareholder; and

(c) applies to a non-share dividend in the same way as it applies to a dividend.

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

(1) This section applies to income that is derived on or after 1 July 1968 by a non-resident and consists of royalty that:

(a) is paid or credited to the non-resident by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country; or

(b) is paid or credited to the non-resident by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

(1A) For the purposes of Division 5 and Division 6 of Part III, but subject to subsections (3) and (4), income to which this section applies shall be deemed to be attributable to sources in Australia.

(2) For the purposes of sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*, but subject to subsections (3) and (4), income to which this section applies shall be deemed to have been derived from a source in Australia.

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(3) Where:

(a) income to which this section applies is paid or credited to the non-resident by whom it is derived by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident; and

(b) the royalty of which the income consists is, in part, an outgoing incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country;

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

(4) Where:

(a) income to which this section applies is paid or credited to the non-resident by whom it is derived by a person who, or by persons each of whom, is a non-resident; and

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

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

(5) In subsection (6), a reference to a relevant person is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least 1 of whom is, a resident.

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

(a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by a relevant person carrying on business in a country outside Australia; and

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

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

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

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

(7) For the purposes of paragraphs (1)(b) and (4)(b), where:

(a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by another person or other persons (in this subsection referred to as ***the payer***), being:

(i) another person who is carrying on business in Australia and is a non-resident; or

(ii) other persons who are carrying on business in Australia and each of whom is a non-resident; and

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

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

(ii) is incurred by the payer in carrying on a business for the purpose of gaining or producing income and is

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reasonably attributable to income that is derived, or may be derived, by the payer in so carrying on business at or through a permanent establishment of the payer in Australia;

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

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

(1) In this section:

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

natural resource income means income that:

(a) is derived by a non-resident; and

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

but does not include:

(c) income that consists of royalty; or

(d) income where:

(i) on 7 April 1986, the non-resident had a continuing entitlement to receive the income;

(ii) the income was derived by the non-resident pursuant to that continuing entitlement;

(iii) the non-resident was, at 5 o'clock in the afternoon, by standard time in the Australian Capital Territory on 7 April 1986, a resident, within the meaning of a double tax agreement, of a foreign country in respect of which the double tax agreement was in force;

(iv) before 8 April 1986, the Commissioner had given a statement in writing to the effect that income tax would be levied on 50% of income included in a specified class of income; and

(v) the income is included in that class of income.

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(2) For the purposes of Divisions 5 and 6 of Part III, natural resource income shall be deemed to be attributable to sources in Australia.

(3) For the purposes of section 255 of this Act and sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*, natural resource income shall be deemed to have been derived from a source in Australia.

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

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

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

6F Dual resident investment company

(1) For the purposes of this Act, a company (other than a company in the capacity of trustee) is a dual resident investment company in relation to a year of income if:

(a) at any time during the year of income the company is a resident of Australia; and

(b) the company is liable to tax in a foreign country in respect of some or all of the income or profits of the company of the year of income (or would be so liable if the company derived income or profits) because:

(i) the company is treated as a resident of that country for the purposes of the relevant law of that country; or

(ii) the company is treated as domiciled in that country for the purposes of the relevant law of that country; or

(iii) the company's management and control is treated as being located in that country for the purposes of the relevant law of that country; and

(c) at any time during the year of income when the company was in existence:

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(i) the company was not carrying on business with a reasonable view to profit; or

(ii) a substantial purpose of the company (whether or not stated in its constituent document) was to acquire or hold shares, securities or other investments in related companies (whether directly or indirectly through one or more companies, partnerships or trusts).

(2) For the purposes of this section, companies are related to each other if they are controlled (as defined by subsection (3)) by the same person, either alone or together with associates (whether or not the same associates are involved in relation to each company).

(3) For the purposes of this section, a person, either alone or together with associates, controls a company if:

(a) the person, either alone or together with associates:

(i) controls or is capable of controlling, either directly or through one or more interposed companies, partnerships or trusts, at least 50% of the maximum number of votes that might be cast at a general meeting of the company; or

(ii) is beneficially entitled to receive, directly or indirectly, at least 50% of any dividends that are or might be paid, or of any distribution of capital that is or may be made, by the company; or

(iii) is capable, under a scheme, of gaining such control or such an entitlement; or

(b) the company or its directors are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the person, either alone or together with associates.

(4) Section 159GZH applies for the purposes of this section in determining the beneficial entitlement of a person to receive indirectly the whole or a particular fraction of a dividend that is, or might be, paid by a company or of a distribution of capital of a company.

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(5) In this section:

associate has the same meaning as in section 318.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

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

Recognised small credit union in relation to a year of income

(1) For the purposes of this Act, a credit union is a recognised small credit union in relation to a year of income if:

(a) both:

(i) the year of income is the 1994-95 year of income; and

(ii) either:

(A) the credit union is not a designated credit union; or

(B) the credit union's notional taxable income of the year of income is less than $50,000; or

(b) both:

(i) the year of income is the 1995-96 year of income or a later year of income; and

(ii) the credit union's notional taxable income of the year of income is less than $50,000.

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Recognised medium credit union in relation to a year of income

(2) For the purposes of this Act, a credit union is a recognised medium credit union in relation to a year of income if:

(a) the year of income is the 1994-95 year of income or a later year of income; and

(b) the credit union is not a recognised small credit union in relation to the year of income; and

(c) the credit union's notional taxable income of the year of income is less than $150,000.

Recognised large credit union in relation to a year of income

(3) For the purposes of this Act, a credit union is a recognised large credit union in relation to a year of income if:

(a) the year of income is the 1994-95 year of income or a later year of income; and

(b) the credit union is neither:

(i) a recognised small credit union in relation to the year of income; nor

(ii) a recognised medium credit union in relation to the year of income.

Designated credit union

(4) For the purposes of this section, a credit union is a designated credit union if:

(a) it was in existence on 1 July 1993; and

(b) assuming that its accounts for the last accounting period that ended before 1 July 1993 had been prepared in accordance with generally accepted accounting principles—the amount that would have been shown in those accounts as the gross value of its assets as at the end of that accounting period is more than $30 million.

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Notional taxable income

(5) For the purposes of this section, the notional taxable income of a credit union of a year of income is the amount that would be its taxable income of the year of income if:

(a) section 23G did not apply to income derived by it in the 1994-95 year of income or any later year of income; and

(b) Division 9 of Part III had not been enacted.

Definitions

(6) In this section:

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

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

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

7B Application of the *Criminal Code*

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

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

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Part II—Administration

8 Commissioner

The Commissioner shall have the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

14 Annual report

(1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.

(2) The Minister shall cause a copy of a report furnished to him or her under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

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Part III—Liability to taxation

Division 1—General

18 Accounting period

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

(a) with the leave of the Commissioner some other date is adopted; or

(b) the accounting period ends earlier under section 18A.

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

(1) If a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP on a particular day:

(a) the accounting period during which that day occurs (the ***first accounting period***) is taken to have ended immediately before that day; and

(b) another accounting period is taken to have commenced at the beginning of that day.

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

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

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

The effect of ceasing to be a VCLP, an ESVCLP: the second accounting period is now taken under this section to end on 31 March

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2003, and a third accounting period commences on 1 April 2003. The third accounting period is to end on 30 June 2003.

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

21 Where consideration not in cash

(1) Where, upon any transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.

(2) This section has effect subject to section 21A.

21A Non-cash business benefits

(1) For the purposes of this Act, in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash shall be treated as if it were convertible to cash.

(2) For the purposes of this Act, if a non-cash business benefit (whether or not convertible to cash) is income derived by a taxpayer:

(a) the benefit shall be brought into account at its arm's length value reduced by the recipient's contribution (if any); and

(b) if the benefit is not convertible to cash—in determining the arm's length value of the benefit, any conditions that would prevent or restrict the conversion of the benefit to cash shall be disregarded.

(3) Where:

(a) a non-cash business benefit is income derived by a taxpayer in a year of income; and

(b) if the taxpayer had, at the time the benefit was provided, incurred and paid unreimbursed expenditure in respect of the provision of the benefit equal to the amount of the arm's length value of the benefit—a once-only deduction would, or would but for Subdivisions F, GA and G of Division 3 of this

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Part, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the taxpayer in respect of a percentage (in this subsection called the ***deductible percentage***) of the expenditure;

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

(4) Where:

(a) a non-cash business benefit is income derived by a taxpayer in a year of income; and

(b) a percentage (in this subsection called the ***non-deductible entertainment percentage***) of any expenditure incurred by the provider in respect of the provision of the benefit is non-deductible entertainment expenditure;

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

(5) In this section:

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

(a) the amount that the recipient could reasonably be expected to have been required to pay to obtain the benefit from the provider under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction; or

(b) if such an amount cannot be practically determined—such amount as the Commissioner considers reasonable.

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

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

(a) wholly or partly in respect of a business relationship; or

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

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

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

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

provide:

(a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise); and

(b) in relation to services—includes allow, confer, give, grant or perform.

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

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

(a) an arrangement for or in relation to:

(i) the performance of work (including work of a professional nature), whether with or without the provision of property;

(ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or

(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

(b) a contract of insurance; or

(c) an arrangement for or in relation to the lending of money.

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(6) Notwithstanding section 21, the consideration referred to in the definition of ***recipient's contribution*** in subsection (5) of this section is consideration in money.

(7) This section does not apply to an ESS interest (within the meaning of the *Income Tax Assessment Act 1997*) to which Subdivision 83A-B or 83A-C of that Act (about employee share schemes) applies.

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

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

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

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

(a) is an employee:

(i) of the United States Forces; or

(ii) of, or of a body conducting, a club or other facility established for the benefit or welfare of members of the United States Forces or of persons accompanying those Forces and which is recognized by the Government of the United States of America as a non-appropriated fund activity; or

(b) is serving with an organization that, with the approval of the Government of the Commonwealth, accompanies the United States Forces in Australia.

dependant, in relation to a person, means:

(a) the spouse of that person; or

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

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

Force Posture Agreement means the Force Posture Agreement between the Government of Australia and the Government of the United States of America done at Sydney on 12 August 2014, as amended and in force for Australia from time to time.

Note: The Treaty could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Force Posture Initiative has the same meaning as in the Force Posture Agreement.

Note: As well as some announced initiatives, this includes future initiatives that Australia and the United States mutually decide to be Force Posture Initiatives for the purposes of that Agreement.

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

(a) a company incorporated in Australia;

(b) an Australian citizen; or

(c) a person, other than a company, who is ordinarily resident in Australia.

foreign employee means a person who:

(a) is an employee of a foreign contractor; or

(b) is a director of a company that is a foreign contractor;

and is not an Australian citizen or ordinarily resident in Australia.

prescribed contract means:

(a) a contract to which the Government of the United States of America is a party in connexion with an approved project; or

(b) a contract made for purposes connected with the performance of a contract referred to in paragraph (a).

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prescribed purposes means:

(a) in relation to a foreign contractor or foreign employee—purposes relating to the performance of a prescribed contract;

(aa) in relation to a United States employee—purposes relating to an approved project; and

(b) in relation to a member of the United States Forces or a civilian accompanying the United States Forces—purposes relating to the carrying on of activities agreed upon between the Government of the Commonwealth and the Government of the United States of America.

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

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

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

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

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

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

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(a) a member of the United States Forces;
(b) a civilian accompanying the United States Forces;
(c) an Australian citizen; or
(d) a person ordinarily resident in Australia.

(2) For the purposes of this section, a foreign contractor, foreign employee or United States employee who is in Australia, or is carrying on business in Australia, solely for prescribed purposes does not cease to be in Australia solely for those purposes, or to be carrying on business in Australia solely for those purposes, by reason of anything undertaken or done by him or her in connexion with an undertaking in Australia of the Government of the United States of America, other than an approved project, agreed upon between the Government of the Commonwealth and the Government of the United States of America.

(3) Where a person:
(a) has been in Australia, or has carried on business in Australia, solely for prescribed purposes during a period when the person was a foreign contractor or foreign employee;
(b) has been in Australia solely for prescribed purposes during a period when the person was a member of the United States Forces, a civilian accompanying the United States Forces or a United States employee; or
(c) has been in Australia during a period when the person was a dependant of such a contractor, employee, member or civilian who was in Australia solely for prescribed purposes;

that person shall, for the purposes of the provisions of this Act other than Subdivision A of Division 17, be deemed not to have been a resident of Australia during that period, and the presence of that person in Australia during that period shall be disregarded in determining, for the purposes of those provisions, whether the person was a resident of Australia at any other time.

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

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

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

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

(5) Where:

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

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

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

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

(6) Where:

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

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

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

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

(1) In this section:

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

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

(a) that have not been credited in payment of income tax; and

(b) in respect of which a payment has not been made by the Commissioner.

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

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

(2) The regulations may prescribe a person or a class of persons for the purposes of this section but shall not so prescribe a person or class of persons unless the salary, wages and allowances received by the person or by all the persons in that class, as the case may be, in respect of his, her or their United Nations service are paid, given or granted by the Commonwealth or by the United Nations for and on behalf of the Commonwealth.

(3) A succeeding provision of this section does not apply in relation to a person if the regulations provide that that provision does not apply in relation to that person or in relation to a class of persons in which that person is included.

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(4) Subsection 12(2) (retrospective commencement of legislative instruments) of the *Legislation Act 2003* does not apply to regulations made for the purposes of subsection (2) or (3) of this section.

(5) Where:

(a) a payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988* is made in respect of the incapacity, impairment or death of a taxpayer; and

(b) the incapacity, impairment or death of the taxpayer resulted from an occurrence that happened during the performance by the taxpayer of United Nations service; and

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

the payment of compensation is exempt from income tax.

(6) For the purposes of section 15-2 of the *Income Tax Assessment Act 1997*, the total value of all allowances, gratuities, compensations, benefits, bonuses and premiums (in this subsection referred to as ***living allowances***) allowed, given or granted in meals, sustenance or the use of premises or quarters (including payment in lieu of one or more of those living allowances) to a taxpayer in respect of, or for or in relation directly or indirectly to, United Nations service shall be deemed to be an amount calculated at the rate of $2 for each week of that service in which any of those living allowances were so allowed, given or granted, or in which payment in lieu of any of those living allowances was made, to the taxpayer.

(7) Subject to subsections (8), (8A) and (9A) and subsection 79B(4), a taxpayer is entitled to a rebate of tax in his or her assessment in respect of income of a year of income in which he or she has

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performed United Nations service and derived income by way of salary, wages or other allowances in respect of that service. The amount of the rebate is:

(a) where the total period of that service performed by the taxpayer during the year of income is more than one-half of the year of income or where the taxpayer dies while performing that service during the year of income—an amount equal to the sum of:

(i) $338; and

(ii) the amount worked out using subsection (7A); or

(b) in any other case—such amount as, in the opinion of the Commissioner, is reasonable in the circumstances, being an amount not greater than the amount of the rebate to which the taxpayer would have been entitled under this subsection if paragraph (a) had applied to him or her in respect of the year of income.

(7A) For the purposes of subparagraph (7)(a)(ii), the amount is equal to 50% of the sum of the following rebates (if any) in respect of the year of income:

(a) any tax offset to which the taxpayer is entitled under Subdivision 61-A of the *Income Tax Assessment Act 1997*;

(b) any notional tax offset to which the taxpayer is entitled under Subdivision 961-A of the *Income Tax Assessment Act 1997*.

(8) For the purposes of subsection (7), but subject to subsection (8A), the total period of United Nations service of a taxpayer in any year of income shall be deemed to include any period in that year of income during which the taxpayer has resided, or has actually been, in the prescribed area.

(8A) For the purposes of subsection (7), United Nations service does not include any period of service of the taxpayer in respect of which an exemption from income tax applies under section 23AG.

(9) Where a rebate is allowable under subsection (7) in the assessment of a taxpayer in respect of income of a year of income and, but for this subsection, a rebate of a lesser amount would be allowable in

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that assessment under section 79A, a rebate under section 79A is not allowable in that assessment.

(9A) Where a rebate is allowable under section 79A in the assessment of a taxpayer in respect of income of a year of income and, but for this subsection, a rebate of the same or a lesser amount would be allowable in that assessment under subsection (7), a rebate under subsection (7) is not allowable in that assessment.

(9B) Subsection 79B(4) shall be disregarded in determining for the purposes of subsections (9) and (9A) of this section the amount of a rebate allowable to a taxpayer under subsection (7) of this section or under section 79A.

(10) Where:

(a) the trustee of the estate of a deceased person who has performed United Nations service is liable to pay income tax, in respect of a year of income, upon income that consists of or includes salary, wages or allowances derived by the deceased person in respect of that service; or

(b) the death of the person resulted from an occurrence that happened during that service; and

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

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

(d) if the assessable income of the deceased person of the year of income consists solely of the salary, wages or allowances derived in respect of that service—from the amount of income tax so payable by the trustee; or

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(e) if the assessable income of the deceased person of the year of income includes income other than the salary, wages or allowances derived in respect of that service:

(i) from the amount of income tax so payable by the trustee; or

(ii) from the amount by which the income tax payable in respect of the income of the year of income has been increased by the inclusion of the salary, wages or allowances so derived in the assessable income of the deceased person of the year of income;

whichever is the less.

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

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

Requirements for exemption

(1) The pay and allowances earned by a person serving as a member of the Defence Force are exempt from tax if:

(a) they are earned while there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the person is on eligible duty with a specified organisation in a specified area outside Australia; and

(b) the eligible duty is not as, or under, an attaché at an Australian embassy or legation.

Eligible duty

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

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Where paragraph (1)(a) certificate in force

(3) A certificate under paragraph (1)(a):

(a) comes into force at the later of:

(i) the time specified in the certificate (which may be before the time when it is issued, but not before the end of the specified day under the regulations); and

(ii) the time when the person arrives for duty in the specified area concerned; and

(b) subject to paragraph (c), continues in force until the earliest of:

(i) the time of the person's departure from the specified area; and

(ii) the time when, in accordance with a certificate of revocation signed by the Chief of the Defence Force, it ceases to be in force; and

(iii) any time prescribed by the regulations in relation to the eligible duty for the purposes of this subparagraph; and

(c) is in force during any period of hospital treatment resulting from an illness contracted, or injuries sustained, during the person's eligible duty.

Review of paragraph (1)(a) certificate

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

Delegation of paragraph (1)(a) power

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

Revocation certificate is legislative instrument

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

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

(1) Where a taxpayer, being a natural person, has been engaged on qualifying service on a particular approved project for a continuous period of not less than 91 days, any eligible foreign remuneration derived by the person that is attributable to that qualifying service is exempt from tax.

(3) Subject to subsections (4) and (5), a person shall be taken for the purposes of this section to be engaged on qualifying service on an approved project during any period during which:

(a) the person is outside Australia and is engaged in the performance of personal services in connection with the approved project;

(b) the person is travelling between Australia and the site of the approved project;

(c) by reason of an incapacity for work due to accident or illness occurring while the person was, by virtue of paragraph (a) or (b), to be taken to be engaged on qualifying service on the approved project, the person is absent from work; or

(d) the person is on eligible leave, being leave that accrued in respect of a period during which the person was, by virtue of any of the preceding paragraphs, to be taken to be engaged on qualifying service on the approved project.

(4) A person shall not be taken to have been engaged on qualifying service on a particular approved project while the person was travelling between Australia and the site of the approved project unless the Commissioner is satisfied that the time taken for the journey is reasonable.

(5) A person shall not be taken to have been engaged on qualifying service on a particular approved project by virtue of paragraph (3)(c) during a period of incapacity for work unless the person is taken to have been engaged on qualifying service on that approved project by virtue of paragraph (3)(a), (b) or (d) during a period that commenced immediately after the incapacity ceased.

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(6) Where:

(a) a person was engaged on qualifying service on a particular approved project; and

(b) due to unforeseen circumstances, the person ceased to be engaged on qualifying service on that approved project;

the period during which the person is to be taken to have been engaged on qualifying service on that approved project shall, except for the purpose of determining whether income derived by the person is eligible foreign remuneration, be taken to include the additional period after the person ceased to be engaged on qualifying service on that approved project during which the person would, in the opinion of the Commissioner, have continued to be engaged on qualifying service on that approved project but for those unforeseen circumstances.

(7) Where:

(a) a person (in this subsection referred to as the ***original person***) was engaged on qualifying service on a particular approved project;

(b) due to unforeseen circumstances, the original person ceased to be engaged on qualifying service on that approved project; and

(c) as soon as practicable after the time when the original person ceased to be engaged on qualifying service on that approved project, another person (in this subsection referred to as the ***substituted person***) commenced to be engaged on qualifying service on that approved project in lieu of the original person;

the period during which the substituted person is to be taken to have been engaged on qualifying service on that approved project shall, except for the purpose of determining whether income derived by the substituted person is eligible foreign remuneration, be taken to include a period that ended immediately before the substituted person commenced to be engaged on qualifying service on that approved project in lieu of the original person and was of the same duration as the continuous period during which the original person was, immediately before the original person ceased to be engaged on qualifying service on that approved project, taken

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to have been engaged on qualifying service on that approved project.

(8) Where:

(a) during the period (in this subsection referred to as the ***total project period***) commencing at the time when a person was first engaged on qualifying service on an approved project and ending at the time when the person was last engaged on qualifying service on that approved project, the person was in Australia during a period or periods (in this subsection referred to as the ***intervening period or intervening periods***) during which the person was not engaged on qualifying service on that approved project;

(b) the total number of days in the intervening period or intervening periods does not exceed one-sixth of the total number of days during the total project period during which the person was engaged on qualifying service on the approved project; and

(c) at all times during the total project period, the person was engaged on qualifying service on the approved project or was in Australia;

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

(9) Where, immediately before a person commences to take eligible leave, leave of the same kind as the eligible leave has accrued in relation to the person but has not been used and that unused leave consists of:

(a) leave that accrued in respect of a period or periods when the person was engaged on qualifying service on an approved project and leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project;

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(b) leave that accrued in respect of 2 or more periods when the person was engaged on qualifying service on 2 or more different approved projects; or

(c) leave that accrued in respect of 2 or more periods when the person was engaged on qualifying service on 2 or more different approved projects and leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project;

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

(d) in a case to which paragraph (a) applies—the person shall be deemed first to have taken leave that accrued in respect of the period when the person was engaged on qualifying service on the approved project referred to in that paragraph;

(e) in a case to which paragraph (b) applies—the leave shall be deemed to have been taken in the order that is reverse to the order in which it accrued;

(f) in a case to which paragraph (c) applies:

(i) the person shall be deemed not to have taken any of the leave that accrued in respect of a period or periods when the person was not engaged on qualifying service on an approved project until the person had taken leave for a number of days equal to the number of days of leave referred to in that paragraph that had accrued in respect of periods when the person was engaged on qualifying service on approved projects; and

(ii) the leave that had accrued in respect of periods when the person was engaged in qualifying service on approved projects shall be deemed to have been taken by the person in the order that is reverse to the order in which that leave accrued.

(10) Where the amount of income derived by a person that:

(a) is attributable to qualifying service on an approved project; and

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(b) would, apart from this subsection, be eligible foreign remuneration;

exceeds the amount of income that the Commissioner considers would be reasonable remuneration in respect of that qualifying service, the amount of the excess is not eligible foreign remuneration for the purposes of this section.

(11) Where the Trade Minister is satisfied that the undertaking of an eligible project that was commenced, or is proposed to be commenced, after 19 August 1980 is, or will be, in the national interest, that Minister may, by writing signed by that Minister, approve that eligible project for the purposes of this section.

(12) The Trade Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by that Minister, delegate to a person that Minister's power under subsection (11).

(13) The power so delegated, when exercised by the delegate shall, for the purposes of this section, be deemed to have been exercised by the Trade Minister.

(14) A delegation under subsection (12) does not prevent the exercise of a power by the Trade Minister.

(15) Where:

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

(b) at the time of making an assessment in respect of income of the person of the year of income, the Commissioner is of the opinion that, at a later time, circumstances will exist by reason of which that eligible foreign remuneration will be exempt from tax by virtue of this section;

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

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

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

(17) For the purposes of this section, income is excluded income if:

(a) the income is income to which section 23AG applies; or

(aa) the income is a payment, consideration or amount that:

(i) is included in assessable income under Division 82, section 83-295 or Division 301, 302, 304 or 305 of the *Income Tax Assessment Act 1997*; or

(ii) is included in assessable income under Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; or

(iii) is mentioned in paragraph 82-135(e), (f), (g), (i) or (j) of the *Income Tax Assessment Act 1997*; or

(iv) is an amount transferred to a fund, if the amount is included in the assessable income of the fund under section 295-200 of the *Income Tax Assessment Act 1997*; or

(b) the income is derived from sources in a country other than Australia and:

(i) is exempt from income tax in that country; and

(ii) would not be exempt from income tax in that country apart from the operation of an agreement applying to Australia and that other country relating to the avoidance of double taxation or of a law of that other country giving effect to such an agreement; or

(c) the income consists of:

(i) payments in lieu of long service leave; or

(ii) payments by way of superannuation or pension.

(17A) If the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section (in this section called the ***exempt amount***) and other income, the amount of tax (if any) payable in respect of the other income is calculated using the formula:

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

where:

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

(a) the exempt amount were not exempt income; and

(aa) if the exempt amount is a payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997*—the exempt amount (excluding any part of that amount that represented contributions made by the taxpayer) were assessable income of the taxpayer; and

(b) the taxpayer were not entitled to any rebate of tax.

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

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

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

(e) so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that assessable income; and

(f) the amount calculated using the formula in subsection (17B).

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

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

where:

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

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

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

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

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

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

eligible contractor means:

(a) a resident of Australia;

(b) the Commonwealth, a State, a Territory, the government of a country other than Australia or an authority of the Commonwealth, of a State, of a Territory or of the government of a country other than Australia;

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(c) an organization:
  (i) of which Australia and a country or countries other than Australia are members; or
  (ii) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia; or
(d) an agency of an organization to which paragraph (c) applies.

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

(a) income consisting of salary, wages, commission, bonuses or allowances, or of amounts included in a person's assessable income under Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes), derived by the person in his or her capacity as an employee of an eligible contractor; or
(b) income, or amounts included in a person's assessable income under that Division, derived by the person under a contract with an eligible contractor, being a contract that is wholly or substantially for the personal services of the person;

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

eligible leave means leave other than long service leave.

eligible project means:

(a) a project for the design, supply or installation of any equipment or facilities; or
(b) a project for the construction of works; or
(c) a project for the development of an urban area or a regional area; or
(d) a project for the development of agriculture; or

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(e) a project consisting of giving advice or assistance relating to the management or administration of a government department or of a public utility; or

(f) a project included in a class of projects approved in writing for the purposes of this section by the Trade Minister.

employee includes:

(a) a person employed by the Commonwealth, by a State, by a Territory, by the government of a country other than Australia or by an authority of the Commonwealth, of a State, of a Territory or of the government of a country other than Australia; and

(b) a member of the Defence Force.

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

23AG Exemption of income earned in overseas employment

(1) Where a resident, being a natural person, has been engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived by the person from that foreign service are exempt from tax.

(1AA) However, those foreign earnings are not exempt from tax under this section unless the continuous period of foreign service is directly attributable to any of the following:

(a) the delivery of Australian official development assistance by the person's employer (except if that employer is an Australian government agency (within the meaning of the *Income Tax Assessment Act 1997*));

(b) the activities of the person's employer in operating a public fund that:

(i) is covered by item 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of the *Income Tax Assessment Act 1997* (international affairs deductible gift recipients); and

(ii) meets the special conditions mentioned in that item;

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(c) the activities of the person's employer, if the employer is exempt from income tax because of paragraph 50-50(1)(c) or (d) of the *Income Tax Assessment Act 1997* (prescribed institutions located or pursuing objectives outside Australia);

(d) the person's deployment outside Australia as a member of a disciplined force by:

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

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

(e) an activity of a kind specified in the regulations.

(1A) A person is taken, for the purposes of subsection (1), to have been engaged in foreign service for a continuous period of 91 days if:

(a) the person died at a time when he or she was engaged in foreign service for a continuous period of less than 91 days; and

(b) he or she would have otherwise continued to be engaged in the foreign service; and

(c) his or her continuous period of engagement in the foreign service would have otherwise been a period of at least 91 days.

(2) An amount of foreign earnings derived in a foreign country is not exempt from tax under this section if the amount is exempt from income tax in the foreign country only because of any of the following:

(a) a law of the foreign country giving effect to a double tax agreement within the meaning of Part X;

(b) a double tax agreement within the meaning of Part X;

(c) provisions of a law of the foreign country under which income covered by any of the following categories is generally exempt from income tax:

(i) income derived in the capacity of an employee;

(ii) income from personal services;

(iii) similar income;

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(d) the law of the foreign country does not provide for the imposition of income tax on one or more of the categories of income mentioned in paragraph (c);

(e) a law of the foreign country corresponding to the *International Organisations (Privileges and Immunities) Act 1963* or to the regulations under that Act;

(f) an international agreement to which Australia is a party and that deals with:

(i) diplomatic or consular privileges and immunities; or

(ii) privileges and immunities in relation to persons connected with international organisations;

(g) a law of the foreign country giving effect to an agreement covered by paragraph (f).

(2A) Subsection (2) does not apply in relation to foreign earnings to the extent that the person derived them from foreign service in Iraq after 31 December 2002 but before 1 May 2004.

(3) If the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section (in this section called the ***exempt amount***) and other income, the amount of tax (if any) payable in respect of the other income is calculated using the formula:

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

where:

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

(a) the exempt amount were not exempt income; and

(aa) if the exempt amount is a payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997*—the exempt amount (excluding any part of that amount that represented contributions made by the taxpayer) were assessable income of the taxpayer; and

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(b) the taxpayer were not entitled to any rebate of tax.

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

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

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

(e) so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that assessable income; and

(f) the amount calculated using the formula in subsection (4).

(4) The formula referred to in paragraph (3)(f) is:

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

where:

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

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

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

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(5) Subsection (3) applies to a taxpayer in respect of income of a year of income as if any payment covered by section 83-240 or 305-65 of the *Income Tax Assessment Act 1997* that related to the termination of employment that was made in respect of the taxpayer during that year of income were income of the taxpayer of that year of income that is exempt from tax under this section.

(6) For the purposes of this section, a period during which a person is engaged in foreign service includes any period during which the person is, in accordance with the terms and conditions of that service:

(a) absent on recreation leave, other than:

(i) leave wholly or partly attributable to a period of service or employment other than that foreign service;

(ii) long service leave, furlough, extended leave or leave of a similar kind (however described); or

(iii) leave without pay or on reduced pay; or

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

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

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

(b) a time (if any), since the start of the first of the 2 or more periods, when the person's total period of absence exceeds $^1/_6$ of the person's total period of foreign service;

whichever happens sooner.

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

Kate is then absent for 5 days before commencing a further period of foreign service. No matter how long the further period lasts, it can never constitute a continuous period of foreign service with the first 2 periods of foreign service, because on the fourth day of the second absence the total period of absence is $^1/_5$ of the total period of foreign service.

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(6B) In subsection (6A):

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

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

(6F) Where:

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

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

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

(7) In this section:

employee includes:

(a) a person employed by a government or an authority of a government or by an international organisation; or

(b) a member of a disciplined force.

foreign earnings means income consisting of earnings, salary, wages, commission, bonuses or allowances, or of amounts included in a person's assessable income under Division 83A of the *Income Tax Assessment Act 1997* (about employee share schemes), but does not include any payment, consideration or amount that:

(a) is included in assessable income under Division 82 or Subdivision 83-295 or Division 301, 302, 304 or 305 of the *Income Tax Assessment Act 1997*; or

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(b) is included in assessable income under Division 82 of the *Income Tax (Transitional Provisions) Act 1997*; or

(c) is mentioned in paragraph 82-135(e), (f), (g), (i) or (j) of the *Income Tax Assessment Act 1997*; or

(d) is an amount transferred to a fund, if the amount is included in the assessable income of the fund under section 295-200 of the *Income Tax Assessment Act 1997*.

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

income tax, in relation to a foreign country:

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

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

23AH Foreign branch income of Australian companies not assessable

Objects

(1) The objects of this section are:

(a) to ensure that active foreign branch income derived by a resident company, and capital gains made by a resident company in disposing of non-tainted assets used in deriving foreign branch income, (except income and capital gains from the operation of ships or aircraft in international traffic) are not assessable income or exempt income of the company; and

(b) to include in the assessable income of a resident company that part of its income and capital gains derived through a branch in a foreign country that is comparable to the amounts that would be included in an attributable taxpayer's assessable income for income and capital gains derived by a CFC resident in the same foreign country; and

(c) to get the same outcomes where one or more partnerships or trusts are interposed between a resident company and a foreign branch; and

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(d) to limit the effect mentioned in paragraph (a) where there is a branch hybrid mismatch for the purposes of Division 832 of the *Income Tax Assessment Act 1997*.

Foreign branch income not assessable

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

Foreign capital gains and losses disregarded

(3) Subject to this section, a capital gain from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:

(a) the gain is made by a company that is a resident; and

(b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or through a PE of the company in a listed country or unlisted country; and

(c) the asset is not taxable Australian property.

(4) Subject to this section, a capital loss from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:

(a) the loss is made by a company that is a resident; and

(b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or through a PE of the company in a listed country or unlisted country; and

(c) had the loss been a gain, it would be disregarded under subsection (3).

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Exception relating to hybrid mismatch rules

(4A) Subsection (2) does not apply to foreign income derived by the company if the foreign income is branch hybrid mismatch income (see subsection (14C)).

Exceptions: listed country PE

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

(a) the PE is in a listed country; and

(b) the PE does not pass the active income test (see subsection (12)); and

(c) the foreign income is both:

(i) adjusted tainted income (see subsection (13)); and

(ii) eligible designated concession income in relation to a listed country.

(6) Subsection (3) or (4) does not apply to a capital gain or capital loss if:

(a) the PE is in a listed country; and

(b) for a capital gain—the gain is from a tainted asset and is eligible designated concession income in relation to a listed country; and

(c) for a capital loss—the loss is from a tainted asset and would be eligible designated concession income in relation to a listed country if it were a capital gain.

Exceptions: unlisted country PE

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

(a) the PE is in an unlisted country; and

(b) the PE does not pass the active income test (see subsection (12)); and

(c) the foreign income is adjusted tainted income (see subsection (13)).

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(8) Subsection (3) or (4) does not apply to a capital gain or capital loss if:
  (a) the PE is in an unlisted country; and
  (b) the gain or loss is from a tainted asset.

Income derived in disposing of a business

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

Interposed partnerships or trusts

(10) This section applies to any indirect interest (through one or more partnerships or trust estates) of a company in foreign income derived by a partnership or trustee through a PE of the partnership or trustee in a listed country or unlisted country as if that indirect interest were foreign income derived by the company through a PE of the company in that country.

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

Active income test

(12) A PE of an entity passes the ***active income test*** for a year of income if the entity would have passed the active income test in section 432 if:
  (a) the assumptions in subsection (14) were made; and
  (b) subsection 432(3) and 446(2) and paragraphs 432(1)(b) and (e) and 447(1)(b), (d) and (f) had not been enacted.

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Adjusted tainted income

(13) For the purposes of this section, the ***adjusted tainted income*** of a PE of an entity is income or other amounts that would be adjusted tainted income of the entity for the purposes of Part X if:

(a) the assumptions in subsection (14) were made; and

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

Assumptions for subsections (12) and (13)

(14) The assumptions referred to in paragraphs (12)(a) and (13)(a) are:

(a) except in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b), the only income or other amounts derived by the entity were the income derived in carrying on business at or through the PE; and

(b) the entity's statutory accounting periods were the same as the entity's years of income; and

(c) in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b):

(i) the part of the entity's operations that consists of the business carried on at or through the PE were a company (the ***PE company***); and

(ii) the remaining part of the entity's operations were a separate company (the ***HQ company***); and

(iii) the PE company and the HQ company had carried out the transactions that they would have carried out if the PE company were engaged in the same or similar activities as the PE under the same or similar conditions as the PE and were dealing wholly independently with the HQ company; and

(iv) any income derived by the HQ company were disregarded; and

(d) if the entity is an AFI entity (within the meaning of subsection 326(2))—the entity were an AFI subsidiary; and

(e) in applying paragraphs 447(1)(a), (c) and (e), the HQ company were an associate of the PE company.

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(14A) This section does not apply to foreign income, or to a capital gain or capital loss, of a company to the extent that the income, gain or loss is from:

(a) the operation of ships or aircraft in international traffic at or through a PE of the company in a listed country or unlisted country; or

(b) things that are ancillary to that operation.

(14B) A company operates a ship or aircraft in international traffic if the company operates it for transporting passengers or goods between a place in one country and a place in another country.

Branch hybrid mismatch income

(14C) For the purposes of this section, if foreign income derived by the company is an amount that, for the purposes of Division 832 of the *Income Tax Assessment Act 1997*, is a payment:

(a) received by the company; and

(b) that, apart from subsection (4A) of this section, would give rise to a branch hybrid mismatch;

then so much of the foreign income as does not exceed the amount of the branch hybrid mismatch is ***branch hybrid mismatch income***.

(14D) For the purposes of this section, ***PE***, when it is used in Division 832 of the *Income Tax Assessment Act 1997*, does not have the meaning it has in that Act but instead has the same meaning as in this section.

Definitions

(15) In this section:

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

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

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

foreign income includes an amount that:

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

(b) is derived from sources in a listed country or unlisted country.

listed country has the same meaning as in Part X.

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

(a) if there is a double tax agreement in relation to that country—has the same meaning as in the double tax agreement; or

(b) in any other case—has the meaning given by subsection 6(1).

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

tainted asset has the same meaning as in Part X.

unlisted country has the same meaning as in Part X.

23AI Amounts paid out of attributed income not assessable

(1) Where:

(a) either:

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

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

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

the following provisions have effect:

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

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

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

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

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

(g) if the payment is of a kind referred to in paragraph 365(1)(e) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit.

(2) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.

(3) In this section:

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

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attribution debit has the same meaning as in Part X.

company has the same meaning as in Part X.

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

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

When this section applies

(1) This section applies if:
  (a) either:
    (i) a FIF attribution account payment of a kind referred to in former paragraph 603(1)(a), (b), (c), (d), (f), (g) or (h) is made to a taxpayer (other than a partnership or taxpayer in the capacity of trustee of a trust); or
    (ii) a FIF attribution account payment of a kind referred to in former paragraph 603(1)(e) is made to a taxpayer; and
  (b) on the making of the payment, a post FIF abolition debit arises, for the FIF attribution account entity making the payment, in relation to the taxpayer.

Post FIF abolition debit arises

(2) A post FIF abolition debit arises for a FIF attribution account entity (the ***eligible entity***) in relation to a taxpayer if:
  (a) the eligible entity makes a FIF attribution account payment to the taxpayer or to a FIF attribution account entity; and
  (b) immediately before the eligible entity makes the FIF attribution account payment, there is a post FIF abolition surplus for the eligible entity in relation to the taxpayer.

Amount of post FIF abolition debit

(3) The amount of the post FIF abolition debit is the lesser of:

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(a) the post FIF abolition surplus; and
(b) whichever of the following is applicable:
(i) if the attribution account payment is made to the taxpayer—the FIF attribution account payment;
(ii) in any other case—the taxpayer's FIF attribution account percentage (for the FIF attribution account entity to which the payment is made) of the FIF attribution account payment;

reduced by any attribution debit that arises under section 372 for the entity in relation to the taxpayer as a result of the making of the payment.

When the post FIF abolition debit arises

(4) The post FIF abolition debit arises when the FIF attribution account payment is made.

When a post FIF abolition surplus exists

(5) A post FIF abolition surplus for a FIF attribution account entity in relation to a taxpayer exists at a particular time (the ***relevant time***) if the sum of:
(a) the entity's total FIF attribution credits (within the meaning of former section 605) that arose before the commencement of Schedule 1 to the *Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010*; and
(b) the entity's total post FIF abolition credits arising before the relevant time in relation to the taxpayer;

exceeds the sum of:
(c) the entity's total FIF attribution debits (within the meaning of former section 606) that arose before that commencement in relation to the taxpayer; and
(d) the entity's total post FIF abolition debits arising before the relevant time in relation to the taxpayer.

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Post FIF abolition credit arises

(6) A post FIF abolition credit arises for a FIF attribution account entity (the ***eligible entity***) in relation to a taxpayer if a FIF attribution account payment that requires a post FIF abolition debit for another entity in relation to the taxpayer is made to the eligible entity.

Amount of post FIF abolition credit

(7) The amount of the post FIF abolition credit is equal to the amount of the post FIF abolition debit for the other entity.

When the post FIF abolition credit arises

(8) The post FIF abolition credit arises when the FIF attribution account payment referred to in subsection (6) is made.

Effect of this section applying

(9) If this section applies, the following provisions have effect:
   (a) if the payment is of a kind referred to in former paragraph 603(1)(a) or (b)—the payment is not assessable income, and is not exempt income, to the extent of the debit;
   (b) if the payment is of a kind referred to in former paragraph 603(1)(c) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 92 in respect of an individual interest in the net income of the partnership of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;
   (c) if the payment is of a kind referred to in former paragraph 603(1)(d) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

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(d) if the payment is of a kind referred to in former paragraph 603(1)(d) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;

(e) if the payment is of a kind referred to in former paragraph 603(1)(e)—the payment is not, to the extent of the debit, assessable to the taxpayer as mentioned in that paragraph;

(f) if the payment is of a kind referred to in former paragraph 603(1)(f) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

(g) if the payment is of a kind referred to in former paragraph 603(1)(g)—the payment is not assessable income, and is not exempt income, to the extent of the debit;

(h) if the payment is of a kind referred to in former paragraph 603(1)(h)—the payment is not assessable income, and is not exempt income, to the extent of the debit.

(10) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.

(11) In this section:

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

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

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

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

23B Reduction of disposal consideration if FIF attributed income not distributed

(1) If:

(a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account:

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

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

being an asset that is an interest in a FIF attribution account entity; and

(b) immediately before the disposal or CGT event takes place there is a post FIF abolition surplus for the FIF attribution account entity in relation to the taxpayer;

then, for the purposes of this Act:

(c) the consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is taken to be reduced by so much of the amount of the post FIF abolition surplus as does not exceed the consideration or capital proceeds; and

(d) a post FIF abolition debit arises at the time of the disposal or the CGT event under this paragraph, in relation to the taxpayer, for the FIF attribution account entity; and

(e) the amount of the post FIF abolition debit is equal to so much of the surplus as is taken into account under paragraph (c).

(2) For the purposes of paragraph (1)(c), if the disposal of the asset or the CGT event causes the taxpayer's FIF attribution account percentage for the FIF attribution account entity to be reduced by a proportion, then only that proportion of the post FIF abolition

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surplus for the entity is to be taken into account under that paragraph.

(3) In this section:

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

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

23G Exemption of interest received by credit unions

(1) In this section:

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

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

(b) the company has a consent under section 66 of that Act that allows it to assume or use the expression "credit union" or "credit society", or another expression (whether or not in English) that is of like import to either of those expressions.

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

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

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

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

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

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(a) during that year of income the credit union did not enter into any transactions of a kind not ordinarily entered into by a company of a kind referred to in paragraph (a) of the definition of ***credit union*** in subsection (1); and

(b) by comparison with the profits of other credit unions for that year of income and the amounts transferred by those credit unions out of those profits to reserves, and after making due allowance for differences in the numbers of transactions entered into by other credit unions and the first-mentioned credit union and the amounts to which the respective transactions related, the profit of the first-mentioned credit union for that year of income was not excessive and the first-mentioned credit union did not transfer an unreasonable part of that profit to a reserve.

(4) In determining for the purposes of paragraph (3)(a) whether any transactions entered into by a credit union during a year of income were transactions of a kind referred to in that paragraph, the Commissioner may have regard to:

(a) the circumstances in which, and the terms and conditions upon which, during that year of income:

(i) moneys were lent to, invested with, or otherwise obtained by, the credit union;

(ii) moneys were lent or otherwise made available by the credit union to its members or to other persons; and

(iii) moneys were invested by the credit union;

(b) the nature of the connexion (if any) between:

(i) the credit union or any of its members and any of the persons by whom moneys were lent to, invested with, or otherwise made available to, the credit union during that year of income;

(ii) the credit union or any of its members and any of the persons who owed moneys to the credit union at any time during that year of income; or

(iii) any of the persons by whom moneys were lent to, invested with, or otherwise made available to, the credit union during that year of income and any of the persons

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who owed moneys to the credit union at any time during that year of income; and

(c) any other relevant matters.

23K Substitution of certain securities

(1) In this section:

central borrowing authority means:

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

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

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

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

(a) the substituted security was issued by the person to the taxpayer in exchange for the surrender or transfer of, or otherwise in replacement or substitution for, the original security; and

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(b) the terms and conditions provided for by the substituted security were identical in all material respects to those provided for by the original security.

(3) Where:

(a) but for this subsection, a person would be taken to have issued a security (in this subsection referred to as the ***substituted security***) to a taxpayer in substitution for another security (in this subsection referred to as the ***original security***) held by the taxpayer; and

(b) either or both of the following conditions is or are satisfied:

(i) an amount was payable by the taxpayer by way of consideration for the issue of the substituted security; or

(ii) an amount was payable to the taxpayer by way of consideration for the surrender, transfer, replacement or substitution of the original security;

the person shall not be taken for the purposes of this section to have issued the substituted security in substitution for the original security.

(4) Where:

(a) under terms and conditions provided for by a security, the day on which interest is payable in respect of a period is different from that on which interest is payable in respect of the same period under another security; and

(b) the terms and conditions provided for by the securities are otherwise identical in all material respects;

the following provisions have effect:

(c) if the days on which the interest is payable are separated by an interval not exceeding 31 days—the terms and conditions provided for by the 2 securities shall, for the purposes of paragraph (2)(b), be taken to be identical in all material respects; and

(d) in any other case—the terms and conditions provided for by the 2 securities shall, for the purposes of paragraph (2)(b), be taken not to be identical in all material respects.

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(5) Where, on or after 8 August 1984, a central borrowing authority issued or issues a security (in this subsection referred to as the ***substituted security***) to a taxpayer in substitution for another security (in this subsection referred to as the ***original security***) held by the taxpayer that was issued by a public authority other than the central borrowing authority:

(a) the substituted security shall, for the purposes of this Act, be deemed to be a continuation of the original security on the terms and conditions provided for by the substituted security; and

(b) no amount shall, in respect of the issue of the substituted security or the surrender, transfer, replacement or substitution of the original security, be included in, allowable as a deduction from or taken into account in ascertaining any amount included in or allowable as a deduction from, the assessable income of any taxpayer in respect of any year of income.

23L Certain benefits in the nature of income not assessable

(1) Income derived by a taxpayer by way of the provision of a fringe benefit is not assessable income and is not exempt income of the taxpayer.

(1A) Income derived by a taxpayer by way of the provision of a benefit (other than a benefit to which section 15-70 of the *Income Tax Assessment Act 1997* applies) that, but for paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit is exempt income of the taxpayer.

(2) Where:

(a) in a year of income, a taxpayer derives income consisting of one or more non-cash business benefits (within the meaning of section 21A); and

(b) the total amount that is applicable under section 21A in respect of those benefits does not exceed $300;

the income is exempt income.

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

Subdivision A—Exemption for certain State/Territory bodies

24AK Key principle

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

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

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

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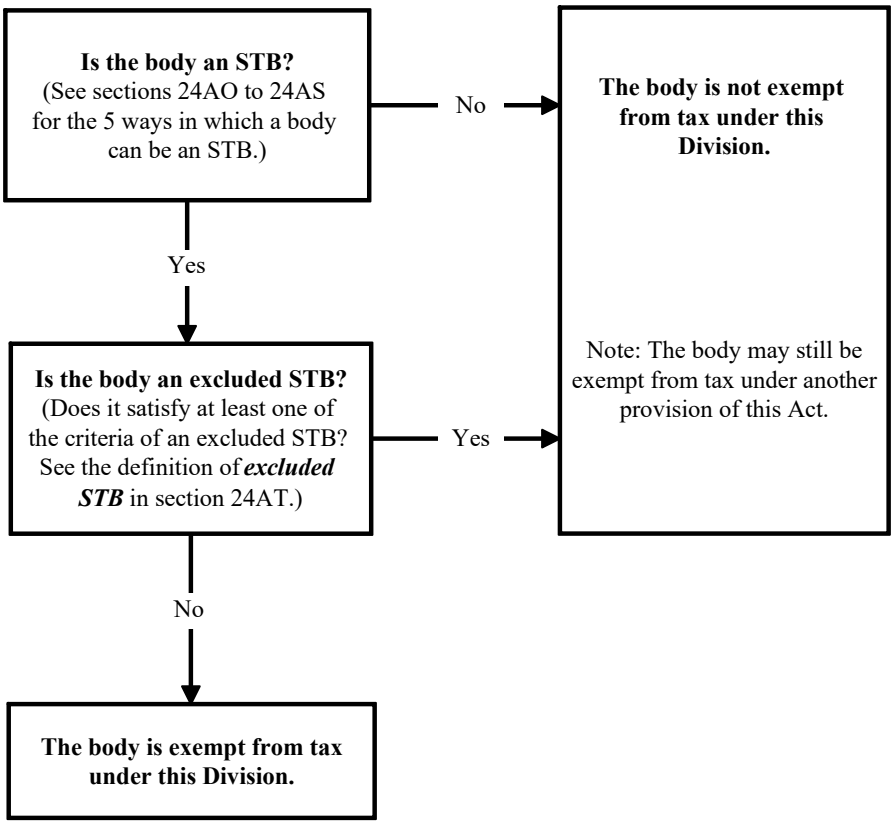

24AM Certain STBs exempt from tax

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

24AN Certain STBs not exempt from tax under this Division

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

Notes: 1. For the definition of ***excluded STB*** see section 24AT.

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2. Even though an excluded STB is not exempt from income tax under this Division, it may still be exempt under another provision of this Act.

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

A body is an ***STB*** if:

(a) it is a company limited solely by shares; and

(b) all the shares in it are beneficially owned by one or more government entities.

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

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

A body is an ***STB*** if:

(a) it is established by State or Territory legislation; and

(b) it is not a company limited solely by shares; and

(c) the legislation provides that it must distribute all of its profits (if any) only to one or more government entities; and

(d) if the legislation makes provision as to the way its net assets may be distributed if it is dissolved or wound up—the provision is that, if it is dissolved, all of its net assets (if any) must be distributed only to one or more government entities.

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

A body is an ***STB*** if:

(a) it is established by State or Territory legislation; and

(b) it is not a company limited solely by shares; and

(c) the legislation gives the power to appoint or dismiss its governing person or body only to one or more government entities.

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

A body is an ***STB*** if:

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

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

A body is an ***STB*** if:

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

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

In this Division:

excluded STB means an STB that:

(a) at a particular time, is prescribed as an excluded STB in relation to that time; or
(b) is a municipal corporation or other local governing body (within the meaning of section 50-25 of the *Income Tax Assessment Act 1997*); or
(c) is a public educational institution to which any of paragraphs 50-55(1)(a) to (c) of the *Income Tax Assessment Act 1997* applies; or
(d) is a public hospital to which any of paragraphs 50-55(1)(a) to (c) of the *Income Tax Assessment Act 1997* applies; or
(e) is a superannuation fund.

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government entity means:

(a) a State; or

(b) a Territory; or

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

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

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

Territory means the Northern Territory or the Australian Capital Territory.

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

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

(a) a Governor of a State; or

(b) a Minister of the Crown of a State; or

(c) a Minister of a Territory; or

(d) the head of a Department of a State or a Territory; or

(e) any combination of paragraphs (a) to (d);

the power is taken to be given to, or held by, a government entity.

24AV Regulations prescribing excluded STBs

States and Territories to consent to STBs being excluded STBs

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

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Retrospective application of regulations prescribing excluded STBs

(2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a regulation prescribing an STB as an excluded STB.

Subdivision B—Body ceasing to be an STB

24AW Body ceasing to be an STB

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

(a) the cessation were a change which requires a company to calculate its taxable income and tax loss under Subdivision 165-B of the *Income Tax Assessment Act 1997*; and

(b) the references in that Subdivision to "company" were references to "body"; and

(c) if the body is not a company—there were no further requirement for the body to calculate its taxable income for the year of income under that Subdivision; and

(d) the amount of any notional loss of the body calculated under section 165-50 of that Act for the period before the cessation were nil; and

(e) the body's deductions for tax losses were attributed under section 165-55 of that Act to the period before the cessation and not to any other period; and

(f) those deductions were taken not to be full year deductions under section 165-55 of that Act; and

(g) the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* were modified, for the purposes of that Subdivision, in accordance with section 24AX of this Act.

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24AX Special provisions relating to capital gains and losses

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

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

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

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

Special case 1—gain exceeds loss

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

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Special case 2—loss equal to or exceeds gain

(4) If this subsection applies and the net capital gain does not exceed the net capital loss:

(a) no amount is to be included in the assessable income of the body for any period in the cessation year as a result of a net capital gain accruing to the body; and

(b) in determining if a net capital gain accrued to, or a net capital loss was incurred by, the body for the year following the cessation year, the net capital loss that the body incurred in the cessation year is taken to be the amount (if any) by which the net capital loss exceeds the net capital gain.

24AY Losses from STB years not carried forward

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

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

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

24AYA Effect of unfunded superannuation liabilities

(1) This section applies to a deduction under section 290-60 of the *Income Tax Assessment Act 1997* in respect of a contribution made in relation to a person who was an employee of a prescribed excluded STB when it ceased to be an STB.

(2) A deduction to which this section applies is not allowable to the body for any year of income unless the requirements of subsections (3) and (4) are complied with.

(3) For the deduction to be allowable, the body must obtain a certificate by an authorised actuary stating the actuarial value, as at the time the body ceases to be an STB, of liabilities of the STB to

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provide superannuation benefits for, or for SIS dependants of, employees of the body, where the liabilities:

(a) accrued after 30 June 1995 and before the time when the body ceased to be an STB; and

(b) were, according to actuarial principles, unfunded at that time.

(4) The certificate must be in a form approved in writing by the Commissioner. The body must obtain the certificate:

(a) before the date of lodgment of its return of income of the year of income in which the body ceased to be an STB; or

(b) within such further time as the Commissioner allows.

(5) If the body obtains the certificate, a deduction to which this section applies is nevertheless not allowable for a year of income if the sum of all deductions to which this section applies for the year of income is less than or equal to the unfunded liability limit (see subsection (6)) for the year of income.

(6) If the sum is greater than that limit, so much of the deduction as is worked out using the following formula is not allowable:

$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions to which this section applies for the year of income}} \times \text{Unfunded liability limit for the year of income}$$

where:

Unfunded liability limit for a year of income is:

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

(b) in any other case—that actuarial value as reduced by the total amount of deductions to which this section applies that, because of subsection (5), have not been allowable to the body for all previous years of income.

(7) Expressions used in this section that are also used in section 290-60 of the *Income Tax Assessment Act 1997* have the same respective meanings as in that section.

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

In this Subdivision:

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

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

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Division 2—Income

Subdivision A—Assessable income generally

25A Assessable income to include certain profits

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

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

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

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

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

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

(i) shares in a private company;

(ii) an interest in a partnership; or

(iii) an interest in a private trust estate; and

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

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

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

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

(ii) the company, partnership or trustee of the trust estate, as the case may be, held an interest, through one or more interposed companies, partnerships or trusts, in property that:

(A) was acquired for the purpose of profit-making by sale by another private company, partnership or trustee of a private trust estate; and

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

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

(3) Subsection (2) does not apply in relation to the sale by a taxpayer of property where the Commissioner, having regard to:

(a) the extent to which the assets of the company, partnership or trust estate, as the case may be, referred to in paragraph (2)(a), immediately before the time of sale, consisted of the property referred to in subparagraph (2)(b)(i) or the interest referred to in subparagraph (2)(b)(ii), as the case may be;

(b) the nature and extent, immediately before the time of sale, of the taxpayer's control of the company, partnership or trust estate, as the case may be, referred to in paragraph (2)(a) including, in the case of a company, the nature and extent of the taxpayer's shareholding in the company;

(c) the circumstances surrounding any other sale, whether or not by the taxpayer, of shares in the company, or an interest in the partnership or trust estate, as the case may be, referred to in paragraph (2)(a), being a sale at a time when the property of that company, partnership or trust estate included the

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property referred to in subparagraph (2)(b)(i) or the interest referred to in subparagraph (2)(b)(ii), as the case may be; and

(d) such other matters as the Commissioner considers relevant;

considers that it is not appropriate that that subsection should apply in relation to the sale of the property by the taxpayer.

(4) Where:

(a) a taxpayer acquired or acquires property, being shares in a company, for the purpose of profit-making by sale; and

(b) after 23 August 1983:

(i) the company issued or issues other shares (in this subsection referred to as the ***bonus shares***) to the taxpayer in satisfaction of a dividend (including an amount debited against an amount standing to the credit of a share premium account) payable to the taxpayer in respect of the shares referred to in paragraph (a); or

(ii) by reason that the taxpayer was the owner of the shares referred to in paragraph (a), the company issued or issues to the taxpayer rights to acquire other shares in the company;

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

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

(6) Where:

(a) after 23 August 1983, a taxpayer sold or sells property; and

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(b) the property sold was:

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

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

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

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

(a) an interest in property, being property acquired by the company, partnership or trustee for the purpose of profit-making by sale; or

(b) property, or an interest in property, in which was merged an interest in property, being an interest acquired by the company, partnership or trustee for the purpose of profit-making by sale;

the company, partnership or trustee, as the case may be, shall be deemed to have acquired the underlying property for the purpose of profit-making by sale.

(8) Where:

(a) property (in this subsection referred to as the ***acquired property***) was or is acquired for the purpose of profit-making by sale; and

(b) after 23 August 1983, property (in this subsection referred to as the ***transferred property***) being:

(i) an interest in the acquired property; or

(ii) property, or an interest in property, in which was merged an interest in the acquired property;

was or is transferred to a taxpayer in the prescribed manner;

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

(9) Where a taxpayer sold or sells property that, by virtue of any of the preceding provisions of this section, is deemed to have been acquired by the taxpayer for the purpose of profit-making by sale, so much (if any) of the proceeds of sale as, in the opinion of the Commissioner, is appropriate shall, for the purposes of this Act, be deemed to be profit arising from the sale by the taxpayer of the property.

(10) For the purposes of the application of subsection (9) in relation to the sale of property (in this subsection referred to as the ***relevant property***) by a taxpayer:

(a) if:

(i) the relevant property is deemed by subsection (2) to have been acquired by the taxpayer for the purpose of profit-making by sale;

(ii) the property (in this paragraph referred to as the ***underlying property***) to which sub-subparagraph (2)(b)(i)(A) or (2)(b)(ii)(A), as the case may be, applies was actually acquired for the purpose of profit-making by sale by the company, partnership or trustee referred to in that sub-subparagraph (which company, partnership or trustee is in this paragraph referred to as the ***underlying owner***); and

(iii) the relevant property was not transferred to the taxpayer in the prescribed manner;

the Commissioner shall have regard to the extent to which, in the Commissioner's opinion, the proceeds of sale of the relevant property are attributable to the amount of any increase in the value of the underlying property during the period (in this paragraph referred to as the ***relevant period***) when the underlying property was held by the underlying

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owner and the relevant property was held by the taxpayer reduced by the amount of any capital expenditure incurred by the underlying owner in respect of the underlying property during the relevant period (not including expenditure in respect of which a deduction has been allowed, or is allowable, to the underlying owner);

(b) if the relevant property is deemed by subsection (5) to have been acquired by the taxpayer for the purpose of profit-making by sale and the relevant property was actually acquired for the purpose of profit-making by sale by the person (in this paragraph referred to as the ***transferor***) who transferred the relevant property to the taxpayer in the prescribed manner—the Commissioner shall have regard to the extent to which the amount (if any) that would have been included in the assessable income of the transferor if the transferor had sold the relevant property at the time when it was sold by the taxpayer for an amount of consideration equal to the amount of the consideration received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer exceeds the sum of:

(i) any expenditure incurred by the taxpayer in respect of the relevant property, not including:

(A) any consideration given by the taxpayer in respect of the transfer of the relevant property to the taxpayer; or

(B) expenditure to which subparagraph (ii) applies;

(ii) where the taxpayer incurred expenditure of a capital nature in respect of the relevant property otherwise than:

(A) in acquiring property for the purpose of profit-making by sale; or

(B) as part of a profit-making undertaking or scheme;

an amount equal to so much of the consideration received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer as exceeds the amount that, in the opinion of the Commissioner, would have been the consideration received or

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receivable by the taxpayer if the taxpayer had not incurred that capital expenditure; and

(iii) the amount of any profit included in the assessable income of the transferor in respect of the transfer of the relevant property to the taxpayer;

(c) if the relevant property is deemed to have been acquired by the taxpayer by virtue of the application of this section (either directly or indirectly) in relation to property (in this paragraph referred to as the ***related property***) that was actually acquired by the taxpayer or by another person or other persons for the purpose of profit-making by sale—the Commissioner shall have regard to the extent to which the relevant property consists of, or is attributable to, the related property;

(d) if the relevant property consists of rights to acquire shares in a company, being rights that the taxpayer is deemed by subsection (4) to have acquired for the purpose of profit-making by sale—the relevant property shall be deemed to have been acquired by the taxpayer at no cost; and

(e) if the relevant property consists of bonus shares that the taxpayer is deemed by subsection (4) to have acquired for the purpose of profit-making by sale—the cost to the taxpayer of the relevant property shall be ascertained in accordance with section 6BA.

(11) For the purposes of this section, property shall be taken to have been transferred to a person (in this subsection referred to as the ***transferee***) in the prescribed manner if:

(a) the following conditions are satisfied:

(i) the property is transferred by way of gift or for consideration the amount or value of which is less than the amount that, in the opinion of the Commissioner, is the value of the property immediately before the time of transfer;

(ii) the property is transferred otherwise than as a result of:

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(A) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or

(B) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; and

(iii) the Commissioner is satisfied that the transferee and the person who transferred the property were not dealing with each other at arm's length in relation to the transfer of the property; or

(b) the property:

(i) is transferred by way of a distribution of property of a private company or private trust estate made (whether in the course of the winding up of the company or trust estate or otherwise) to the transferee in the transferee's capacity as a shareholder in the company or a beneficiary of the trust estate, as the case may be; and

(ii) is not excepted property of the company or trust estate, as the case may be.

(12) In this section:

(a) a reference to excepted property of a company, partnership or trust estate is a reference to:

(i) trading stock of the company, partnership or trustee; or

(ii) property being plant within the meaning of section 45-40 of the *Income Tax Assessment Act 1997* purchased for use by the company, partnership or trustee of the trust estate for the purpose of producing assessable income;

(b) a reference to a private company is a reference to a company other than a company the shares in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere;

(c) a reference to a private trust estate is a reference to a trust estate other than a unit trust the units in which are listed for

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quotation in the official list of a stock exchange in Australia or elsewhere or are ordinarily available for subscription or purchase by the public; and

(d) a reference to property generally or to a particular kind of property includes a reference to an estate or interest in property or in that kind of property, as the case may be.

26AB Assessable income—premium for lease

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

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

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

- granting leases; and
- assigning leases granted on or after 20 September 1985.

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

(1) In this section, ***premium*** means a consideration payable in one amount, or each amount of a consideration payable in more than one amount, where the consideration is:

(a) in the nature of a premium, fine or foregift payable for or in connexion with the grant or assignment of a lease; or

(b) for or in connexion with an assent to the grant or assignment of a lease;

but does not include an amount in respect of goodwill or a licence.

(2) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was not, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or the assignee or some other person wholly or

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partly for the purpose of gaining or producing assessable income, the assessable income of the taxpayer shall include the premium.

(3) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or assignee or some other person partly for the purpose of gaining or producing assessable income and partly for other purposes, the assessable income of the taxpayer shall include such part of the premium as the Commissioner considers may reasonably be attributed to the intended use of the property for purposes other than gaining or producing assessable income.

(4) Where, in a case referred to in subsection (2) or (3), the taxpayer satisfies the Commissioner that, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, the taxpayer believed on reasonable grounds that the grantee or assignee intended a particular use of the property by the grantee or assignee or some other person for the purpose of gaining or producing assessable income, the Commissioner may apply this section on the basis that that intention existed.

(5) This section does not apply in relation to:

(b) a premium received in connexion with the assignment of a lease of land granted under a law of a State or Territory relating to mining;

(c) a premium received in connexion with the grant or assignment of a lease that was, for the purposes of former section 88B, a grant or assignment for mining purposes; or

(d) a premium received in connexion with the assignment from the Commonwealth or a State of a lease:

(i) granted in perpetuity or for a term not less than 99 years; or

(ii) with a right of purchase; or

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(iii) effecting improvements to be used for residential purposes only.

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

(1) Where:

(a) in a year of income and after 19 August 1980, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, a paragraph 23(ja) fund or a section 23FB fund;

(aa) if the fund is an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*)—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;

(b) the benefit is received or obtained otherwise than in accordance with approved terms and conditions applicable to the fund at the time when the benefit is received or obtained; and

(c) the Commissioner is satisfied that the taxpayer received or obtained the benefit:

(i) by reason that the taxpayer was, or had been, a member of the fund;

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

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

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

(2) Where, in a year of income and after 19 August 1980, a taxpayer receives valuable consideration in respect of the transfer by the

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

(3) In this section:

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

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

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

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

section 23FB fund means:

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

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(b) a fund that was a section 79 fund for the purposes of this section as in force at any time before the commencement of the *Income Tax Assessment Amendment Act (No. 3) 1984*.

(4) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*) in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:

(a) the year of income ended before the proclaimed superannuation standards day and the income of the fund of the year of income would, but for the amendments made by the *Taxation Laws Amendment Act (No. 4) 1987*, have been exempt from tax under paragraph 23(ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;

(b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, the income of the fund of the year of income would have been exempt from tax under paragraph 23(ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;

paragraph 23(ja) or section 23FB of this Act, as in force immediately before the commencement of section 1 of that Act, shall be taken to have continued to apply in relation to the fund in relation to the year of income of the fund.

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

(1) Where:

(a) in a year of income and on or after 7 December 1983, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, a section 23F fund;

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(aa) if the fund is an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*)—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;

(b) the benefit:

(i) is not a benefit that the taxpayer has a right to receive from the fund; or

(ii) is an excessive benefit; and

(c) the Commissioner is satisfied that the taxpayer received or obtained the benefit:

(i) by reason that the taxpayer was, or had been, a member of the fund;

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

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

(iv) by reason that the taxpayer was, or had been, associated with a person who had made contributions to the fund, being contributions to which Subdivision AA of Division 3 applied;

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

(2) Where:

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

(b) the Commissioner, having regard to:

(i) the nature of the fund;

(ii) the circumstances by reason of which the benefit is an excessive benefit; and

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(iii) such other matters relating to the receiving or obtaining of the benefit by the taxpayer as the Commissioner considers relevant;

is satisfied that it would be unreasonable for subsection (1) to apply to the whole or part of the benefit;

that subsection does not apply to the benefit, or to that part of the benefit, as the case may be.

(3) Where, in a year of income and on or after 7 December 1983, a taxpayer receives valuable consideration in respect of the transfer by the taxpayer to another person (whether by assignment, by declaration of trust or by any other means) of a right (whether vested or contingent) to receive a benefit from a fund, being a section 23F fund and not being an exempt fund within the meaning of section 26AFB (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*), the assessable income of the taxpayer of the year of income shall include the amount or value of that consideration.

(4) In this section:

dependant, in relation to a taxpayer, includes the spouse and any child of the taxpayer.

excessive benefit means a benefit of any kind that is excessive in amount or value having regard to the matters mentioned in subparagraphs 23F(2)(h)(i), (ii), (iii) and (iv) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*.

section 23F fund means a fund to which section 23F (as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*) applies, or has applied, in relation to any year of income.

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(5) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act (as in force just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*) in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:

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

(b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, section 23F of this Act, as in force immediately before the commencement of section 1 of that Act, would, but for the amendments made by that Act, have applied in relation to the fund in relation to the year of income;

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

26AG Certain film proceeds included in assessable income

(1) Where:

(a) under a contract entered into on or after 1 October 1980, a taxpayer has expended, or is deemed by former section 124ZAP to have expended, capital moneys in producing, or by way of contribution to the cost of producing, a film;

(b) by reason of the moneys having been expended, the taxpayer became the owner of an interest in the copyright in the film; and

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(c) a deduction has been allowed, or is allowable, to the taxpayer under former section 124ZAF or 124ZAFA in respect of some or all of those moneys;

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

(d) any amount derived by the taxpayer in the year of income from sources in or out of Australia as consideration for the use of, or the right to use, the copyright or the film, to the extent to which the amount derived is attributable to the interest referred to in paragraph (b); and

(e) any amount (other than an amount to which paragraph (d) applies) receivable by the taxpayer from sources in or out of Australia as consideration in respect of the disposal, in the year of income, of the whole or a part of the interest referred to in paragraph (b).

(2) The assessable income of a taxpayer of a year of income shall include amounts to which this section applies in relation to the taxpayer in relation to the year of income.

(3) Where:

(a) for any reason, including:

(i) the formation or dissolution of a partnership; or

(ii) a variation in the constitution of a partnership or in the interests of the partners;

a change has occurred in the ownership of, or in the interests of persons in, a copyright in a film;

(b) the person, or one or more of the persons, who owned the copyright before the change has or have an interest in the copyright after the change; and

(c) any person (in this subsection referred to as the ***relevant person***) who had an interest in the copyright before the change:

(i) did not have an interest in the copyright after the change; or

(ii) had a lesser interest in the copyright after the change;

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the following provisions have effect:

(d) if the relevant person did not have an interest in the copyright after the change, the relevant person shall be deemed, for the purposes of subsection (1), to have disposed of the whole of his or her interest in the copyright at the time when the change occurred for an amount of consideration equal to:

(i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the copyright for the purposes of the agreement, an amount greater than the value of the copyright at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the interest deemed to have been disposed of bears to the value of the copyright at the time when the change occurred; and

(ii) in any other case—the value, at the time when the change occurred, of the interest disposed of;

(e) if the relevant person had a lesser interest in the copyright after the change, the relevant person shall be deemed, for the purposes of subsection (1), to have disposed of a part of his or her interest in the copyright at the time when the change occurred for an amount of consideration equal to:

(i) if the change occurred in pursuance of an agreement and the agreement specified, as the value of the copyright for the purposes of the agreement, an amount greater than the value of the copyright at the time when the change occurred—so much of the amount specified in the agreement as bears to that amount the same proportion as the value, at the time when the change occurred, of the part of the interest deemed to have been disposed of bears to the value of the copyright at the time when the change occurred; and

(ii) in any other case—the value, at the time when the change occurred, of the part of the interest disposed of.

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(4) For the purposes of this section, where, in pursuance of a judgment of a court or otherwise, an amount is paid to a taxpayer in respect of an infringement, or an alleged infringement, of a copyright in a film, the taxpayer shall be deemed to have disposed of a part of his or her interest in the copyright, at the time of payment, in consideration of the payment of that amount.

(5) Subject to subsections (3) and (6), a reference in this section to the consideration receivable by a taxpayer in respect of the disposal of the whole or a part of the taxpayer's interest in a copyright (which whole or part is in this subsection referred to as the ***unit***) is a reference to:

(a) where the unit is disposed of for a specified price—that price less:

(i) the expenses of the disposal; and

(ii) if the disposal is a taxable supply—an amount equal to the GST payable on the supply; or

(b) where the unit is disposed of together with other property and no separate price is allocated to the unit—such amount as the Commissioner determines.

(6) Where:

(a) a taxpayer disposes of the whole or a part of the taxpayer's interest in a copyright (which whole or part is in this subsection referred to as the ***unit***) to another person;

(b) the Commissioner is satisfied, having regard to any connection between the taxpayer and that other person or to any other relevant circumstances, that the taxpayer and that other person were not dealing with each other at arm's length in relation to the disposal; and

(c) there was no amount receivable by the taxpayer in respect of the disposal or the amount receivable by the taxpayer in respect of the disposal was less than the value of the unit at the time of the disposal;

the amount of the consideration receivable by the taxpayer in respect of the disposal shall be taken, for the purposes of this

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section, to be the amount that was the value of the unit at the time of the disposal.

(8) If:

(a) a non-resident taxpayer derives, from sources outside Australia, income in respect of a film; and

(b) but for this subsection, subsection (2) would include the amount in the taxpayer's assessable income of a year of income;

that subsection does not include in the taxpayer's assessable income so much of the amount as:

(c) is attributable to the exhibition of the film in the country from sources in which the income was derived; and

(d) is not exempt from income tax in the country from sources in which the income was derived.

(9) Where:

(a) an amount (in this subsection referred to as the ***relevant amount***) is derived by a partnership in a year of income; and

(b) if the relevant amount were derived by a partner in the partnership, the relevant amount, or a part of the relevant amount, would, by virtue of paragraph (1)(d), be an amount to which this section applies in relation to that partner in relation to the year of income;

the following provisions have effect:

(c) the relevant amount shall not be taken into account, for the purposes of any provision of this Act, in calculating the net income of the partnership, or the partnership loss, of any year of income in accordance with section 90; and

(d) for the purposes of the application of this Act in relation to a taxpayer being a partner in the partnership, an amount equal to:

(i) so much of the relevant amount as the partners have agreed is derived for the benefit of the taxpayer; or

(ii) if the partners have not agreed as mentioned in subparagraph (i)—so much of the relevant amount as bears to the relevant amount the same proportion as the

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individual interest of the taxpayer in the net income of the partnership of the year of income in which the relevant amount was derived by the partnership bears to that net income or, as the case requires, the individual interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss;

shall be taken to have been derived by the taxpayer.

(10) Where:

(a) a partnership has disposed of the whole or a part of the copyright or of an interest in the copyright in a film;

(b) an amount (in this subsection referred to as the ***relevant amount***) is receivable by the partnership as consideration in respect of that disposal; and

(c) if the relevant amount were receivable by a partner in the partnership, the relevant amount or a part of the relevant amount would, by virtue of paragraph (1)(e), be an amount to which this section applies in relation to that partner in relation to the year of income;

the following provisions have effect:

(d) the relevant amount shall not be taken into account, for the purposes of any provision of this Act, in calculating the net income of the partnership, or the partnership loss, of any year of income in accordance with section 90;

(e) for the purposes of the application of this Act in relation to a taxpayer being a partner in the partnership, an amount equal to:

(i) so much of the relevant amount as the partners have agreed is receivable for the benefit of the taxpayer; or

(ii) if the partners have not agreed as mentioned in subparagraph (i)—so much of the relevant amount as bears to the relevant amount the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income in which the disposal mentioned in paragraph (a) occurred bears to that net income, or, as the case requires, the individual

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interest of the taxpayer in the partnership loss for that year of income bears to that partnership loss;

shall be taken to be receivable by the taxpayer;

(f) where the taxpayer had an interest in the copyright before the disposal and did not have an interest in the copyright after the disposal or had a lesser interest in the copyright after the disposal, the amount deemed to be receivable by the taxpayer shall be deemed to be receivable in respect of the disposal by the taxpayer of his or her interest in the copyright or of a part of his or her interest in the copyright, as the case may be;

(g) where the disposal is deemed to have occurred by virtue of subsection (4) or is a disposal to which paragraph (13)(a) applies, the amount deemed to be receivable by the taxpayer shall be deemed to be receivable, in respect of the disposal by the taxpayer of a part of his or her interest in the copyright.

(11) In determining for the purposes of subsection (10) whether a partnership has disposed of the whole or part of a copyright or of an interest in a copyright and in determining the amount of consideration receivable by the partnership in respect of the disposal, subsections (4), (5), (6) and (13) apply as if the partnership were a taxpayer.

(12) Where:

(a) a taxpayer has disposed of the whole or a part of the taxpayer's interest in a copyright;

(b) by reason of that disposal, an amount would, but for former subsection 124T(3), be included in the assessable income of the taxpayer of a year of income under former section 124P or would be applied, under former section 124N or 124S, in reducing the residual value, for the purposes of former Division 10B, of a unit of industrial property owned by the taxpayer; and

(c) but for this subsection, this section would apply, in relation to a year of income, to the amount of the consideration receivable by the taxpayer in respect of the disposal;

the amount to which this section applies by virtue of the disposal is the amount of the consideration referred to in paragraph (c)

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reduced by the amount that would be included in the assessable income of the taxpayer, or would be applied under former section 124N or 124S, as mentioned in paragraph (b).

(13) In this section:

(a) a reference to a disposal by a taxpayer of the whole or a part of the taxpayer's interest in a copyright in a film includes a reference to the assignment by the taxpayer of a right to receive amounts as consideration for the use of, or the right to use, the copyright or the film;

(b) a reference to an amount derived by a taxpayer as consideration for the use of, or the right to use, a copyright in a film includes a reference to an amount derived as consideration for the granting of a licence in respect of copyright in the film that is to come into existence at a future time or upon the happening of a future event;

(c) a reference to the value of property at a particular time shall, if there is insufficient evidence of the value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable;

(d) a reference to the expenditure of capital moneys is a reference to the expenditure of moneys that is expenditure of a capital nature;

(e) a reference to a taxpayer becoming the owner of an interest in copyright includes a reference to the taxpayer becoming the owner of the copyright; and

(f) a reference to copyright, in relation to a film, is a reference to the copyright subsisting in the film by virtue of Part IV of the *Copyright Act 1968* and includes a reference to copyright subsisting in, or in relation to, the film or in any work comprised in the film, under the law of a country other than Australia.

26AH Bonuses and other amounts received in respect of certain short-term life assurance policies

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

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

assurance year, in relation to an eligible policy, means the period of 12 months commencing on, or on any anniversary of, the date of commencement of risk of the policy.

date of commencement of risk, in relation to an eligible policy, means the date of commencement of the period in respect of which the first or only premium paid under the policy was paid or, if the first or only premium was not paid in respect of a period, the date on which that premium was paid.

eligible period, in relation to an eligible policy, means the period of 10 years commencing on the date of commencement of risk of the policy.

eligible policy means a life assurance policy in relation to which the date of commencement of risk is after 27 August 1982, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003.

eligible reckoning date, in relation to an eligible policy, means the date of commencement of an assurance year that, for the purposes of an application of subsection (13), is the premium increase year referred to in that subsection.

(2) Where a paid-up life assurance policy is issued to a taxpayer in lieu of an eligible policy:

(a) the paid-up policy shall, for the purposes of this section, be deemed to be a continuation of the eligible policy; and

(b) no amount shall be taken for the purposes of subsection (4) to have been re-invested or otherwise dealt with on behalf of the taxpayer or as he or she directs in connection with the issue of the paid-up policy to the taxpayer in lieu of the eligible policy.

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(3) This section applies to any amount received after 27 August 1982 under an eligible policy.

(4) For the purposes of this section, but subject to subsection (5), a taxpayer shall be taken to have received an amount under or in relation to an eligible policy although the amount is not actually paid to the taxpayer but is re-invested or otherwise dealt with on his or her behalf or as he or she directs.

(5) Subsection (4) does not apply in relation to an amount in relation to an eligible policy if the amount is re-invested or otherwise dealt with on behalf of the taxpayer or as the taxpayer directs so as to increase the amount that might reasonably be expected to be received under the eligible policy on a surrender or maturity of the eligible policy.

(6) Where, during the eligible period in relation to an eligible policy, a taxpayer receives an amount (in this subsection referred to as the ***relevant amount***) under the policy as or by way of a bonus, being an amount that, but for this section, would not be included in the assessable income of the taxpayer of any year of income, the assessable income of the taxpayer of the year of income in which the relevant amount is received shall include:

(a) if the relevant amount is received during the first 8 years of the eligible period—an amount equal to the relevant amount;

(b) if the relevant amount is received during the ninth year of the eligible period—an amount equal to two-thirds of the relevant amount; or

(c) if the relevant amount is received during the tenth year of the eligible period—an amount equal to one-third of the relevant amount.

(6A) If, during the year of income, an amount referred to in subsection (6) is received during the eligible period in relation to an eligible policy held by the trustee of a non-complying superannuation fund:

(a) subsection (6) does not apply to the amount; and

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(b) the amount is included in the assessable income of the fund of the year of income.

(7) Subsection (6) does not apply to any amount received by a taxpayer in a year of income under an eligible policy where:

(a) the amount is received in consequence of:

(i) the death of the person on whose life the policy was effected; or

(ii) an accident, illness or other disability suffered by the person on whose life the policy was effected; or

(aa) the eligible policy is an RSA; or

(b) the eligible policy is held by the trustee of:

(i) a complying superannuation fund; or

(ii) a complying approved deposit fund; or

(iii) a pooled superannuation trust; or

(ba) the eligible policy is issued by a life assurance company and the company's liabilities under the policy are to be discharged out of:

(i) complying superannuation assets within the meaning of the *Income Tax Assessment Act 1997*; or

(ii) segregated exempt assets within the meaning of that Act; or

(c) except where the policy was effected, purchased or taken on assignment with a view to it being forfeited, surrendered or otherwise terminated, or to it maturing, within 10 years—the amount was received by the taxpayer by reason of the forfeiture, surrender or other termination of the whole or a part of the policy in circumstances arising out of serious financial difficulties of the taxpayer.

(8) Where:

(a) subsection (6) would, but for this subsection, apply to an amount (in this subsection referred to as the ***relevant amount***) received by a taxpayer by reason of the forfeiture, surrender or other termination of the whole or a part of an eligible policy; and

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(b) the Commissioner, having regard to:

(i) the total amount of premiums paid under the eligible policy;

(ii) the total amounts received by the taxpayer or by any other person under the eligible policy and the total amounts of bonuses included in the amounts so received;

(iii) the amount of the surrender value of the eligible policy at the time when the forfeiture, surrender or other termination occurred; and

(iv) such other matters as the Commissioner considers relevant, is of the opinion that it would be unreasonable for subsection (6) to apply to the relevant amount or to a part of the relevant amount;

subsection (6) does not apply to the relevant amount, or to that part of the relevant amount, as the case may be.

(9) Where:

(a) otherwise than as or by way of a bonus, a taxpayer receives an amount (in this subsection referred to as the ***relevant amount***) under an eligible policy; and

(b) the Commissioner is of the opinion that the relevant amount or a part of the relevant amount represents the whole or part of:

(i) a bonus that has accrued or has been declared in respect of the policy; or

(ii) a bonus that can reasonably be expected to accrue in respect of the policy;

the relevant amount or the part of the relevant amount, as the case may be, shall, for the purposes of subsection (6), be deemed to have been received by the taxpayer under the policy as or by way of a bonus.

(10) Where:

(a) subsection (9) applies by reason that the Commissioner has formed an opinion under paragraph (9)(b) that the whole or a

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part of an amount received by a taxpayer represents the whole or a part of a bonus; and

(b) the taxpayer subsequently receives an amount (in this subsection referred to as the ***actual bonus***), being the whole or a part of the bonus, or of the part of the bonus, as the case may be, referred to in paragraph (a) of this subsection;

the following provisions have effect:

(c) the operation of subsection (9) is not affected by the receipt of the actual bonus; and

(d) no part of the actual bonus shall be included in the assessable income of the taxpayer.

(11) Where, in relation to an eligible policy, a taxpayer receives an amount from the assurer, or from another person at the request of, or under an agreement with, the assurer, by way of an advance or loan in respect of which interest is not payable or in respect of which interest is payable at a rate less than the rate of interest that could reasonably be expected to be payable in respect of a loan of the same amount made on similar terms and conditions by the assurer or the other person, as the case may be, to a person with whom the assurer or that other person was dealing at arm's length, the amount shall, for the purposes of subsection (9), be deemed to be an amount to which paragraph (9)(a) applies.

(12) Where an eligible policy, or any right to receive any benefits that have accrued, or will or may reasonably be expected to accrue, under an eligible policy, is sold or assigned in whole or in part by a taxpayer during the eligible period in relation to the policy:

(a) the amount of any consideration received by the taxpayer in respect of that sale or assignment shall be deemed to be an amount to which paragraph (9)(a) applies; and

(b) subsections (9) and (10) apply in relation to that consideration as if "represents" were omitted from paragraphs (9)(b) and (10)(a) and "is attributable" to were substituted.

(13) Where the amount of the premiums payable under an eligible policy in relation to an assurance year (in this subsection referred

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to as the ***premium increase year***) exceeds by more than 25% the amount of the premiums payable under the policy in relation to the immediately preceding assurance year, the eligible period in relation to the policy shall, for the purposes of:

(a) the application of subsection (6) in relation to any amount received under the policy after the date of commencement of the premium increase year and before the first subsequent eligible reckoning date (if any) in relation to the eligible policy; and

(b) the application of subsection (12) in relation to any sale or assignment of the policy after the date of commencement of the premium increase year and before the first subsequent eligible reckoning date (if any) in relation to the eligible policy;

be reckoned from the date of commencement of the premium increase year.

(14) This section has effect in relation to an eligible policy in relation to which the date of commencement of risk is on or before 7 December 1983 as if:

(a) "10 years" were omitted from the definition of ***eligible period*** in subsection (1) and "4 years" were substituted;

(b) "8 years", "ninth year" and "tenth year" were omitted from subsection (6) and "2 years", "third year" and "fourth year" respectively were substituted; and

(c) "10 years" were omitted from paragraph (7)(c) and "4 years" were substituted.

26AJ Investment-related lottery winnings to be included in assessable income

(1) If:

(a) either:

(i) a loan benefit is provided to a taxpayer, or to another person, in respect of a year of income (in this subsection called the ***current year of income***); or

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(ii) an amount (other than loan principal) is paid or credited to a taxpayer, or to another person, during a year of income (in this subsection also called the ***current year of income***); or

(iii) other property or services are provided to a taxpayer, or to another person, during a year of income (in this subsection also called the ***current year of income***); and

(b) the making of a loan, the payment or crediting of the amount, or the provision of the property or services, as the case may be, is by way of winnings from:

(i) betting (including pool betting); or

(ii) a lottery or other form of gambling; or

(iii) a game with prizes; and

(c) the chance to participate in the betting, lottery, gambling or game (in this subsection called the ***betting chance***) was provided:

(i) wholly or partly in respect of an investment held by the taxpayer in or with a third person (who may be an associate of the taxpayer) (in this subsection called the ***investment body***); or

(ii) wholly or partly in relation directly or indirectly to such an investment; and

(d) the betting, lottery, gambling or game was organised by, or on behalf of:

(i) the investment body (either acting alone or together with one or more other persons); or

(ii) an associate of the investment body (either acting alone or together with one or more other persons); and

(e) if the recipient of the loan benefit, amount or property or services, as the case may be, is a person other than the taxpayer—either:

(i) the other person is an associate of the taxpayer; or

(ii) the loan benefit, amount or property or services, as the case may be, is provided under an arrangement to which the taxpayer, or an associate of the taxpayer, is a party; and

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(f) no part of the value of the betting chance is included in the assessable income of the taxpayer of any year of income; and

(g) the provision of the betting chance is neither:

(i) a fringe benefit; nor

(ii) a benefit that, apart from paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit;

then:

(h) if subparagraph (a)(i) applies—the taxpayer's assessable income of the current year of income includes the amount (if any) by which the benchmark amount of interest in relation to the loan in respect of the current year of income exceeds the amount of interest that has accrued on the loan in respect of the current year of income; or

(i) if subparagraph (a)(ii) applies—the taxpayer's assessable income of the current year of income includes the amount paid or credited; or

(j) if subparagraph (a)(iii) applies—the taxpayer's assessable income of the current year of income includes the arm's length value of the property or services, reduced by the recipient's contribution (if any).

(2) If:

(a) apart from this subsection, an amount (in this subsection called the ***gross assessable amount***) is included in a taxpayer's assessable income of a year of income under paragraph (1) (h) in respect of a loan benefit; and

(b) assuming that:

(i) the recipient of the loan benefit had, on the last day of the period (in this subsection called the ***loan period***) during the year of income when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid unreimbursed interest (in this subsection called the ***gross interest***), in respect of the loan, in respect of the loan period; and

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(ii) the amount of the gross interest was equal to the benchmark amount of interest in relation to the loan in respect of the year of income;

a once-only deduction (in this subsection called the ***gross deduction***) would, or would apart from Subdivisions F and GA of Division 3 of this Part, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient in respect of the gross interest;

the gross assessable amount is reduced by:

(c) if no interest accrued on the loan in respect of the loan period—the amount of the gross deduction; or

(d) in any other case—the amount worked out using the formula:

Gross deduction – Reducing amount

where:

Gross deduction means the amount of the gross deduction.

Reducing amount means the amount (if any) that would, or that would apart from Subdivisions F and GA of Division 3 of this Part, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient in respect of the interest that accrued on the loan in respect of the loan period if that interest had been incurred and paid by the recipient on the last day of the loan period.

(3) If:

(a) apart from this subsection, an amount (in this subsection called the ***gross assessable amount***) is included in a taxpayer's assessable income of a year of income under paragraph (1)(j) in respect of the provision of property or services; and

(b) assuming that:

(i) the recipient of the property or services had, at the time the property or services were provided, incurred and paid unreimbursed expenditure in respect of the provision of the property or services; and

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(ii) the expenditure was equal to the amount of the arm's length value of the property or services;

a once-only deduction would, or would apart from Subdivisions F and GA of Division 3 of this Part, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient in respect of a percentage (in this subsection called the ***deductible percentage***) of the expenditure;

the gross assessable amount is reduced by the deductible percentage.

(4) For the purposes of the application of this section to a taxpayer, if a person (in this subsection called the ***provider***) makes a loan to another person (who may be the taxpayer) (in this subsection called the ***recipient***):

(a) the making of the loan is taken to constitute a loan benefit provided by the provider to the recipient; and

(b) that loan benefit is taken to be provided in respect of each year of income of the taxpayer during the whole or part of which the recipient is under an obligation to repay the whole or any part of the loan.

(5) For the purposes of this section, if a person (in this subsection called the ***provider***) makes a deferred interest loan (in this subsection called the ***principal loan***) to another person (in this subsection called the ***recipient***):

(a) the provider is taken, at the end of:

(i) the period of 6 months commencing on the day on which the principal loan was made; and

(ii) each subsequent period of 6 months;

(being in either case a period during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this subsection called the ***deemed loan***) to the recipient; and

(b) the amount of the deemed loan is equal to the amount by which the interest (in this subsection called the ***accrued interest***) that has accrued on the principal loan in respect of

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that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period; and

(c) if any part of the accrued interest becomes payable or is paid after the time when the deemed loan is taken to have been made, the deemed loan is to be reduced accordingly; and

(d) the deemed loan is taken to have been made at a nil rate of interest.

(6) For the purposes of this section, if no interest is payable in respect of a loan, a nil rate of interest is taken to be payable in respect of the loan.

(7) For the purposes of this section, a person is taken to be under an obligation to pay or repay an amount even though the amount is not due for payment or repayment.

(8) For the purposes of this section, if a person does anything that results in the creation of property in another person, the first-mentioned person is taken to have provided that property to the other person at the time when the property comes into existence.

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

(a) a particular mode of application of money by a taxpayer in relation to another person (in this subsection called the ***investment body***) would not, apart from this subsection, be an investment; and

(b) a chance to participate in:

(i) betting (including pool betting); or

(ii) a lottery or other form of gambling; or

(iii) a game with prizes;

is provided to the taxpayer or a third person:

(iv) wholly or partly in respect of the mode of application of money by the taxpayer; or

(v) wholly or partly in relation directly or indirectly to the mode of application of money by the taxpayer; and

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(c) if a cash payment had been provided by the investment body to the taxpayer instead of that chance, the payment would constitute, to any extent, a return on an investment held by the taxpayer in or with the investment body;

the mode of application of money is taken to be an investment held by the taxpayer with the investment body.

(10) If a ballot is held to determine the order in which loans are to be made by a Starr-Bowkett building society to its members, then the making of a loan in accordance with the ballot is not covered by paragraph (1)(b).

(11) In this section:

arm's length value, in relation to property or services, means:

(a) the amount that the recipient could reasonably have been expected to have been required to pay to obtain the property or services from the provider under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction; or

(b) if such an amount cannot be practically determined—such amount as represents a reasonable valuation of the property or services.

arrangement means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

associate has the same meaning in relation to a person as that expression has in relation to a person in section 318.

benchmark amount of interest, in relation to a loan, in relation to a year of income, means the amount of interest that would have accrued on the loan in respect of the year of income if the interest

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was calculated on the daily balance of the loan at the benchmark interest rate in relation to the year of income.

benchmark interest rate, in relation to a year of income, means the predominant per cent per annum interest rate on new, variable interest rate housing loans to individuals for owner-occupation that is specified, for the June immediately preceding the financial year to which the year of income relates, in the "Interest Rates and Yields: Banks" table in the Statistical Directory of the *Reserve Bank of Australia Bulletin* dated July in that financial year.

deferred interest loan means a loan in respect of which interest is payable at a rate exceeding nil, other than:

(a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or

(b) a loan where:

(i) the interest is payable by instalments; and

(ii) the intervals between instalments do not exceed 6 months; and

(iii) the first instalment is due for payment within 6 months after the loan is made.

investment means any mode of application of money for the purpose of gaining a return.

loan includes:

(a) an advance of money; and

(b) the provision of credit or any other form of financial accommodation; and

(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether express or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit has the meaning given by subsection (4).

person means any of the following:

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(a) a company;
(b) a partnership;
(c) a person in the capacity of trustee;
(d) any other person.

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

recipient's contribution, in relation to property or services, means the amount of any consideration paid to the provider by the recipient in respect of the provision of the property or services, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration.

return, in relation to an investment, includes interest, income or profit.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:
(a) an arrangement for or in relation to:
(i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
(ii) the provision of, or the use of facilities for, entertainment, recreation or instruction; or
(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
(b) a contract of insurance; or
(c) an arrangement for or in relation to the lending of money.

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unreimbursed expenditure means expenditure no part of which has been reimbursed.

unreimbursed interest means interest no part of which has been reimbursed.

26BB Assessability of gain on disposal or redemption of traditional securities

(1) In this section:

acquire, in relation to a security, means acquire, on issue, purchase, transfer, assignment or otherwise, the security or the right to receive payment of the amount or amounts payable under the security.

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

dispose, in relation to a security, means sell, transfer, assign or dispose of in any way the security or the right to receive payment of the amount or amounts payable under the security.

eligible return has the same meaning as in Division 16E.

periodic interest has the same meaning as in Division 16E.

security has the same meaning as in Division 16E.

traditional security, in relation to a taxpayer, means a security held by the taxpayer that:

(a) is or was acquired by the taxpayer after 10 May 1989;

(b) either:

(i) does not have an eligible return; or

(ii) has an eligible return, where:

(A) the precise amount of the eligible return is able to be ascertained at the time of issue of the security; and

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(B) that amount is not greater than $1^1/_2$ % of the amount calculated in accordance with the formula:

$$\text{Payments} \times \text{Term}$$

where:

Payments is the amount of the payment or of the sum of the payments (excluding any periodic interest) liable to be made under the security when held by any person; and

Term is the number (including any fraction) of years in the term of the security; and

(d) is not trading stock of the taxpayer.

(2) Where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any gain on the disposal or redemption shall be included in the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

(3) Where the Commissioner, having regard to any connection between the parties to the transaction by which the taxpayer disposed of the traditional security or by which it was redeemed, or by which the taxpayer acquired the traditional security, is satisfied that the parties were not dealing with each other at arm's length in relation to the transaction, then, for the purposes of determining under subsection (2) the amount of any gain on the disposal or redemption, the consideration for the transaction shall be taken to be:

(a) the amount that might reasonably be expected for the transaction if the parties were independent parties dealing at arm's length with each other; or

(b) where, for any reason it is not possible or practicable for the Commissioner to ascertain that amount—such amount as the Commissioner determines.

(4) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:

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(a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:
  (i) the issuer of the traditional security; or
  (ii) a connected entity of the issuer of the traditional security; and
(b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:
  (i) the issuer of the traditional security; or
  (ii) the connected entity.

(5) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:
(a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:
  (i) the issuer of the traditional security; nor
  (ii) a connected entity of the issuer of the traditional security; and
(b) in the case of a disposal—the disposal is to:
  (i) the issuer of the traditional security; or
  (ii) a connected entity of the issuer of the traditional security; and
(c) the traditional security was issued on the basis that it will or may be:
  (i) disposed of to the issuer of the traditional security or to the connected entity; or
  (ii) redeemed;
  in exchange for ordinary shares in the company.

26BC Securities lending arrangements

(1) In this section:

convertible note:
(a) in relation to a company—has the same meaning as in Division 3A; or

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(b) in relation to a unit trust—means a note issued by the trustee of the unit trust, being a note that, if the unit trust were a company, would be a convertible note issued by the company, and includes a note that would be a convertible note within the meaning of Division 3A if:

(i) references in that Division to a company were references to a unit trust, or to the trustee of the unit trust, as the context requires; and

(ii) references in that Division to shares were references to units.

debenture, in relation to a unit trust, means an instrument issued by the trustee of the unit trust, being an instrument that, if the unit trust were a company, would be a debenture issued by the company.

distribution includes:

(a) interest; or

(b) a dividend; or

(c) a share issued by a company to a shareholder in the company where the share is issued:

(i) as a bonus share; or

(ii) in the circumstances mentioned in subsection 6BA(1); or

(d) an amount credited by the trustee of a unit trust to a unit holder as a unit holder; or

(e) a unit issued by the trustee of a unit trust to which section 130-20 of the *Income Tax Assessment Act 1997* applies (apart from subsection (4) of that section).

eligible security means:

(a) a share, bond, debenture, convertible note, right, option or similar financial instrument issued by a public company; or

(b) a unit, bond, debenture, convertible note, right, option or similar financial instrument issued by the trustee of:

(i) a listed unit trust; or

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(ii) a unit trust any of the units of which were offered to the public; or

(c) a bond, debenture, right, option or similar financial instrument issued by a government or by an authority of a government.

government means:

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

(b) the government of, or of a part of, a foreign country.

listed company means a company any of the shares of which are listed for quotation in the official list of a stock exchange in Australia or elsewhere.

listed unit trust means a unit trust any of the units of which are listed for official quotation in the official list of a stock exchange in Australia or elsewhere.

option:

(a) in relation to a company—means an option to acquire shares in the company; or

(b) in relation to a unit trust—means an option to acquire units in the unit trust; or

(c) in relation to a government or an authority of a government—means an option to acquire a bond, debenture or similar financial instrument issued by the government or by the authority.

public company means:

(a) a listed company; or

(b) a mutual life assurance company; or

(c) a company in which a government or an authority of a government has a controlling interest; or

(d) a company that is a 100% subsidiary of a company covered by paragraph (a), (b) or (c).

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right:

(a) in relation to a company—means a right to acquire shares in the company or to acquire an option; or

(b) in relation to a unit trust—means a right to acquire units in the unit trust or to acquire an option; or

(c) in relation to a government or an authority of a government—means a right to acquire a bond, debenture or similar financial instrument issued by the government or by the authority or to acquire an option.

(2) If an eligible security is held by a person as trustee for another person who is absolutely entitled to the eligible security as against the trustee, this section applies as if the eligible security were vested in the other person and any acts of the trustee were the acts of that other person.

(3) This section applies where:

(a) under a written agreement of the kind known as a securities lending arrangement, being an agreement that was entered into after 9 May 1990:

(i) at a particular time (in this section called the ***original disposal time***), a taxpayer (in this section called the ***lender***) disposed of an eligible security (in this section called the ***borrowed security***) to another taxpayer (in this section called the ***borrower***); and

(ii) at a later time (in this section called the ***re-acquisition time***), being less than 12 months after the original disposal time, the lender:

(A) re-acquired the borrowed security (which re-acquired security is in this section called the ***replacement security***) from the borrower; or

(B) acquired an identical security (which acquired security is in this section also called the ***replacement security***) from the borrower; and

(b) both the borrower and the lender were dealing with each other at arm's length in relation to each of the transactions mentioned in paragraph (a); and

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(c) if any of the following events occurred during the period (in this section called the ***borrowing period***) commencing at the original disposal time and ending at the re-acquisition time:

(i) the making or payment of a distribution (whether in property or money) in respect of the borrowed security;

(ii) the issue, by the company, trustee, government or government authority concerned, of a right or option in respect of the borrowed security;

(iii) if the borrowed security is a right or option:

(A) the giving of a direction by the lender to the borrower to exercise the right or option; or

(B) the giving of a direction by the lender to the borrower to exercise an identical right or option;

then (even if the event occurred after the borrowed security was disposed of by the borrower to a third party), the lender receives from the borrower, under the agreement:

(iv) if subparagraph (i) applies:

(A) the distribution; or

(B) if the distribution is in property—identical property; or

(C) a payment (in this section called the ***compensatory payment***) equal to the value to the lender of the distribution; or

(v) if subparagraph (ii) applies:

(A) the right or option; or

(B) an identical right or option; or

(C) a payment (in this section also called the ***compensatory payment***) equal to the value to the lender of the right or option; or

(vi) if subparagraph (iii) applies:

(A) the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option; or

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(B) shares, units, bonds, debentures or financial instruments that are identical to those that resulted from, or that would have resulted from, exercising the right or option; or

(C) a payment (in this section also called the ***compensatory payment***) equal to the value to the lender of the shares, units, bonds, debentures or financial instruments that resulted from, or would have resulted from, exercising the right or option; and

(d) if the total consideration payable or to be given by the borrower under the agreement consists of:

(i) the transfer of, or the promise to transfer, the replacement security or replacement securities concerned; and

(ii) other consideration (in this paragraph called the ***notifiable consideration***);

the agreement contains:

(iii) if the notifiable consideration is wholly covered by one of the following categories:

(A) a fee;

(B) an adjustment for variations in the market value of eligible securities;

(C) other consideration;

a statement specifying the category concerned and setting out such information as will enable the amount or value of the notifiable consideration to be readily ascertained; or

(iv) if the notifiable consideration is covered by 2 or more of the following categories:

(A) a fee;

(B) an adjustment for variations in the market value of eligible securities;

(C) other consideration;

a statement dissecting the notifiable consideration into those categories in such a manner as will enable the

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amount or value of each category to be readily ascertained; and

(e) the lender does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the borrower under the agreement.

(3A) For the purposes of paragraph (3)(c), if, apart from this subsection, either of the following events occurred after the commencement of the borrowing period:

(a) the making or payment of a distribution (whether in property or money) in respect of the borrowed security;

(b) the issue, by the company, trustee, government or government authority concerned, of a right or option in respect of the borrowed security;

(even if the event occurred after the borrowed security was disposed of by the borrower to a third party), the event is taken to have occurred during the borrowing period if, and only if, (assuming that the borrower had held the borrowed security at all times during the borrowing period) the entitlement to the distribution or issue would have been attributable to the borrower's holding of the borrowed security at a particular time during the borrowing period.

(4) In determining:

(a) whether an amount (other than a fee payable under the securities lending arrangement) is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT); or

(b) whether an amount is allowable as a deduction to the lender;

in respect of either or both of the transactions covered by paragraph (3)(a), the lender is to be treated as if:

(c) neither of those transactions had been entered into; and

(d) the lender had held the borrowed security at all times during the borrowing period; and

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(e) if the replacement security is not the borrowed security—the replacement security were the borrowed security.

(4A) If the lender receives a compensatory payment covered by sub-subparagraph (3)(c)(v)(C), then, in determining whether an amount is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*, the lender is to be treated as if:

(a) the lender had held the borrowed security at all relevant times during the borrowing period; and

(b) the right or option had been issued directly to the lender in respect of the borrowed security; and

(c) the lender had disposed of the right or option immediately after its issue for a consideration equal to the compensatory payment.

(4B) If the lender receives a compensatory payment covered by sub-subparagraph (3)(c)(vi)(C), then, in determining whether an amount is included in the assessable income of the lender under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*, the lender is to be treated as if:

(a) the lender had held the right or option at all relevant times during the borrowing period; and

(b) the lender had exercised the right or option; and

(c) the lender had immediately disposed of the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option for a consideration equal to the compensatory payment.

(5) In determining:

(a) whether an amount is included in the assessable income of the borrower under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or

(b) an amount (other than a fee payable under the securities lending arrangement) is allowable as a deduction to the borrower;

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in respect of either or both of the transactions covered by paragraph (3)(a):

(c) if the borrowed security was disposed of by the borrower to a third party:

(i) the borrower is to be treated as if the borrower had acquired the borrowed security from the lender for a consideration equal to the market value of the borrowed security at the time of its acquisition; and

(ii) the borrower is to be treated as if the borrower had disposed of the replacement security to the lender for a consideration equal to the market value of the borrowed security at the time of its acquisition from the lender; or

(d) in any other case—the borrower is to be treated as if neither of the transactions referred to in paragraph (3)(a) had been entered into.

(6) Any capital gain or capital loss from the disposal of the borrowed security by the lender is disregarded.

(6A) If the lender acquired the borrowed security before 20 September 1985, the lender is taken (for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*) to have acquired the replacement security before that day.

(6B) If the lender acquired the borrowed security on or after 20 September 1985, the first element of the cost base of the replacement security is the cost base of the borrowed security just before the acquisition of the replacement security. The reduced cost base of the replacement security is worked out similarly.

(7) If:

(a) the borrowed security was acquired on or after 20 September 1985; and

(b) a CGT event (other than one involving a transaction covered by subsection (3)) happens in relation to the replacement security at least 12 months after the lender acquired a paired security in relation to the replacement security (otherwise than under a transaction covered by subsection (3));

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section 114-10 of the *Income Tax Assessment Act 1997* (about the requirement for 12 months ownership) does not apply to the CGT event.

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

(a) if CGT event A1 happens (involving a transaction covered by subsection (3)) by the lender disposing of an eligible security to the borrower, that security is a paired security in relation to the replacement security subsequently acquired or re-acquired by the lender; and

(b) a security is a paired security in relation to a second security if the first security is a paired security in relation to a third security that is a paired security in relation to the second security (including a pairing with the second security by another application or other applications of this paragraph).

(9) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower:

(a) if the borrower disposes of the borrowed security to a third party:

(i) the first element of the cost base and reduced cost base of the borrowed security (in the hands of the borrower) is taken to be its market value when the borrower acquired it; and

(ii) when the borrower disposes of a replacement security to the lender, the capital proceeds from that CGT event are taken to be that market value; and

(b) if no third party is involved—the transactions referred to in paragraph (3)(a) are ignored.

(9A) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower, the incidental costs to the borrower of the acquisition of an eligible security covered by sub-subparagraph (3)(a)(ii)(B) include a compensatory payment incurred by the borrower (to the extent that the borrower has not deducted and cannot deduct it).

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(9B) For the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a right or option received by the lender as mentioned in subparagraph (3)(c)(v), the borrower and lender are to be treated as if the eligible security in respect of which the right or option was issued had been held by the lender at the time of the acquisition of the right or option.

(9C) For the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a share, unit, bond, debenture or financial instrument received by the lender as mentioned in subparagraph (3)(c)(vi), the borrower and the lender are to be treated as if:

(a) the share, unit, bond, debenture or financial instrument had been received as the result of the exercise of the borrowed security; and

(b) the borrowed security had been held by the lender at the time of the exercise; and

(c) the lender had exercised the borrowed security; and

(d) the lender had exercised the borrowed security at the time the direction concerned was given; and

(e) the amount of the contribution (if any) made by the lender to the borrower in respect of the carrying out of the direction were an amount paid as consideration by the lender in respect of the exercise.

(9D) If a distribution covered by subparagraph (3)(c)(i) consists of one or more shares issued by a company to the borrower or to a third party in the circumstances mentioned in subsection 6BA(1), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a share (in this subsection called the ***notional bonus share***) received by the lender in relation to the distribution in the circumstances mentioned in sub-subparagraph (3)(c)(iv)(A) or (B), the borrower and the lender are to be treated as if:

(a) the company had issued the notional bonus share to the lender instead of the borrower or the third party, as the case requires; and

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(b) the notional bonus share had been issued in the circumstances mentioned in subsection 6BA(1); and

(c) the notional bonus share had been issued in respect of the borrowed security; and

(d) the lender had held the borrowed security at the time the notional bonus share was issued.

(9E) If a distribution covered by subparagraph (3)(c)(i) consists of one or more units issued by the trustee of a unit trust to the borrower or to a third party in the circumstances covered by section 130-20 of the *Income Tax Assessment Act 1997*, then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to a unit (in this subsection called the ***notional bonus unit***) received by the lender in relation to the distribution in the circumstances mentioned in sub-subparagraph (3)(c)(iv)(A) or (B), the borrower and the lender are to be treated as if:

(a) the trustee had issued the notional bonus unit to the lender instead of the borrower or the third party, as the case requires; and

(b) the notional bonus unit had been issued in the circumstances covered by section 130-20 of the *Income Tax Assessment Act 1997*; and

(c) the notional bonus unit had been issued in respect of the borrowed security; and

(d) the lender had held the borrowed security at the time the notional bonus unit was issued.

(9F) If the lender receives a compensatory payment covered by sub-subparagraph (3)(c)(v)(C), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the lender, the lender is to be treated as if:

(a) the lender had held the borrowed security at all relevant times during the borrowing period; and

(b) the right or option had been issued directly to the lender in respect of the borrowed security; and

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(c) the lender had disposed of the right or option immediately after its issue and had received capital proceeds of an amount equal to the compensatory payment.

(9G) If the lender receives a compensatory payment covered by sub-subparagraph (3)(c)(vi)(C), then, for the purposes of the application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the lender, the lender is to be treated as if:

(a) the lender had held the right or option at all relevant times during the borrowing period; and

(b) the lender had exercised the right or option; and

(c) the lender had immediately disposed of the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option and had received capital proceeds of an amount equal to the compensatory payment.

(11A) If:

(a) the lender receives from the borrower a distribution or identical property covered by subparagraph (3)(c)(iv); and

(b) assuming that the borrowed security had continued to be held by the lender, an amount (in this subsection called the ***otherwise assessable amount***) would have been included in the lender's assessable income of a year of income in respect of the distribution concerned;

the lender's assessable income of the year of income includes an amount equal to the otherwise assessable amount.

(11B) If:

(a) the lender receives from the borrower a compensatory payment covered by sub-subparagraph (3)(c)(iv)(C); and

(b) assuming that the borrowed security had continued to be held by the lender, an amount (in this subsection called the ***otherwise assessable amount***) would have been included in the lender's assessable income of a year of income in respect of the distribution concerned;

the lender's assessable income of the year of income includes an amount equal to the otherwise assessable amount.

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(12) Where:

(a) a taxpayer has entered into a transaction of a kind referred to in subparagraph (3)(a)(i); and

(b) at the time of making an assessment in respect of income of the taxpayer of the year of income in which the transaction occurred, the Commissioner is of the opinion that, at a later time, circumstances will exist because of which this section will apply in connection with that transaction;

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

(13) Where:

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

(b) after the making of the assessment, the Commissioner becomes satisfied that the circumstance will not exist;

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

26E Income from RSAs

(1) All benefits provided in respect of, and amounts that are paid from, an RSA (including amounts taken to be paid from an RSA under subsection (2)) are taken to have an Australian source.

(2) If the premiums of an insurance policy are paid from an RSA, any amounts paid by the insurer under the policy are taken to be paid by the RSA provider as a benefit of the RSA.

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Subdivision AA—Non-superannuation annuities etc.

27H Assessable income to include annuities and superannuation pensions

(1) Subject to Division 54 of the *Income Tax Assessment Act 1997*, the assessable income of a taxpayer of a year of income shall include:

(a) the amount of any annuity derived by the taxpayer during the year of income excluding, in the case of an annuity that has been purchased, any amount that, in accordance with the succeeding provisions of this section, is the deductible amount in relation to the annuity in relation to the year of income; and

(b) the amount of any payment made to the taxpayer during the year of income as a supplement to an annuity, whether the payment is made voluntarily, by agreement or by compulsion of law and whether or not the payment is one of a series of recurrent payments.

Note: Division 54 of the *Income Tax Assessment Act 1997* provides a tax exemption for certain payments under structured settlements and structured orders.

(2) Subject to subsections (3) and (3A), the deductible amount in relation to an annuity derived by a taxpayer during a year of income is the amount (if any) ascertained in accordance with the formula $\frac{A\,(B\ -\ C)}{D}$, where:

A is the relevant share in relation to the annuity in relation to the taxpayer in relation to the year of income.

B is the amount of the undeducted purchase price of the annuity.

C is:

(a) if there is a residual capital value in relation to the annuity and that residual capital value is specified in the agreement by virtue of which the annuity is payable or is capable of being ascertained from the terms of that agreement at the

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time when the annuity is first derived—that residual capital value; or

(b) in any other case—nil; and

D is the relevant number in relation to the annuity.

(3) Subject to subsection (3A), where the Commissioner is of the opinion that the deductible amount ascertained in accordance with subsection (2) is inappropriate having regard to:

(a) the terms and conditions applying to the annuity; and

(b) such other matters as the Commissioner considers relevant;

the deductible amount in relation to the annuity derived by the taxpayer during the year of income is so much of the annuity as, in the opinion of the Commissioner, represents the undeducted purchase price having regard to:

(c) the terms and conditions applying to the annuity;

(d) any certificate or certificates of an actuary or actuaries stating the extent to which, in the opinion of the actuary or actuaries, the amount of the annuity derived by the taxpayer during the year of income represents the undeducted purchase price; and

(e) such other matters as the Commissioner considers relevant.

(3A) For the purposes of this section, where the annuity derived by a taxpayer during a year of income is part of an annuity of which a part has been commuted in the year of income or a preceding year of income, the deductible amount ascertained under subsection (2) or (3) shall be reduced by such amount as, in the opinion of the Commissioner, is appropriate having regard to:

(c) any deductible amount ascertained under this section in relation to the annuity in relation to a preceding year of income; and

(d) such other matters as the Commissioner considers relevant.

(4) In this section:

actuary means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

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

annuity means an annuity, a pension paid from a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) or a pension paid from a scheme mentioned in paragraph 290-5(c) of that Act, but does not include:

(a) an annuity that is a qualifying security for the purposes of Division 16E; or

(b) a superannuation income stream (within the meaning of the *Income Tax Assessment Act 1997*).

life expectation factor, in relation to a person in relation to an annuity, means the number of years in the complete expectation of life of the person as ascertained by reference to the prescribed Life Tables at the time at the beginning of the period to which the first payment of the annuity relates.

purchase price means:

(a) in relation to a pension—the sum of:

(i) contributions made by any person to a foreign superannuation fund to obtain the pension; and

(ii) so much as the Commissioner considers reasonable of contributions made by any person to a foreign superannuation fund to obtain superannuation benefits including the pension; and

(b) in relation to an annuity other than a pension—the sum of:

(i) payments made solely to purchase the annuity; and

(ii) so much as the Commissioner considers reasonable of payments made to purchase the annuity and to obtain other benefits.

relevant number, in relation to an annuity in relation to a year of income, means:

(a) where the annuity is payable for a term of years certain—the number of years in the term;

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(b) where the annuity is payable during the lifetime of a person and not thereafter—the life expectation factor of the person; and

(c) in any other case—the number that the Commissioner considers appropriate having regard to the number of years in the total period during which the annuity will be, or may reasonably be expected to be, payable.

relevant share, in relation to an annuity derived by a taxpayer during a year of income, means:

(a) in a case where the annuity derived by the taxpayer is a share of an annuity (which annuity is in this paragraph referred to as the ***total annuity***) payable to the taxpayer and another person or other persons—the fraction ascertained by dividing the number of whole dollars in the amount of the annuity derived by the taxpayer during the year of income by the number of whole dollars in the amount of the total annuity derived during the year of income by the taxpayer and the other person or persons; or

(b) in any other case—the number 1.

residual capital value, in relation to an annuity, means the capital amount payable on the termination of the annuity.

undeducted purchase price, in relation to an annuity, has the meaning given by section 27A immediately before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*.

(5) In the definition of ***purchase price*** in subsection (4):

(a) a reference to contributions made by any person to a foreign superannuation fund to obtain a pension does not include a reference to contributions made to a foreign superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer; and

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(b) a reference to payments made to purchase, or solely to purchase, an annuity (other than a pension) does not include a reference to payments made by an employer, or by another person under an agreement to which the employer is a party, to purchase, or solely to purchase, the annuity for, or for dependants of, an employee of the employer.

(6) For the purposes of subsection (5), in determining whether a person is an employer of another person, treat the holding of an office by the other person as employment of that person.

Subdivision D—Dividends

43A Subdivision has effect subject to provisions of Division 216 of the *Income Tax Assessment Act 1997*

This Subdivision has effect subject to the provisions of Division 216 of the *Income Tax Assessment Act 1997* (which describes cum dividend sales in which a distribution to a member of a corporate tax entity is treated as having been made to someone else).

43B Application of Subdivision to non-share dividends

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

(2) Subsection (1) does not apply to section 47A.

(3) Paragraph (1)(c) does not apply to subsection 44(1).

(4) Subsection (1) has effect subject to the special provision that is made for non-share dividends in subsection 44(1).

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44 Dividends

(1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) includes:

(a) if the shareholder is a resident:

(i) dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source; and

(ii) all non-share dividends paid to the shareholder by the company; and

(b) if the shareholder is a non-resident:

(i) dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia; and

(ii) non-share dividends paid to the shareholder by the company to the extent to which they are derived from sources in Australia; and

(c) if the shareholder is a non-resident carrying on business in Australia at or through a permanent establishment of the shareholder in Australia, and the company is a resident:

(i) dividends (other than non-share dividends) that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia; and

(ii) non-share dividends that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are derived from sources outside Australia.

This subsection does not apply to a dividend (or non-share dividend) to the extent to which another provision of this Act that expressly deals with dividends includes some or all of the dividend (or non-share dividend) in, or excludes some or all of the dividend (or non-share dividend) from, the shareholder's assessable income.

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Note 1: Some other provisions that expressly deal with dividends are sections 23AI, 23AK and 128D of this Act and section 768-5 of the *Income Tax Assessment Act 1997*.

Note 2: An amount declared to be conduit foreign income is not included in assessable income under paragraph (1)(b) or (c): see section 802-15 of the *Income Tax Assessment Act 1997*.

(1A) For the purposes of this Act, a dividend paid out of an amount other than profits is taken to be a dividend paid out of profits.

(1B) Where:

(a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share capital account of the company; or

(b) a dividend paid by a company is a repayment by the company of an amount paid-up on a share;

the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.

(2) Subsections (3) and (4) apply to a demerger dividend unless the head entity elects in writing, within one month after it decides which of its shareholders will receive ownership interests in the demerged entity under the demerger, that those subsections do not apply to the total demerger dividend for all shareholders.

(3) This section applies to the demerger dividend as if it had not been paid out of profits.

(4) A demerger dividend is not assessable income or exempt income.

(5) However, subsections (3) and (4) do not apply to a demerger dividend unless, just after the demerger, CGT assets owned by the demerged entity or a demerger subsidiary representing at least 50% by market value of all the CGT assets (or a reasonable approximation of market value) owned by the demerged entity and its demerger subsidiaries are used, directly or indirectly, in one or more businesses carried on by one or more of those entities.

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(6) In applying subsection (5), disregard any assets that are ownership interests in a demerger subsidiary unless they are used in a business referred to in that subsection.

(7) In this section:

permanent establishment of a person:

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

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

45 Streaming of bonus shares and unfranked dividends

Application of section

(1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends to its shareholders in such a way that:

(a) the shares are received by some shareholders but not all shareholders; and

(b) some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

(2) The value of the share at the time that the shareholder is provided with the share is taken, for the purposes of this Act, to be a dividend that is unfrankable (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*) and that is paid by the company, out of profits of the company, to the shareholder at that time.

(3) A dividend is ***minimally franked*** if it is not franked, or is franked to less than 10%, in accordance with section 202-5 or 208-60 of the *Income Tax Assessment Act 1997*.

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45A Streaming of dividends and capital benefits

Application of section

(1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of capital benefits and the payment of dividends to its shareholders in such a way that:

(a) the capital benefits are, or apart from this section would be, received by shareholders (the ***advantaged shareholders***) who would, in the year of income in which the capital benefits are provided, derive a greater benefit from the capital benefits than other shareholders; and

(b) it is reasonable to assume that the other shareholders (the ***disadvantaged shareholders***) have received, or will receive, dividends.

However, it does not apply if section 45 applies in relation to the streaming or in the circumstances set out in subsection (5).

Commissioner to determine that section 45C applies

(2) The Commissioner may make, in writing, a determination that section 45C applies in relation to the whole, or a part, of the capital benefits. A determination does not form part of an assessment.

Note: Subsection (6) limits the determination to a part of the capital benefit in certain cases.

*Meaning of **provision of capital benefit***

(3) A reference to the ***provision of a capital benefit*** to a shareholder in a company is a reference to any of the following:

(a) the provision to the shareholder of shares in the company;

(b) the distribution to the shareholder of share capital or share premium;

(c) something that is done in relation to a share that has the effect of increasing the value of a share (which may or may not be the same share) held by the shareholder.

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(3A) For the purposes of this section, a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return.

*Meaning of **greater benefit** from capital benefits*

(4) The circumstances in which a shareholder would, in a year of income, derive a ***greater benefit*** from capital benefits than another shareholder include, but are not limited to, any of the following circumstances existing in relation to the first shareholder and not in relation to the other shareholder:

(a) some or all of the shares in the company held by the shareholder were acquired, or are taken to have been acquired, before 20 September 1985;

(b) the shareholder is a non-resident;

(c) the cost base (for the purposes of Part IIIA) of the relevant share is not substantially less than the value of the applicable capital benefit;

(d) the shareholder has a net capital loss for the year of income in which this capital benefit is provided;

(e) the shareholder is a private company who would not have been entitled to a rebate under former section 46F if the shareholder had received the dividend that was paid to the disadvantaged shareholder;

(f) the shareholder has income tax losses.

Certain capital benefits not covered

(5) This section does not apply where the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, fully franked dividends.

Determination limited in certain cases

(6) If the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, partly

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franked dividends, the Commissioner may only make a determination under subsection (2) in relation to so much of the capital benefit as the Commissioner considers relates to the unfranked part of the dividend.

45B Schemes to provide certain benefits

Purpose of section

(1) The purpose of this section is to ensure that relevant amounts are treated as dividends for taxation purposes if:

(a) components of a demerger allocation as between capital and profit do not reflect the circumstances of a demerger; or

(b) certain payments, allocations and distributions are made in substitution for dividends.

Application of section

(2) This section applies if:

(a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company; and

(b) under the scheme, a taxpayer (the ***relevant taxpayer***), who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit; and

(c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling a taxpayer (the ***relevant taxpayer***) to obtain a tax benefit.

Commissioner to determine that section 45BA or 45C applies

(3) The Commissioner may make, in writing, a determination that:

(a) section 45BA applies in relation to the whole, or a part, of the demerger benefit; or

(b) section 45C applies in relation to the whole, or a part, of the capital benefit.

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A determination does not form part of an assessment.

Note: If section 45BA applies in relation to the whole, or a part, of a demerger benefit, this benefit may be a capital benefit.

*Meaning of **provided with a demerger benefit***

(4) A person is ***provided with a demerger benefit*** if in relation to a demerger:

(a) a company provides the person with ownership interests in that or another company; or

(b) something is done in relation to an ownership interest owned by the person that has the effect of increasing the value of an ownership interest (which may or may not be the same ownership interest) owned by the person.

*Meaning of **provided with a capital benefit***

(5) A reference to a person being ***provided with a capital benefit*** is a reference to any of the following:

(a) the provision of ownership interests in a company to the person;

(b) the distribution to the person of share capital or share premium;

(c) something that is done in relation to an ownership interest that has the effect of increasing the value of an ownership interest (which may or may not be the same interest) that is held by the person.

(6) However, a person is not ***provided with a capital benefit*** to the extent that the provision of interests, the distribution or the thing done referred to in subsection (5) involves the person receiving a demerger dividend.

(7) For the purposes of this section, a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return.

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*Meaning of **relevant circumstances** of scheme*

(8) The ***relevant circumstances*** of a scheme include the following:

(a) the extent to which the demerger benefit or capital benefit is attributable to capital or the extent to which the demerger benefit or capital benefit is attributable to profits (realised and unrealised) of the company or of an associate (within the meaning in section 318) of the company;

(b) the pattern of distributions of dividends, bonus shares and returns of capital or share premium by the company or by an associate (within the meaning in section 318) of the company;

(c) whether the relevant taxpayer has capital losses that, apart from the scheme, would be unutilised (within the meaning of the *Income Tax Assessment Act 1997*) at the end of the relevant year of income;

(d) whether some or all of the ownership interests in the company or in an associate (within the meaning in section 318) of the company held by the relevant taxpayer were acquired, or are taken to have been acquired, by the relevant taxpayer before 20 September 1985;

(e) whether the relevant taxpayer is a non-resident;

(f) whether the cost base (for the purposes of the *Income Tax Assessment Act 1997*) of the relevant ownership interest is not substantially less than the value of the applicable demerger benefit or capital benefit;

(h) if the scheme involves the distribution of share capital or share premium—whether the interest held by the relevant taxpayer after the distribution is the same as the interest would have been if an equivalent dividend had been paid instead of the distribution of share capital or share premium;

(i) if the scheme involves the provision of ownership interests and the later disposal of those interests, or an increase in the value of ownership interests and the later disposal of those interests:

(i) the period for which the ownership interests are held by the holder of the interests; and

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(ii) when the arrangement for the disposal of the ownership interests was entered into;

(j) for a demerger only:

(i) whether the profits of the demerging entity and demerged entity are attributable to transactions between the entity and an associate (within the meaning in section 318) of the entity; and

(ii) whether the assets of the demerging entity and demerged entity were acquired under transactions between the entity and an associate (within the meaning in section 318) of the entity;

(k) any of the matters referred to in subsection 177D(2).

Meaning of ***obtaining a tax benefit***

(9) A relevant taxpayer ***obtains a tax benefit*** if an amount of tax payable, or any other amount payable under this Act, by the relevant taxpayer would, apart from this section, be less than the amount that would have been payable, or would be payable at a later time than it would have been payable, if the demerger benefit had been an assessable dividend or the capital benefit had been an assessable dividend.

(10) In this section:

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

45BA Effect of determinations under section 45B for demerger benefits

(1) If the Commissioner makes a determination under subsection 45B(3), the amount of the demerger benefit, or the part of the benefit, is taken not to be a demerger dividend for the purposes of this Act for the owner of the ownership interest or the relevant taxpayer at the time when the owner or relevant taxpayer is provided with the demerger benefit.

(2) The amount of the demerger benefit is:

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(a) if the benefit is the provision of an ownership interest—the market value of the interest at the time that it is provided; or

(b) if the benefit is an increase in the value of an ownership interest—the increase in the market value of the interest as a result of the change; or

(c) if the benefit is a distribution to the shareholder of share capital or share premium—the amount debited to the share capital account or share premium account of the company in connection with the provision of the benefit.

45C Effect of determinations under sections 45A and 45B for capital benefits

(1) If the Commissioner makes a determination under subsection 45A(2) or 45B(3), the amount of the capital benefit, or the part of the benefit, is taken, for the purposes of this Act, to be an unfranked dividend that is paid by the company to the shareholder or relevant taxpayer at the time that the shareholder or relevant taxpayer is provided with the capital benefit.

(2) The dividend is taken to have been paid out of profits of the company.

(3) If the Commissioner has made a determination under section 45B in respect of the whole or a part of a capital benefit and the Commissioner makes a further written determination that the capital benefit, or the part of the capital benefit, was paid under a scheme for which a purpose, other than an incidental purpose, was to avoid franking debits arising in relation to the distribution from the company:

(a) on the day on which notice of the determination is served in writing on the company, a franking debit of the company arises in respect of the capital benefit; and

(b) the amount of the franking debit is the amount that, if the company had:

(i) paid a dividend of an amount equal to the amount of the capital benefit, or the part of the capital benefit, at the time when it was provided; and

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(ii) fully franked the dividend;

would have been the amount of the franking credit of the company that would have arisen as a result of the dividend.

(4) The amount of the capital benefit is:

(a) if the benefit is the provision of an ownership interest—the market value of the interest at the time that it is provided; or

(b) if the benefit is an increase in the market value of an ownership interest—the increase in the market value of the interest as a result of the change; or

(c) if the benefit is a distribution to the shareholder of share capital or share premium—the amount debited to the share capital account or share premium account of the company in connection with the provision of the benefit.

(4A) For the purposes of this section:

(a) a non-share distribution to an equity holder is taken to be the distribution to the equity holder of share capital to the extent to which it is a non-share capital return; and

(b) the debit to the company's non-share capital account, in respect of the non-share distribution, is taken to be a debit to the company's share capital account.

45D Determinations under sections 45A, 45B and 45C

Notice by Commissioner of determination

(1) If the Commissioner makes a determination under section 45A, 45B or 45C, the Commissioner must give a copy of the determination to the company concerned (which, in the case of a demerger benefit referred to in section 45B, is the head entity of the demerger group).

Notice by company of determination

(1A) That company must, in the case of a determination under section 45A or 45B, give a copy of the notice to:

(a) the advantaged shareholder referred to in section 45A; or

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(b) the relevant taxpayer referred to in section 45B.

Publication of determination in relation to listed public company

(2) If the Commissioner makes a determination under section 45A, in respect of a dividend paid by a listed public company, the Commissioner is taken to have served notice in writing of the determination on the advantaged shareholder if the Commissioner causes the notice to be published in a manner that results in the notice being accessible to the public and reasonably prominent. The notice is taken to have been served on the day on which the publication takes place.

Evidence of determination

(3) The production of:

(a) a notice of a determination; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is conclusive evidence of:

(c) the due making of the determination; and

(d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

(4) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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46FA Deduction for dividends on-paid to non-resident owner

Allowable deduction

(1) An amount is allowable as a deduction from the assessable income of a company (the ***resident company***) if:

(a) the resident company is paid a dividend (the ***original dividend***) that:

(i) is paid by a company that is a resident; and

(ii) is a non-portfolio dividend; and

(iii) is not a fully-franked dividend; and

(b) the resident company is not a group company in relation to the company that paid the original dividend in relation to the year of income in which the dividend is paid; and

(ba) neither the resident company, nor the company that pays the dividend, is a prescribed dual resident; and

(c) ignoring the amendments made by Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*, but for subsection 46AB(1) or 46AC(2) or subparagraph 46F(2)(a)(i) of this Act as in force just before the commencement of those amendments, the resident company would have been entitled to a rebate under section 46 of this Act as so in force in respect of the unfranked amount of the original dividend; and

(d) the resident company pays a dividend (the ***flow-on dividend***) to a company that is not a resident (the ***non-resident company***); and

(e) the flow-on dividend is not a fully-franked dividend; and

(f) the resident company declares that the unfranked amount of the flow-on dividend is an on-payment of the unfranked amount of the original dividend to the extent of a specified percentage (not exceeding 100%); and

(g) when the original dividend is paid, when the declaration is made and when the flow-on dividend is paid, the resident company is:

(i) a resident; and

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(ii) wholly owned by the non-resident company.

The deduction is from assessable income of the year of income in which the flow-on dividend is paid. The amount of the deduction is equal to the flow-on amount worked out using subsection (2).

(2) The ***flow-on amount*** is:

$$\text{Percentage specified under paragraph (1)(f)} \times \text{Unfranked amount of the flow-on dividend}$$

Flow-on declarations

(3) The declaration under paragraph (1)(f) (the ***flow-on declaration***) must be made:

(a) in writing; and

(b) before the flow-on dividend is paid.

The declaration cannot be revoked or varied.

(4) The flow-on declaration is effective only to the extent to which the flow-on amount does not exceed the surplus in the resident company's unfranked non-portfolio dividend account immediately before the declaration is made.

Note: See section 46FB for the unfranked non-portfolio dividend account.

Unfranked amount of flow-on dividend unfrankable

(5) Part 3-6 of the *Income Tax Assessment Act 1997* (the imputation system) applies to the unfranked amount of the flow-on dividend as if it were an unfrankable distribution within the meaning of section 202-45 of that Act if a deduction is allowed to the resident company in relation to the flow-on dividend.

Wholly owned by non-resident company

(6) The resident company is wholly owned by the non-resident company if all the shares in the resident company are held by and beneficially owned by the non-resident company.

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(7) However, the company is not wholly owned by the non-resident company if a person is in a position to affect rights, in relation to the resident company, of the non-resident company.

(8) The resident company is also not wholly owned by the non-resident company if at some future time a person will be in a position to affect rights as described in subsection (7).

A person in a position to affect rights

(9) A person is in a position to affect rights of a company in relation to another company if the person has a right, power or option:

(a) to acquire those rights from one or other of those companies; or

(b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.

(10) It does not matter whether the person has the right, power or option because of the constitution of one or other of those companies, any agreement or otherwise.

Definitions

(11) In this section:

fully-franked dividend means a dividend whose franking percentage (within the meaning of section 203-35 of the *Income Tax Assessment Act 1997*) is 100%.

group company has the same meaning as in former section 160AFE as in force immediately before 1 July 2002.

non-portfolio dividend has the same meaning as in section 317.

non-resident company means a company that is not a resident.

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income*

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Tax Assessment Act 1997) means the amount of the dividend less the franked part.

46FB Unfranked non-portfolio dividend account

Company may establish account

(1) A company may establish an unfranked non-portfolio dividend account.

Account surplus

(2) An unfranked non-portfolio dividend account surplus exists for a company at a particular time if the company's total unfranked non-portfolio dividend credits arising before that time exceed its total unfranked non-portfolio dividend debits arising before that time.

(3) The amount of the surplus is equal to the amount of the excess.

Credits

(4) An unfranked non-portfolio dividend credit arises for a company if:

(a) the company is paid an unfranked non-portfolio dividend; and

(b) the company is not a group company in relation to the company that paid the dividend in relation to the year of income in which the dividend is paid; and

(c) ignoring the amendments made by Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*, but for subsection 46AB(1) or 46AC(2) or subparagraph 46F(2)(a)(i) of this Act as in force just before the commencement of those amendments, the company would have been entitled to a rebate under section 46 of this Act as so in force in respect of the unfranked amount of the dividend.

The amount of the credit is the unfranked amount of the dividend. The credit arises when the dividend is paid to the company.

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Debits

(5) An unfranked non-portfolio dividend debit arises for a company if the company makes a declaration under paragraph 46FA(1)(f) in relation to a dividend paid on a particular day. The amount of the debit is the flow-on amount under subsection 46FA(2). The debit arises when the declaration is made.

Definitions

(6) In this section:

group company has the same meaning as in former section 160AFE as in force immediately before 1 July 2002.

non-portfolio dividend has the same meaning as in section 317.

unfranked amount of a dividend (including an unfrankable distribution within the meaning of section 202-45 of the *Income Tax Assessment Act 1997*) means the amount of the dividend less the franked part.

47 Distributions by liquidator

(1) Distributions to shareholders of a company by a liquidator in the course of winding-up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up share capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

(1A) A reference in subsection (1) to income derived by a company includes a reference to:

(a) an amount (except a net capital gain) included in the company's assessable income for a year of income; or

(b) a net capital gain that would be included in the company's assessable income for a year of income if the *Income Tax Assessment Act 1997* required a net capital gain to be worked out as follows:

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Method statement

Step 1. Work out each capital gain (except a capital gain that is disregarded) that the company made during that year of income. Do so *without indexing* any amount used to work out the cost base of a CGT asset.

Step 2. Total the capital gain or gains worked out under Step 1. The result is the net capital gain for that year of income.

(2) Those distributions shall, to the extent to which they are made out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

(2A) Where:

(a) the business of a company has been, or is in the course of being, discontinued otherwise than in the course of a winding up of the company under any law relating to companies;

(b) in connexion with the discontinuance, any moneys of the company have been or other property of the company has been, on or after 19 October 1967, distributed, otherwise than by the company, to shareholders of the company; and

(c) the moneys or other property so distributed are not, for the purposes of this Act, dividends;

the distribution shall, subject to subsection (2B), be deemed to be, for the purposes of this section, a distribution to the shareholders by a liquidator in the course of winding up the company.

(2B) Where:

(a) subsection (2A) would, but for this subsection, apply in relation to any moneys or other property of a company distributed to shareholders of the company; and

(b) the company does not cease to exist within a period of 3 years after the distribution, or within such further period as the Commissioner allows;

subsection (2A) shall not apply, and shall be deemed never to have applied, in relation to those moneys or that other property, and

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those moneys or that other property so distributed shall, for the purposes of this Act, be deemed to be dividends paid by the company to the shareholders out of profits derived by it.

(3) For the purposes of this section, ***paid-up share capital*** includes capital which has been paid up in money or by other valuable consideration and which has been cancelled and has not been repaid by the company to the shareholders.

47A Distribution benefits—CFCs

(1) Subject to subsection (2), if:

(a) a company (in this section called the ***first company***) has profits immediately before a distribution time for a distribution benefit in relation to the first company; and

(b) the distribution time occurred after 3 June 1990; and

(c) the first company is a CFC at the distribution time; and

(d) the first company is a resident of an unlisted country at the distribution time;

so much of the distribution payment in relation to the distribution time as would not otherwise be a dividend and does not exceed the amount of those profits is taken, for the purposes of this Act, to be a dividend paid by the first company:

(e) to the recipient of the benefit as a shareholder in the first company; and

(f) out of profits derived by the first company; and

(g) at the distribution time.

(2) If:

(a) any of the following subparagraphs applies:

(i) by virtue of subsection (1), the whole or a part of the distribution payment is included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44;

(ii) by virtue of subsection (1), the whole or a part of the distribution payment would, apart from section 23AI or section 768-5 of the *Income Tax Assessment Act 1997*,

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be included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44; and

(b) both of the following subparagraphs apply:

(i) the taxpayer's return of income for the year of income was not prepared on the basis that the distribution payment had the consequence specified in subsection (1);

(ii) the taxpayer has not notified the Commissioner, in writing, within 12 months after the end of the year of income, that the distribution payment had the consequence specified in subsection (1);

that subsection has effect in relation to the taxpayer and in relation to that distribution payment as if the reference in that subsection to the purposes of this Act were a reference to the purposes of this Act (other than section 365 of this Act and Division 770 of the *Income Tax Assessment Act 1997*).

(3) Subject to subsections (9) and (12), a reference in this section to a distribution benefit in relation to the first company is a reference to an eligible benefit where the following conditions are satisfied:

(a) the eligible benefit was provided to:

(i) an associated entity in relation to the first company; or

(ii) another entity that, immediately after the time of the provision of the eligible benefit, was an associated entity in relation to the first company;

(b) the eligible benefit was provided by:

(i) the first company; or

(ii) an entity (in this subsection called the ***arranger***) other than the first company under an arrangement between:

(A) the first company; and

(B) the arranger or another entity;

(c) if subparagraph (b)(ii) applies—the first company made, or entered into an undertaking to make, one or more transfers of property or services to the arranger or to another entity (which transfers are in this section called the ***arrangement***

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transfers) that are attributable, in whole or in part, to the provision of the eligible benefit.

(4) Where the first company entered into an undertaking to make one or more arrangement transfers, the time of the arrangement transfers is the time the undertaking was entered into.

(5) Where, at a particular time, an entity (in this subsection called the ***provider***) waives or releases the obligation of another entity (in this subsection called the ***recipient***) to pay or repay to the provider an amount:

(a) the waiver or release is taken to constitute an eligible benefit provided at that time by the provider to the recipient; and

(b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:

(i) if the eligible benefit was provided by the first company—the time of the provision of the eligible benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

(c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount the payment or repayment of which is waived or released; or

(ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

(6) For the purposes of subsection (5), an entity is taken to be under an obligation to pay or repay an amount even if the amount is not due for payment or repayment.

(7) Where, at a particular time, an entity (in this subsection called the ***provider***) makes a loan to another entity (in this subsection called the ***recipient***), where:

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(a) the parties to the loan are not at arm's length with each other in relation to the loan; or

(b) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly (through one or more interposed companies, partnerships or trusts), the payment of a dividend that is, or would be, non-assessable non-exempt income under section 768-5 of the *Income Tax Assessment Act 1997* (in whole or in part); or

(c) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly, the provision of an eligible benefit by the recipient, being an eligible benefit that is a distribution benefit in relation to any company;

the following provisions have effect:

(d) the making of the loan is taken to constitute an eligible benefit provided by the provider to the recipient at that time;

(e) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:

(i) if the benefit was provided by the first company—the time of the provision of the benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

(f) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount of the loan; or

(ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

(8) Where, at a particular time:

(a) an entity (in this subsection called the ***provider***) acquires from a company (in this subsection called the ***recipient***):

(i) a share in the recipient;

(ii) a right to acquire a share in the recipient;

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(iii) an option to acquire a share in the recipient; or

(b) an entity (in this subsection also called the ***provider***) acquires from the trustee of a unit trust (in this subsection also called the ***recipient***):

(i) a unit in the recipient;

(ii) a right to acquire a unit in the recipient;

(iii) an option to acquire a unit in the recipient;

the following provisions have effect:

(c) the acquisition is taken to constitute an eligible benefit provided by the provider to the recipient at that time;

(d) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

(i) if the benefit was provided by the first company—the time of the provision of the benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

(e) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount or market value of the consideration paid or given by the first company in respect of the acquisition; or

(ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit;

(f) if:

(i) the eligible benefit is a distribution benefit in relation to the first company; and

(ii) the provider transferred property or services to the recipient in respect of the acquisition;

in determining the profits of the company immediately before the distribution time, or the first distribution time, as the case requires, for the distribution benefit, the following assumptions are to be made:

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(iii) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:

(A) disposed of the property or services to an entity other than the recipient; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services;

(iv) if subparagraph (iii) does not apply—the assumption that, immediately before the distribution time, the company had:

(A) disposed of equivalent property or services to an entity other than the recipient or the entity who provided the eligible benefit; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services.

(9) An eligible benefit that is covered by subsection (8) and provided at a particular time is not a distribution benefit in relation to the first company if, at that time, there is no entity (other than the provider referred to in that subsection) who is:

(a) either:

(i) the holder of an eligible equity interest in the first company; or

(ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and

(b) the holder of an eligible equity interest in the recipient referred to in that subsection.

(10) Where:

(a) an entity (in this subsection called the ***provider***) transfers property or services to another entity (in this subsection called the ***recipient***); and

(b) the property or services are transferred:

(i) for no consideration; or

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(ii) for a consideration less than the market value of the property or services; and

(c) in the case of a transfer of services—the services do not consist of the making of a loan; and

(d) in any case—the property or services are not transferred by way of consideration for the acquisition from a company of:

(i) a share in the company; or

(ii) a right to acquire a share in the company; or

(iii) an option to acquire a share in the company; and

(e) in any case—the property or services are not transferred in respect of the acquisition from the trustee of a unit trust of:

(i) a unit in the unit trust; or

(ii) a right to acquire a unit in the unit trust; or

(iii) an option to acquire a unit in the unit trust; and

(f) in the case of a transfer of property—the property does not consist of a payment in respect of a call on a share in a company;

the following provisions have effect:

(g) the transfer is taken to constitute an eligible benefit provided by the provider to the recipient at that time;

(h) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

(i) if the benefit was provided by the first company—the time of the provision of the benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

(j) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount by which the amount or market value of the property or services exceeds the consideration (including nil consideration) mentioned in paragraph (b); or

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(ii) if subparagraph (i) does not apply and there is only one arrangement transfer—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit; or

(iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the amount worked out in relation to the arrangement transfer using the following formula:

$$\text{Total Excess} \times \frac{\text{Arrangement transfer}}{\text{Total arrangement transfers}}$$

where:

Total Excess means so much of the total amount or market value of all the arrangement transfers as is attributable to the provision of the eligible benefit.

Arrangement transfer means the amount or market value of the arrangement transfer concerned.

Total arrangement transfers means the total amount or market value of all of the arrangement transfers.

(k) if the eligible benefit is a distribution benefit in relation to the first company—in determining the profits of the company immediately before a distribution time for the distribution benefit, the following assumptions are to be made:

(i) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:

(A) disposed of the property or services to an entity other than the recipient; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services;

(ii) if subparagraph (i) does not apply and there is only one arrangement transfer—the assumption that, immediately before the distribution time, the company had:

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(A) disposed of the property or services covered by the arrangement transfer to an entity other than the entity who provided the eligible benefit; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services;

(iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the assumption that, immediately before each distribution time, the company had:

(A) disposed of the property or services covered by the arrangement transfer concerned to an entity other than the entity who provided the eligible benefit; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services.

(10A) Subsection (10) does not apply to a transfer that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.

(11) Where, at a particular time, an entity (in this subsection called the ***provider***) makes a payment to another entity, being a company (in this subsection called the ***recipient***), in respect of a call on a share in the recipient:

(a) the making of the payment is taken to constitute an eligible benefit provided by the provider to the recipient at that time; and

(b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

(i) if the benefit was provided by the first company—the time of the provision of the benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

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(c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount of the payment; or

(ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

(12) An eligible benefit that is covered by subsection (11) and provided at a particular time is not a distribution benefit in relation to the first company if, at that time, there is no entity (other than the provider referred to in that subsection) who is:

(a) either:

(i) the holder of an eligible equity interest in the first company; or

(ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and

(b) the holder of an eligible equity interest in the recipient referred to in that subsection.

(13) If:

(a) apart from this subsection, a particular eligible benefit that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and

(b) at a later time, there is an entity (other than the provider referred to in subsection (8) or (11), as the case may be) who is:

(i) either:

(A) the holder of an eligible equity interest in the first company; or

(B) an associate of an entity who is the holder of an eligible equity interest in the first company; and

(ii) the holder of an eligible equity interest in the recipient referred to in whichever of subsections (8) and (11) is applicable; and

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(ba) if the eligible benefit consists of the acquisition of a share or unit—at that later time, the share or unit has not been redeemed or bought back by the recipient mentioned in subsection (8) for a consideration equal to or greater than the arm's length value of the share or unit;

the following provisions have effect:

(c) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to that eligible benefit;

(d) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

(14) If:

(a) apart from this subsection, a particular eligible benefit (in this subsection called the ***first eligible benefit***) that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and

(b) the recipient referred to in whichever of subsections (8) and (11) is applicable provides an eligible benefit (in this subsection called the ***second eligible benefit***) to:

(i) the first company; or

(ii) the provider referred to in whichever of those subsections is applicable; or

(iii) an associated entity in relation to:

(A) the first company; or

(B) that provider; and

(c) the provision of the first eligible benefit facilitated, directly or indirectly, the provision of the second eligible benefit; and

(ca) if the second eligible benefit is covered by subsection (8) or (11):

(i) the second eligible benefit is provided on or after 13 September 1990; or

(ii) both:

(A) the second eligible benefit was provided before 13 September 1990; and

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(B) the Commissioner is of the opinion that the provision of the second eligible benefit had, or would be likely to have, the effect of enabling any taxpayer to avoid tax;

the following provisions have effect:

(d) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to the first eligible benefit;

(e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

(15) In determining whether a company has profits at a particular time, it is to be assumed that the accounts of the company had been drawn up immediately before that time.

(16) For the purposes of this section, where:

(a) the first company has profits (in this subsection called the ***original profits***) immediately before a distribution time for a distribution benefit in relation to the first company; and

(b) by virtue of subsection (1), an amount (in this subsection called the ***original assessable amount***) is included in the assessable income of a taxpayer (in this subsection called the ***original taxpayer***) of a year of income (in this subsection called the ***original year of income***) under section 44 in respect of the distribution payment in relation to the distribution time; and

(c) any of the following subparagraphs applies:

(i) the original taxpayer is:

(A) a resident at any time during the original year of income; and

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

(iii) the original taxpayer is the trustee of a public trading trust in relation to the original year of income;

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(iv) the original taxpayer is the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the original year of income;

(v) the original taxpayer is the trustee of a resident trust estate (within the meaning of Division 6) in relation to the year of income who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of the trust estate;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the original assessable amount.

(17) For the purposes of this section, where:

(a) the first company has profits (in this subsection called the ***original profits***) immediately before a distribution time for a distribution benefit in relation to the first company; and

(b) by virtue of subsection (1), an amount (in this subsection called the ***original assessable amount***) is included in the assessable income of a taxpayer (in this subsection called the ***original taxpayer***) of a year of income (in this subsection called the ***original year of income***) under section 44 in respect of the distribution payment in relation to the distribution time; and

(c) all of the following conditions are satisfied:

(i) the original taxpayer is the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of the trust estate of the original year of income;

(ii) the beneficiary who was entitled to that share was a resident at any time during the original year of income;

(iii) the whole or a part (which whole or part is in this subsection called the ***beneficiary's portion of the original assessable amount***) of the share of the net income is attributable to the original assessable amount;

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then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the beneficiary's portion of the original assessable amount.

(18) For the purposes of this section, where:

(a) the first company has profits (in this subsection called the ***original profits***) immediately before a distribution time for a distribution benefit in relation to the first company; and

(b) by virtue of subsection (1), an amount (in this subsection called the ***original assessable amount***) is included in the assessable income of a taxpayer (in this subsection called the ***original taxpayer***) of a year of income (in this subsection called the ***original year of income***) under section 44 in respect of the distribution payment in relation to the distribution time; and

(c) the original taxpayer is the trustee of a trust estate or a partnership; and

(d) the following conditions are satisfied in relation to another taxpayer (in this subsection called the ***actual taxpayer***):

(i) an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the ***assessment year of income***) under subsection 92(1) or section 97 or 100;

(ii) the actual taxpayer is:

(A) a resident at any time during the assessment year of income, being a company or a natural person (other than a company or a natural person in the capacity of a trustee); or

(C) the trustee of a public trading trust in relation to the assessment year of income; or

(D) the trustee of a complying superannuation fund, a non-complying superannuation fund, a complying approved deposit fund, a non-complying approved deposit fund or a pooled superannuation trust in relation to the assessment year of income; or

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(E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of a trust estate; or

(F) the trustee of a trust estate who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of a trust estate; or

(G) the trustee of a trust estate where trustee beneficiary non-disclosure tax is payable under Division 6D on the whole or part of the net income of the trust estate;

(iii) if sub-subparagraph (ii)(A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the ***actual taxpayer's portion of the original assessable amount***) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

(iv) if sub-subparagraph (ii)(E) applies:

(A) the beneficiary who was entitled to the share concerned was a resident at any time during the assessment year of income; and

(B) the whole or a part (which whole or part is in this subsection also called the ***actual taxpayer's portion of the original assessable amount***) of the share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

(v) if sub-subparagraph (ii)(F) applies:

(A) the trust estate was a resident trust estate (within the meaning of Division 6) in relation to the assessment year of income; and

(B) the whole or a part (which whole or part is in this subsection also called the ***actual taxpayer's portion of the original assessable amount***) of the part of the net income is attributable (either

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directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

(vi) if sub-subparagraph (ii)(G) applies:

(A) the trust estate was a resident trust estate (within the meaning of Division 6) in relation to the assessment year of income; and

(B) the whole or a part (which whole or part is in this subsection also called the ***actual taxpayer's portion of the original assessable amount***) of the whole or the part of the share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the actual taxpayer's portion of the original assessable amount.

(18A) An assessment may be made of a taxpayer on the assumption that subsection (2) will not be applicable in relation to a particular distribution payment made during a year of income of the taxpayer.

(18B) Where:

(a) the assessment mentioned in subsection (18A) is made; and

(b) after the making of the assessment, the Commissioner becomes aware that subsection (2) was applicable in relation to the distribution payment concerned;

then, in spite of anything in section 170, the Commissioner may amend the assessment at any time for the purposes of ensuring that the assessment is made as if subsection (18A) of this section were disregarded.

(19) The provisions of section 102AAJ apply for the purposes of this section in like manner as they apply for the purposes of Division 6AAA.

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(20) For the purposes of this section, the question whether a company is a resident of an unlisted country is to be determined in the same manner in which that question is determined for the purposes of Part X.

(21) In this section:

arm's length value, in relation to the redemption or buy-back of a share in a company or a unit in a unit trust, means the amount that the company or trustee could reasonably be expected to have been required to pay to obtain the redemption or buy-back of the share or unit under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

associate has the same meaning as in Part X.

associated entity, in relation to a company, means either of the following entities:

(a) a shareholder in the company;

(b) an entity who is an associate of a shareholder in the company.

CFC has the same meaning as in Part X.

distribution benefit has the meaning given by subsection (3) of this section.

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eligible equity interest:

(a) in relation to a company, means any of the following:

(i) a share, or an interest in a share, in the company;

(ii) a right to acquire a share, or an interest in a share, in the company;

(iii) an option to acquire a share, or an interest in a share, in the company; or

(b) in relation to a unit trust, means any of the following:

(i) a unit, or an interest in a unit, in the unit trust;

(ii) a right to acquire a unit, or an interest in a unit, in the unit trust;

(iii) an option to acquire a unit, or an interest in a unit, in the unit trust; or

entity has the same meaning as in Part X.

loan includes:

(a) an advance of money; and

(b) the provision of credit or any other form of financial accommodation; and

(c) the payment of an amount for, on account of, on behalf or at the request of an entity where there is an obligation (whether expressed or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

property has the same meaning as in Division 6AAA.

services has the same meaning as in Division 6AAA.

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

transfer has the same meaning as in Division 6AAA.

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Division 3—Deductions

Subdivision A—General

51AAA Deductions not allowable in certain circumstances

(1) Where:

(a) an amount is included in the assessable income of a taxpayer of a year of income by section 102-5 of the *Income Tax Assessment Act 1997* (about net capital gains) or subsection 124ZZB(1) of this Act (about notional capital gains of PDFs);

(b) a deduction would, but for this section, be allowable under a provision listed in the table in subsection (2) to the taxpayer; and

(c) if the amount had not been included in the assessable income the deduction would not be allowable;

the deduction is not allowable.

(2) The table lists provisions allowing deductions that are affected by subsection (1). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Deduction provisions affected by net capital gains limit

Item	Provision	Description
1	**Subdivision A of Division 3 of Part III**	General
2	section 8-1	General deductions
3	Division 25	Some expenses you can deduct
4	Division 30	Gifts or contributions
5	Division 34	Non-compulsory uniforms
6	Division 36	Tax losses of earlier income years

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Deduction provisions affected by net capital gains limit		
Item	**Provision**	**Description**
7	Subdivision 40-F	Facilities to conserve or convey water
8	Subdivision 40-F	Establishing grapevines
9	Subdivision 40-G	Landcare operations
10	Subdivision 40-G	Mains electricity supply
11	Subdivision 40-G	Telephone lines
12	Division 165	Income tax consequences of changing ownership or control of a company
13	Subdivision 170-A	Transfer of tax losses within wholly-owned groups of companies
14	Division 230	Financial arrangements

51AD Deductions not allowable in respect of property used under certain leveraged arrangements

(1) In this section:

arrangement includes:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

associate has the same meaning in relation to a person as that expression has in relation to a person in section 318.

construction includes manufacture.

control means effectively control.

goods includes whatever is capable of being owned or used.

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hire-purchase agreement means a hire purchase agreement to which Division 240 of the *Income Tax Assessment Act 1997* applies.

lease, in relation to property, includes:

(a) any arrangement under which a right to use the property is granted by the owner to another person; and

(b) any arrangement under which a right to use the property, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person;

but does not include a hire-purchase agreement.

owner, in relation to property, includes a person who has taken, and holds, the property on hire under a hire-purchase agreement.

person includes a person in the capacity of a trustee.

prescribed time means one o'clock in the afternoon, by standard time in the Australian Capital Territory, on 24 June 1982.

Note: This section applies to deductions under Division 40 (Capital allowances) and Division 43 (Capital works) of the *Income Tax Assessment Act 1997* as if you were the owner of an asset you hold (under that Division) instead of any other person: see section 40-135 of that Act.

(1A) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:

(a) starts on or after 1 July 2007; and

(b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.

(1B) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

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(c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.

(1C) This section does not apply to property on or after 1 July 2007 if:

(a) Division 16D applied to the property immediately before 1 July 2007; or

(b) this section did not apply to the property immediately before 1 July 2007 and Division 16D would apply to the property on or after 1 July 2007 but for subsection 159GH(2).

For the purposes of applying paragraph (b), disregard the operation of section 159GL.

(1D) Subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D) do not apply to property acquired by a taxpayer if:

(a) the property is acquired by the taxpayer on or after 1 July 2007; and

(b) the property is not acquired under a legally enforceable arrangement entered into before 1 July 2007.

(2) In this section, a reference to the acquisition of property by a person is a reference to:

(a) the person becoming the owner of the property; or

(b) the construction of the property for the person by another person or other persons on premises of the first-mentioned person.

(3) In this section, a reference to property being held for use includes a reference to property that is installed ready for use and held in reserve.

(3B) For the purpose of this section, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this section applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

(4) Subject to subsections (1A), (1B), (1C), (1D) and (8), this section applies, in relation to a taxpayer, to property acquired or

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constructed by the taxpayer, being property acquired by the taxpayer under a contract entered into after the prescribed time or property constructed by the taxpayer, construction having commenced after that time, if:

(a) at a time when the property is owned by the taxpayer, a person (which person is in this section referred to as the ***end-user***) holds rights as lessee under a lease of the property, and:

(i) in a case where the end-user is not a resident of Australia—while the lease is in force, the property is, or is to be, used by a person other than the taxpayer wholly or principally outside Australia;

(ii) while the lease is in force, the property is, or is to be, used by a person other than the taxpayer otherwise than wholly and exclusively for the purpose of producing assessable income; or

(iii) in a case where the property was acquired by the taxpayer—the property was, prior to its acquisition by the taxpayer, owned, and used or held for use, by the end-user; or

(b) in a case to which paragraph (a) does not apply:

(i) at a time when the property is owned by the taxpayer, the property is, or is to be, used (whether or not by the taxpayer) wholly or partly in or in connection with the production, supply, carriage, transmission or delivery of goods or the provision of services; and

(ii) a person other than the taxpayer (which person is in this section also referred to as the ***end-user***) controls, will control, or is or will be able to control, directly or indirectly, that use of the property, and:

(A) in a case where the end-user is not a resident of Australia—that use of the property takes place, or is to take place, wholly or principally outside Australia;

(B) in a case where some or all of the goods are, or are to be, produced for the end-user or supplied, carried, transmitted or delivered to or for the

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end-user, or some or all of the services are, or are to be, provided to or for the end-user—any of those goods or services are, or are to be, used by the end-user otherwise than wholly and exclusively for the purpose of producing assessable income;

(C) in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (i), the end-user derives, or is to derive, no income or income that is wholly or partly exempt from income tax; or

(D) in a case where the property was acquired by the taxpayer—the property was, prior to its acquisition by the taxpayer, owned, and used or held for use, by the end-user.

(5) In subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D), a reference to the end-user is a reference to the end-user, any of the end-users (where there are 2 or more end-users), any associate of the end-user or of any of those end-users, or any 2 or more such persons.

(6) For the purposes of subsection (4), property shall be taken not to have been, prior to its acquisition by the taxpayer, owned, and used or held for use, by a person if:

(a) the property was first used or held for use by the person at a time within 6 months before the acquisition of the property by the taxpayer; and

(b) at that time there was in existence an arrangement that the property would be sold to another person and leased by that person to the first-mentioned person.

(7) Where:

(a) the end-user consists of all or any of the partners in a partnership; and

(b) a condition of paragraph (4)(a) or (b), as the case may be, is satisfied in relation to any of the partners in the partnership;

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that condition shall be taken to be satisfied in relation to all the partners in the partnership.

(8) This section does not apply to property, in relation to a taxpayer, unless the whole or a predominant part of the cost of the acquisition or construction, as the case may be, of the property by the taxpayer is financed directly or indirectly by a debt or debts (which debt is, or debts are, referred to in this subsection as the ***non-recourse debt***) and the rights of the creditor or creditors as against the taxpayer in the event of default in the repayment of principal or payment of interest:

(a) are limited wholly or predominantly to any or all of the following:

(i) rights (including the right to moneys payable) in relation to any or all of the following:

(A) the property or the use of the property;

(B) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the property;

(C) the loss or disposal of the whole or a part of the property or of the taxpayer's interest in the property;

(ii) rights in respect of a mortgage or other security over the property;

(iii) rights arising out of any arrangement relating to the financial obligations of the end-user of the property towards the taxpayer, being financial obligations in relation to the property;

(b) are in the opinion of the Commissioner capable of being so limited, having regard to either or both of the following:

(i) the assets of the taxpayer;

(ii) any arrangement to which the taxpayer is a party; or

(c) where paragraphs (a) and (b) do not apply—are limited by reason that not all of the assets of the taxpayer (not being assets that are security for debts of the taxpayer other than the non-recourse debt) would be available for the purpose of the discharge of the whole of the non-recourse debt (including

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the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of that debt.

(9) Where:

(a) property has been financed by a debt or debts as mentioned in subsection (8); and

(b) the rights of the creditor or creditors as against the taxpayer are, or are capable of being, limited as mentioned in that subsection;

the Commissioner may treat those rights as not being, or capable of being, so limited if the Commissioner is of the opinion, having regard to the circumstances in which the debt was, or debts were, incurred and any other matters that the Commissioner thinks relevant, that it would be reasonable to do so.

(10) Subject to subsections (11), (12), (13) and (15), where this section has applied to property, in relation to a taxpayer, at any time, the taxpayer shall be deemed not to have occupied or used the property, or held the property for use, at that time, for the purpose of producing assessable income or in carrying on a business for that purpose.

(11) Where this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of subparagraph (4)(a)(ii) or sub-subparagraph (4)(b)(ii)(B), and for any part of that time the end-user held, occupied or used the property referred to in that subparagraph, or held it for use, or used any goods or services referred to in that sub-subparagraph, as the case may be, partly for the purpose of producing assessable income, the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

(12) Where this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of

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sub-subparagraph (4)(b)(ii)(C), and for any part of that time the end-user derived assessable income in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (4)(b)(i), the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

(13) Where:

(a) this section has applied to property, in relation to a taxpayer, at any time during a year of income by reason of subparagraph (4)(a)(ii) or sub-subparagraph (4)(b)(ii)(B) or (C);

(b) the end-user referred to in that subparagraph or sub-subparagraph, as the case may be, consisted of all or any of the partners in a partnership; and

(c) for any part of that time one or more of the partners in the partnership was a person in respect of whom, but for the operation of subsection (7), that subparagraph or sub-subparagraph, as the case may be, would not have applied;

the taxpayer shall be deemed, for the whole of the time during the year of income when this section applied to the property, to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, to the extent that the Commissioner considers appropriate.

(14) In considering, for the purposes of subsection (13), the extent to which the taxpayer shall be deemed to have held, occupied or used property, or held if for use, for the purpose of producing assessable income, or in carrying on a business for that purpose, the Commissioner shall have regard:

(a) to the interest or interests of the partner or partners referred to in paragraph (13)(c) in the net income, or the partnership

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loss, of the partnership of the year of income corresponding to the year of income referred to in paragraph (13)(a);

(b) the extent to which, for any part of the time referred to in paragraph (13)(a), a partner or partners other than the partner or partners referred to in paragraph (13)(c) held, occupied or used the property, or held it for use, or used the goods or services referred to in sub-subparagraph (4)(b)(ii)(B), as the case may be, for the purpose of producing assessable income; and

(c) the extent to which, for any part of the time referred to in paragraph (13)(a), a partner or partners other than the partner or partners referred to in paragraph (13)(c) derived assessable income in relation to the production, supply, carriage, transmission or delivery of goods, or the provision of services, as mentioned in subparagraph (4)(b)(i).

(15) Notwithstanding anything contained in subsections (10), (11) and (13), at any time when this section applies to property by reason of subparagraph (4)(a)(ii), the property shall be deemed not to be held, occupied or used, or held for use, by the taxpayer for the purpose of producing assessable income, or in carrying on a business for that purpose, if, at that time:

(a) 2 or more end-users hold rights as lessees under the lease of the property;

(b) one or more of the end-users (which end-user is, or end-users are, referred to in this subsection as the ***exempt end-user***) is a company, or are companies, the income of which is ordinarily exempt from income tax;

(c) the property is, or is to be, used wholly or principally in or in connection with the conduct of operations or transactions of a kind that the exempt end-user ordinarily engages in;

(d) the exempt end-user controls, will control, or is or will be able to control, directly or indirectly, that use of the property; and

(e) in relation to those operations or transactions, the exempt end-user derives, or is to derive, no income or income that is exempt from income tax.

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(16) Where a taxpayer has incurred expenditure for repairs to property to which this section applies or has applied in relation to the taxpayer and, but for this section, a deduction would be allowable under section 25-10 (Repairs) of the *Income Tax Assessment Act 1997* in respect of that expenditure, so much of the expenditure as the Commissioner considers appropriate shall be deemed not to be allowable, having regard to:

(a) the period for which the taxpayer owned the property before the repairs were commenced and any part of that period during which this section applies or applied to the property in relation to the taxpayer; and

(b) in a case to which subsection (11), (12) or (13) of this section applies or applied—the extent to which, for the time during the part of the period referred to in paragraph (a), the taxpayer was deemed to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.

(17) Where a taxpayer has incurred expenditure in borrowing money to finance the acquisition or construction of property to which this section applies or has applied in relation to the taxpayer and a deduction has been allowed, or would but for this section be allowable, under section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997* in relation to that expenditure, so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be, having regard to:

(a) the period for which the money was borrowed or, by the operation of subsection 25-25(6) of that Act, is deemed to have been borrowed and any part of that period during which this section applies, applied or, in the opinion of the Commissioner, will apply to the property; and

(b) in a case to which subsection (11), (12), or (13) of this section applies or applied—the extent to which, for the time during the part of the period referred to in paragraph (a), the taxpayer is, or in the opinion of the Commissioner will be, deemed to have held, occupied or used the property, or held

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it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.

(18) Where a taxpayer has incurred expenditure for the preparation, registration and stamping of a lease, or of an assignment or surrender of a lease, of property to which this section applies or has applied in relation to the taxpayer and a deduction has been allowed, or would but for this section be allowable, under section 25-20 (Lease document expenses) of the *Income Tax Assessment Act 1997* in respect of that expenditure, so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be, having regard to:

(a) the period of the lease and any part of that period during which this section applies, applied or, in the opinion of the Commissioner, will apply to the property; and

(b) in a case to which subsection (11), (12) or (13) of this section applies or applied—the extent to which, for the time during the part of the period mentioned in paragraph (a), the taxpayer is, or in the opinion of the Commissioner will be, deemed to have held, occupied or used the property, or held it for use, for the purpose of producing assessable income, or in carrying on a business for that purpose.

(19) Where:

(a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the ***relevant year of income***), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as ***the relevant year of income***);

(b) a deduction was taken into account in calculating that net income or partnership loss;

(c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the ***relevant deduction***) would not have been

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taken into account for the purpose of that calculation if this section applied in relation to particular property acquired or constructed by the partnership;

(d) this section does not apply in relation to the property by reason only that the property was acquired by the partnership under a contract entered into at or before the prescribed time or was constructed by the partnership, construction having commenced at or before that time; and

(e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer after the prescribed time;

there shall be included in the assessable income of the taxpayer of the relevant year of income an amount that bears to the amount of the relevant deduction the same proportion as the individual interest of the taxpayer in that net income bears to that net income or, as the case requires, as the individual interest of the taxpayer in that partnership loss bears to that partnership loss.

(20) Where:

(a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this subsection referred to as the ***relevant year of income***), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this subsection also referred to as ***the relevant year of income***);

(b) a deduction was taken into account in calculating that net income or partnership loss;

(c) the deduction or a part of the deduction (which deduction or part of the deduction, as the case may be, is referred to in this subsection as the ***relevant deduction***) would not have been taken into account for the purpose of that calculation if this section applied in relation to particular property acquired or constructed by the partnership;

(d) this section does not apply in relation to the property by reason only that the property was acquired by the partnership

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under a contract entered into at or before the prescribed time or was constructed by the partnership, construction having commenced at or before that time;

(e) the taxpayer became a partner in the partnership under a contract entered into by the taxpayer before the prescribed time; and

(f) after the prescribed time, the taxpayer made or agreed to make a contribution or contributions (which contribution is or contributions are in this subsection referred to as the ***additional contribution***) to the capital of the partnership in addition to any contribution or contributions to the capital of the partnership that, under a contract or contracts entered into at or before that time, the taxpayer had made or agreed to make; and

(g) by reason of making or agreeing to make the additional contribution, the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss, is greater than it would otherwise have been;

there shall be included in the assessable income of the taxpayer of the relevant year of income an amount ascertained in accordance with the formula A (B – C), where:

A is the amount of the relevant deduction.

B is the individual interest of the taxpayer in that net income or partnership loss, being that individual interest expressed as a fraction of the aggregate of the individual interests of the partners in that net income or partnership loss; and

C is the fraction that would be ***B*** if another partner, and not the taxpayer, had made or agreed to make the additional contribution.

(21) For the purposes of determining if this section applies to property, the income of a prescribed excluded STB (within the meaning of Division 1AB) is taken to be exempt.

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51AEA Meal entertainment—election under section 37AA of *Fringe Benefits Tax Assessment Act 1986* to use 50/50 split method

(1) If a meal entertainment fringe benefit arises for a taxpayer for an FBT year and the taxpayer elects that Division 9A of Part III of the *Fringe Benefits Tax Assessment Act 1986* applies to the taxpayer for the FBT year, and has not elected that Subdivision C of that Division applies:

(a) for each expense incurred in the FBT year by the taxpayer in providing meal entertainment, a deduction equal to 50% of that expense is allowable to the taxpayer for the year of income in which it is incurred; and

(b) no other deduction under any provision of this Act is allowable to the taxpayer for the expense.

(2) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AEB Meal entertainment—election under section 37CA of *Fringe Benefits Tax Assessment Act 1986* to use the 12 week register method

(1) If a taxpayer has made an election under section 37CA of the *Fringe Benefits Tax Assessment Act 1986*:

(a) for each expense incurred in the FBT year by the taxpayer in providing meal entertainment, a deduction equal to the amount worked out using the following formula is allowable to the taxpayer for the year of income in which it is incurred:

$$\text{Amount of expense} \times \text{Register percentage}$$

(b) no other deduction under any provision of this Act is allowable to the taxpayer for the expense.

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(2) The ***register percentage*** is the percentage worked out using the formula:

$$\frac{\text{Total deductions for register meal entertainment}}{\text{Total register meal entertainment expenses}} \times 100\%$$

where:

Total deductions for register meal entertainment means the total of deductions that would (but for this section and section 51AEA) be allowable to the taxpayer for expenses incurred by the taxpayer in providing meal entertainment in the 12 week period covered by the register kept by the employer under Subdivision C of Division 9A of the *Fringe Benefits Tax Assessment Act 1986*.

Total register meal entertainment expenses means the total of expenses incurred by the taxpayer in providing meal entertainment during that 12 week period.

(3) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AEC Entertainment facility—election under section 152B of *Fringe Benefits Tax Assessment Act 1986* to use 50/50 split method

(1) If a taxpayer has made an election under section 152B of the *Fringe Benefits Tax Assessment Act 1986*:

(a) for each entertainment facility leasing expense incurred in the FBT year by the taxpayer, a deduction equal to 50% of that expense is allowable to the taxpayer for the year of income in which it is incurred; and

(b) no other deduction under any provision of this Act is allowable to the taxpayer for entertainment facility leasing expenses incurred in the FBT year.

(2) Expressions used in this section have the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

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51AF Car expenses incurred by employee

(1) Where:

(a) during a particular period, an employer provides a car for the exclusive use of a person who is, or of persons any of whom is, an employee of the employer or a relative of such an employee; and

(b) at any time during that period, the employee or a relative of the employee is entitled to use the car for private purposes;

a deduction is not allowable under this Act in respect of a car expense that relates to the car and:

(c) is incurred by the employee during that period; or

(d) is incurred by the employee and is wholly or partly attributable to that period.

(2) In this section:

car has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*, but does not include a car covered by section 28-165 of that Act.

car expense has the meaning given by section 28-13 of the *Income Tax Assessment Act 1997*, but does not include a car expense covered by section 28-165 of that Act.

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

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

(a) in the case of an unincorporate body of persons other than a partnership—the manager or other principal officer of that body; and

(b) in the case of a partnership—each partner; and

(c) an Australian government agency as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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51AGA No deduction to employee for certain car parking expenses

No deduction

(1) A deduction is not allowable to an employee under this Act in respect of expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day if:

(a) on that day, the employee has a primary place of employment; and

(b) on that day, the car is parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment; and

(c) the expenditure is in respect of the provision of the parking facilities to which that parking relates; and

(d) on that day, the car was used in connection with travel by the employee between:

(i) the place of residence of the employee; and

(ii) that primary place of employment; and

(e) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section; and

(f) the day is on or after 1 July 1993.

Definitions

(2) In this section:

car has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

daylight period has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

employee has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

place of residence has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

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primary place of employment has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

51AH Deductions not allowable where expenses incurred by employee are reimbursed

(1) Where:

(a) either of the following subparagraphs applies:

(i) a person makes a payment in discharge, in whole or in part, of an obligation of the taxpayer to pay an amount to a third person in respect of an amount of a loss or outgoing incurred by the taxpayer;

(ii) a person reimburses the taxpayer, in whole or in part, in respect of an amount of a loss or outgoing incurred by the taxpayer;

(b) the payment or reimbursement, as the case may be, constitutes:

(i) a fringe benefit; or

(ii) a benefit that, but for paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit; and

(c) in the case of a reimbursement—the amount of the reimbursement is not included in the taxpayer's assessable income under section 15-70 of the *Income Tax Assessment Act 1997*;

the amount of the deduction that, but for this section, has been allowed or would be allowable in respect of the loss or outgoing shall be:

(d) if it would be concluded that the amount of the payment or reimbursement would have been the same even if the loss or outgoing were not incurred in producing assessable income of the taxpayer—calculated as if the loss or outgoing were reduced by the amount of the payment or reimbursement; or

(e) in any other case—reduced by the amount of the payment or reimbursement.

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(2) Expressions (other than "fringe benefit") used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.

(3) This section does not apply to deductions under Division 40 of the *Income Tax Assessment Act 1997* (about capital allowances).

51AJ Deductions not allowable for private component of contributions for fringe benefits etc.

(1) Where:

(a) any of the following benefits is provided in respect of the employment of an employee of an employer:

(i) an airline transport benefit;

(ii) a board benefit;

(iii) a loan benefit;

(iv) a property benefit;

(v) a residual benefit;

(b) the benefit is:

(i) a fringe benefit; or

(ii) a benefit that, but for paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit;

(c) in the case of a loan benefit—the taxpayer, being the recipient or the employee, incurs interest (in this section called the ***recipients interest***) in respect of the loan;

(d) in the case of a benefit other than a loan benefit—the taxpayer, being the recipient or the employee, incurs consideration (in this section called the ***recipients contribution***) to the provider or to the employer in respect of the provision of the recipients transport, the recipients meal, the recipients property or the recipients benefit, as the case may be;

(e) it would be concluded that, in calculating the amount of the recipients interest, or the amount of the recipients

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contribution, as the case may be, the provider or the employer made an allowance for a particular level of application or use of the benefit in producing assessable income of the taxpayer; and

(f) it would be concluded that the amount of the recipients interest, or the amount of the recipients contribution, as the case may be, would have been greater if it had been calculated without making that allowance;

the following provisions have effect:

(g) if the extent of the application or use of the benefit concerned in producing assessable income of the taxpayer is equal to, or less than, that level—a deduction is not allowable to the taxpayer under this Act in respect of the recipients interest or the recipients contribution;

(h) if the extent of the application or use of the benefit concerned in producing assessable income of the taxpayer exceeds that level—the amount of the deduction that, but for this section, has been allowed or would be allowable to the taxpayer under this Act in respect of the recipients interest or the recipients contribution shall not exceed the amount calculated in accordance with the formula:

$$D - A$$

where:

D is the amount of the deduction that, but for this section, would have been allowable to the taxpayer under this Act in respect of the amount of the recipients interest or the amount of the recipients contribution if it had been calculated without making that allowance; and

A is the amount of that allowance.

(2) Expressions (other than "recipients contribution" and "fringe benefit") used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.

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51AK Agreements for the provision of non-deductible non-cash business benefits

(1) Subject to this section, where:

(a) under an agreement:

(i) a taxpayer incurs expenditure; and

(ii) a non-cash business benefit is provided to the taxpayer or another person; and

(b) that benefit is not exclusively for use or application for the purpose of producing assessable income of the taxpayer;

the taxpayer shall be treated, for the purposes of this Act, as if so much of the expenditure as does not exceed the arm's length value of the benefit had been incurred by the taxpayer exclusively in respect of that benefit.

(2) This section does not apply so as to treat particular expenditure, or the cost of particular property, to be a particular amount for a particular purpose if there is another provision of this Act that deems that expenditure, or the cost of that property, to be a lesser amount for that purpose.

(3) A reference in this section to producing assessable income includes a reference to:

(a) gaining assessable income; or

(b) carrying on a business for the purpose of gaining or producing assessable income.

(4) Expressions used in this section and in section 21A have the same respective meanings in this section as they have in that section.

(5) In this section:

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

expenditure includes a loss or outgoing.

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52 Loss on property acquired for profit-making

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

Note: Section 25-40 (Loss from profit-making scheme) of the *Income Tax Assessment Act 1997* deals with such a loss.

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

(1) Any loss incurred by the taxpayer in the year of income upon the sale of any property or from the carrying on or carrying out of any undertaking or scheme, the profit (if any) from which sale, undertaking or scheme would have been included in the taxpayer's assessable income, shall be an allowable deduction:

Provided that, in respect of property acquired by the taxpayer after the date of the commencement of this proviso, no deduction shall be allowable under this section (except where the Commissioner, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme, otherwise directs) unless the taxpayer, not later than the date upon which he or she lodges his or her first return under this Act after having acquired the property, notifies the Commissioner that the property has been acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme.

(2) Where:

(a) a taxpayer sells property (in this subsection referred to as the ***relevant property***) that is deemed by subsection 25A(5) or (8) to have been acquired by the taxpayer for the purpose of profit-making by sale;

(b) the Commissioner is satisfied that the relevant property has not been held or used by the taxpayer in a manner inconsistent with such a purpose; and

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(c) the Commissioner, having regard to:

(i) the amount of the consideration paid by the person who transferred the relevant property or, in a case to which subsection 25A(8) applies, the property referred to in paragraph 25A(8)(b), to the taxpayer in respect of the purchase of the property so transferred; and

(ii) such other matters as the Commissioner considers relevant;

considers that it is appropriate that a loss be deemed to be incurred by the taxpayer upon the sale of the relevant property;

the taxpayer shall be deemed, for the purposes of this section, to have incurred a loss upon the sale of the relevant property of such amount as the Commissioner considers appropriate.

(3) Except as provided by subsection (2), a deduction is not allowable to a taxpayer under this section in respect of a loss incurred upon a sale of property to which paragraph (2)(a) applies.

(4) Where:

(a) a loss is incurred by a taxpayer upon the sale of property (in this subsection referred to as the ***relevant property***); and

(b) the taxpayer is deemed to have acquired the relevant property for the purpose of profit-making by sale by virtue of the application of subsection 25A(6) in accordance with subparagraph (b)(ii) of that subsection;

the deduction that would, but for this subsection, be allowable to the taxpayer under subsection (1) in respect of the loss shall be reduced by such amount (if any) as the Commissioner considers reasonable having regard to the extent to which the relevant property is attributable to the interest in property that was acquired by the taxpayer for the purpose of profit-making by sale as mentioned in that subparagraph.

(5) A deduction is not allowable to a taxpayer under subsection (1) in respect of a loss incurred by the taxpayer upon the sale of property if:

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(a) the sale is a transfer in the prescribed manner by the taxpayer for the purposes of section 25A; or

(b) the property is deemed by subsection 25A(2) to have been acquired by the taxpayer for the purposes of profit-making by sale and was not actually acquired by the taxpayer for that purpose.

52A Certain amounts disregarded in ascertaining taxable income

(1) Notwithstanding section 8-1 of the *Income Tax Assessment Act 1997*, losses or outgoings consisting of expenditure incurred by a taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property as trading stock of the taxpayer shall, if the Commissioner considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the whole of those losses or outgoings, be allowable as a deduction to the taxpayer to the extent only that the Commissioner considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of those losses or outgoings.

(2) Where:

(a) expenditure incurred by a taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property that was purchased or acquired in the carrying on or carrying out of any profit-making undertaking or scheme would, but for this subsection, be taken into account for the purpose of ascertaining whether any profit arose, or any loss was incurred, from the carrying on or carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and

(b) the Commissioner considers that it would be unreasonable that the whole of that expenditure be taken into account for those purposes;

that expenditure shall be taken into account for those purposes to the extent only that the Commissioner considers that it is reasonable in the circumstances that the expenditure be taken into account for those purposes.

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(2A) Where:

(a) prescribed property that was acquired by a taxpayer after 24 September 1978 and before the commencement of this subsection or is acquired after the commencement of this subsection was or is treated or used by the taxpayer as an asset of a business carried on by the taxpayer;

(b) but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of that property; and

(c) the Commissioner considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the value of the property to the extent to which, but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of the property;

a deduction shall be allowable to the taxpayer in respect of the value of the property to the extent only that the Commissioner considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of that value.

(2B) Where:

(a) the value of any prescribed property that:

(i) was acquired by a taxpayer after 24 September 1978 and before the commencement of this subsection or is acquired after the commencement of this subsection; and

(ii) was or is used by the taxpayer in the carrying on or carrying out of any profit-making undertaking or scheme;

would, but for this subsection, be taken into account for the purpose of ascertaining whether or not any profit arose, or any loss was incurred, from the carrying on or the carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and

(b) the Commissioner considers that it would be unreasonable that the value of the property be taken into account for those purposes to the extent to which the value would, but for this subsection, be taken into account for those purposes;

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the value of the property shall be taken into account for those purposes to the extent only that the Commissioner considers that it is reasonable in the circumstances that that value be taken into account for those purposes.

(3) In forming an opinion for the purposes of subsection (1) or (2A) as to the extent to which it is reasonable that a deduction be allowable to a taxpayer in respect of expenditure incurred in the purchase or acquisition of prescribed property or in respect of the value of prescribed property, as the case may be, or in forming an opinion for the purposes of subsection (2) or (2B) as to the extent to which it is reasonable that expenditure incurred by a taxpayer in the purchase or acquisition of prescribed property should be taken into account for the purposes referred to in subsection (2) or that the value of prescribed property should be taken into account for the purposes referred to in subsection (2B), as the case may be:

(a) if the taxpayer expended moneys in purchasing or acquiring the prescribed property—the Commissioner shall have regard to the circumstances in which, and the person or persons from whom, the taxpayer obtained moneys:

(i) that were expended by the taxpayer in purchasing or acquiring the prescribed property; or

(ii) that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property;

(b) if the taxpayer borrowed from another person (in this paragraph referred to as the ***lender***) moneys that were expended by the taxpayer in purchasing or acquiring the prescribed property or moneys that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property—the Commissioner shall have regard to:

(i) the circumstances in which, and the terms and conditions on which, the taxpayer borrowed those moneys from the lender; and

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(ii) whether, in the opinion of the Commissioner, the taxpayer and the lender were dealing with each other at arm's length in connexion with the borrowing of those moneys by the taxpayer;

(c) if, either before or after the purchase or acquisition of the prescribed property by the taxpayer, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, as a result of which there has been, or there could reasonably be expected to be, a substantial reduction in the value of the prescribed property—the Commissioner shall have regard to that agreement, arrangement or understanding;

(d) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction, operation, undertaking, scheme or arrangement, had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

(e) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

(f) if:

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(i) the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, money was to be paid, or other property was to be transferred or made available by a person other than the taxpayer, whether before or after the purchase or acquisition of the prescribed property, to the taxpayer, to the taxpayer and a person or persons other than the taxpayer or to a person or persons other than the taxpayer;

(ii) the Commissioner is satisfied that the amount of money so to be paid, or the value of the property so to be transferred or made available, as the case may be, was to be not less than, or not substantially less than, the amount expended by the taxpayer in the purchase or acquisition of the prescribed property;

the Commissioner shall have regard to the fact that the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of such a transaction, operation, undertaking, scheme or arrangement;

(g) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, other prescribed property was to be issued or allotted by a company (whether to the taxpayer or any other person or persons) and it could reasonably be expected that, as a result of the issue or allotment of that other prescribed property, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

(h) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, rights in respect of

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the prescribed property or in respect of other prescribed property (whether that other prescribed property had been issued or allotted before the time of the purchase or acquisition by the taxpayer of the first-mentioned prescribed property or was to be issued or allotted at a later time) were to be withdrawn or varied and it could reasonably be expected that, as a result of a withdrawal or variation of those rights, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement; and

(j) the Commissioner shall have regard to any other matters that he or she considers relevant.

(4) In this section, ***prescribed property*** means any chose in action.

(4A) In the preceding provisions of this section, references to the value of any prescribed property shall, unless the contrary intention appears, be read as including references to part of the value of that prescribed property.

(5) For the purposes of this section:

(a) a person to whom prescribed property is issued or allotted by a company shall be taken to have acquired that prescribed property;

(b) a person upon whom prescribed property devolves by reason of the death of a person shall be taken to have acquired that prescribed property; and

(c) a person in whom prescribed property vests by the operation of any trust or the exercise of any power under a trust shall be taken to have acquired that prescribed property.

(6) The reference in paragraph (3)(b) to terms and conditions shall be read as including a reference to implied terms and conditions and to terms and conditions that are not enforceable by legal proceedings whether or not they were intended to be so enforceable.

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(7) Where, by virtue of the application of the preceding provisions of this section, the amount (in this subsection referred to as the ***relevant amount***) of the deduction that is allowable to a taxpayer in respect of losses or outgoings incurred by the taxpayer in the purchase or acquisition of prescribed property is less than the amount of those losses and outgoings, the cost of that prescribed property shall, for the purposes of the application of Divisions 70 (Trading stock) and 385 (Primary production) of the *Income Tax Assessment Act 1997* in relation to that property in relation to the taxpayer, be taken to be an amount that is the same as the relevant amount.

(8) References in this section to expenditure incurred by a taxpayer in the purchase or acquisition of any prescribed property shall, in the case of prescribed property being a share or stock in the capital of a company, be read as including references to any payment made or other consideration given by the taxpayer to the company in respect of the prescribed property, whether as a payment of unpaid capital in respect of the prescribed property or otherwise and whether on application for or allotment of the prescribed property, to meet calls or otherwise.

(9) Subsection (8) applies to a non-share equity interest in the same way as it applies to a share.

63 Bad debts

Where a debt in respect of the whole or a part of a payment that has, or will, become liable to be made under a qualifying security within the meaning of Division 16E is written off as a bad debt by a taxpayer during a year of income, then, for the purposes of paragraph 25-35(1)(a) of the *Income Tax Assessment Act 1997*, there is taken to have been included in the taxpayer's assessable income of a year of income so much of the debt as equals the amount (if any) ascertained in accordance with the formula A – B, where:

A is the amount (if any) or the sum of the amounts (if any) included in the assessable income of the taxpayer of any year or

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years of income under section 159GQ that is or are attributable to the payment or to the part of the payment, as the case requires; and

B is the amount (if any) or the sum of the amounts (if any) allowable as a deduction or deductions from the assessable income of the taxpayer of any year or years of income under section 159GQ that is or are attributable to the payment or to the part of the payment, as the case requires.

63D Bad debts etc. of money-lenders not allowable deductions where attributable to listed country or unlisted country branches

(1) Subject to section 63F, if:

(a) apart from this section and section 63F, a deduction would be allowable to a taxpayer:

(i) under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of a debt as bad; or

(ii) under section 63E of this Act in respect of a debt/equity swap in relation to a debt; and

(b) the debt was created or acquired in the ordinary course of a money-lending business of the taxpayer who carries on that business; and

(c) during any part or parts (the ***foreign country branch period***) of the period since the debt was so created or acquired (the ***debt holding period***), it is the case that, if income had been derived by the taxpayer in respect of the debt, the income would not, because of section 23AH of this Act, have been included in the assessable income of the taxpayer;

then only a proportion of the deduction is allowable, being the proportion calculated using the formula:

$$\frac{\text{Debt holding period} - \text{Foreign country branch period}}{\text{Eligible debt term}}$$

where:

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debt holding period means the number of days in the debt holding period.

eligible debt term means:

(a) where the debt was acquired from a person other than an associate, within the meaning of section 318 of this Act—the number of days in the debt holding period; or

(b) in any other case—the number of days in the period beginning on the day on which the debt was created (whether by the taxpayer or another person) and ending at the end of the day on which it was written off.

foreign country branch period means the number of days in the foreign country branch period.

(2) Where a debt that is written off, or in respect of which there is a debt/equity swap (within the meaning of section 63E), was acquired from another person, the creation, and any previous acquisition, of the debt is to be disregarded for the purposes of applying subsection (1), other than paragraph (b) of the definition of ***eligible debt term*** in subsection (1).

(3) Where a part of a debt is written off as bad, this section applies as if the part were an entire debt that is written off as bad.

63E Debt/equity swaps

*Meaning of **debt/equity swap***

(1) For the purposes of this section, a ***debt/equity swap*** occurs if:

(a) under an arrangement (defined in subsection (6)), a taxpayer discharges, releases or otherwise extinguishes the whole or part of a debt owed to the taxpayer in return for the issue by the debtor to the taxpayer of shares (other than redeemable preference shares), or units, in the debtor; and

(b) the debtor is:

(i) a company; or

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(ii) a trading trust (within the meaning of section 102N), or a public unit trust (within the meaning of section 102P), in relation to the year of income in which the units are issued; and

(c) the debt either:

(i) has been brought to account by the taxpayer as assessable income of any year of income; or

(ii) is in respect of money lent in the ordinary course of the business of the lending of money by the taxpayer who carries on that business.

*Meaning of **equity value** and **swap loss***

(2) For the purposes of this section:

(a) the ***equity value*** of the shares or units is the greater of:

(i) their market value at the time of their issue to the taxpayer; and

(ii) their value shown in the accounts of the taxpayer as at the time of their issue to the taxpayer; and

(b) a ***swap loss*** occurs if the amount of the whole or the part of the debt that is extinguished is greater than the equity value of the shares or units.

Swap loss is deductible etc.

(3) If a debt/equity swap occurs:

(a) subject to section 63F, any swap loss is allowable as a deduction from the taxpayer's assessable income of the year of income in which the shares or units are issued; and

(b) no amount is allowable as a deduction from the assessable income of the taxpayer of any year of income under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of the debt as bad in connection with the debt/equity swap; and

(c) for the purposes of any application of Subdivision 20-A of the *Income Tax Assessment Act 1997* in relation to the issue of the shares or units to the taxpayer, the amount received in

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respect of the issue is taken to be the same as the equity value of the shares or units.

Effect of debt/equity swap on later equity disposal etc.

(4) If a debt/equity swap occurs and the taxpayer later disposes of any of the shares or units or they are cancelled or redeemed:

(a) except in accordance with paragraph (b), no amount is included in, or allowable as a deduction from, the taxpayer's assessable income of any year of income under this Act in respect of the later disposal, cancellation or redemption; and

(b) if the consideration received or receivable by the taxpayer in respect of the disposal, cancellation or redemption is different from the equity value of the shares or units:

(i) if the consideration is greater—the difference is included in the taxpayer's assessable income of the year of income in which the disposal, cancellation or redemption occurs; or

(ii) if it is less—the difference is allowable as a deduction from that assessable income.

Consideration of a nil amount

(5) For the purposes of subsection (4), if no consideration is received or receivable by the taxpayer in respect of the disposal, cancellation or redemption, then consideration of a nil amount is taken to have been so received or receivable.

(5A) Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* apply to an allowable deduction under this section in respect of the whole or part of a debt that is extinguished, in the same way as they apply to a debt (or part of a debt) that is written off as bad.

*Meaning of **arrangement***

(6) In this section:

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

63F Limit on deductions where debt write offs and debt/equity swaps occur

Situations where limit is to be applied

(1) If:

(a) apart from this section, a deduction (***the current deduction***) would be allowable to a taxpayer:

(i) under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of a debt as bad; or

(ii) under section 63E of this Act in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) a deduction (***a previous deduction***) was allowed or allowable to the taxpayer under any of those sections, under former section 51 of this Act or under section 63 in respect of any number of occurrences of either or both of the following:

(i) a previous writing off as bad of the whole or part of a debt (***a previous debt***) that was the same as, or included, the debt mentioned in subparagraph (a)(i) or (ii);

(ii) a previous debt/equity swap relating to a part of a debt (***a previous debt***) that was the same as, or included, the debt mentioned in subparagraph (a)(i) or (ii); and

(c) the current deduction or at least one previous deduction is a deduction allowable under section 63E of this Act in respect of a debt/equity swap;

then the current deduction is only allowable to the extent that it does not exceed the limit worked out under subsection (2).

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Calculation of limit

(2) The limit is worked out as follows:

Step 1: Take the amount of the previous debt in respect of the earliest or only writing off or debt/equity swap to which paragraph (1)(b) applies.

Step 2: Reduce the amount by the previous deduction in respect of that writing off or debt/equity swap.

Step 3: If one or more of the following events occur after the writing off or debt/equity swap, progressively reduce the balance of the amount in the way set out below and in the order in which the events occur:

Event	How balance reduced
A writing off or debt/equity swap in respect of which there is a previous deduction.	Reduce the balance by the amount of that previous deduction. If the reduced balance is higher than the level of the debt owing after the event, further reduce the balance to that lower level.
Any other event (e.g. a repayment) that reduces the amount of debt owing, being an event that occurs before the writing off or debt/equity swap in respect of the current deduction.	If the balance at the time of the event is higher than the level of the debt owing after the event occurs, reduce the balance to that lower level

The limit is the resulting balance.

63G Bad debts etc. of trust not allowable in certain circumstances

If:

(a) a deduction is allowable from a trust's assessable income of any year of income:

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(i) under former section 51 of this Act, under section 63 of this Act or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of the extinguishment of the whole or part of a debt; and

(b) the debt was incurred as well as written off or extinguished on the last day of the year of income;

the deduction is not allowable.

Schedule 2F may also prevent a taxpayer deducting an amount in respect of a debt in other circumstances.

65 Payments to associated persons and relatives

(1B) Where, by virtue of section 26-35 (Reduction of deduction for amounts paid to related entities) of the *Income Tax Assessment Act 1997*, an amount is not allowable as a deduction in calculating in accordance with section 90 of this Act the net income, or a partnership loss, of a partnership in which a company, being a private company in relation to the year of income of the company to which the individual interest of the company in the net income of the partnership or in the partnership loss relates, is a partner:

(a) the company shall, for the purposes of this Act other than Division 11A, be deemed to have paid, on the last day of that year of income, a dividend of an amount ascertained in accordance with subsection (1C); and

(b) subsection 26-35(4) of the *Income Tax Assessment Act 1997* does not apply in relation to so much of the amount that is not so allowable as a deduction as is equal to the amount of the dividend that the company is to be so deemed to have paid.

(1C) For the purposes of subsection (1B), the amount of the dividend that the company is to be deemed to have paid is:

(a) where the effect of the disallowance of the deduction has been to increase the net income of the partnership—an amount equal to the difference between the amount of the

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individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the net income of the partnership if the deduction had been allowed;

(b) where the effect of the disallowance of the deduction has been to reduce the partnership loss—an amount equal to the difference between the amount of the individual interest of the company in the partnership loss and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed;

(c) where there is net income of the partnership and the amount of the deduction that was disallowed is equal to that net income—an amount equal to the individual interest of the company in the net income of the partnership;

(d) where there is net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the sum of the amount of the individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed; and

(e) where there is no net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed.

70B Deduction for loss on disposal or redemption of traditional securities

(1) Expressions used in this section that are also used in section 26BB have the same meanings in this section as in section 26BB.

(2) Where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any loss on the disposal or redemption is allowable as a deduction from the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

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(2A) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of traditional securities that are:

(a) segregated exempt assets (for the purposes of the *Income Tax Assessment Act 1997*) of a life assurance company; or

(b) segregated current pension assets (as defined in the *Income Tax Assessment Act 1997*) of a complying superannuation fund.

(2B) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:

(a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:

(i) the issuer of the traditional security; or

(ii) a connected entity of the issuer of the traditional security; and

(b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:

(i) the issuer of the traditional security; or

(ii) the connected entity.

(2C) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:

(a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:

(i) the issuer of the traditional security; nor

(ii) a connected entity of the issuer of the traditional security; and

(b) in the case of a disposal—the disposal is to:

(i) the issuer of the traditional security; or

(ii) a connected entity of the issuer of the traditional security; and

(c) the traditional security was issued on the basis that it will or may be:

(i) disposed of to the issuer of the traditional security or to the connected entity; or

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(ii) redeemed;

in exchange for ordinary shares in the company.

(3) Where the Commissioner, having regard to any connection between the parties to the transaction by which the taxpayer disposed of the traditional security or by which it was redeemed, or by which the taxpayer acquired the traditional security, is satisfied that the parties were not dealing with each other at arm's length in relation to the transaction, then, for the purposes of determining under subsection (2) the amount of any loss on the disposal or redemption, the consideration for the transaction shall be taken to be:

(a) the amount that might reasonably be expected for the transaction if the parties were independent parties dealing at arm's length with each other; or

(b) where, for any reason it is not possible or practicable for the Commissioner to ascertain that amount—such amount as the Commissioner determines.

(4) If:

(a) a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed; and

(b) there is a loss on the disposal or redemption; and

(c) in the case of a disposal or redemption of a marketable security:

(i) the taxpayer did not acquire the security in the ordinary course of trading on a securities market; and

(ii) at the time the taxpayer acquired the security, it was not open to the taxpayer to acquire an identical security in the ordinary course of trading on a securities market; and

(d) in the case of a disposal of a marketable security—the disposal did not take place in the ordinary course of trading on a securities market; and

(e) having regard to:

(i) the financial position of the issuer of the security; and

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(ii) perceptions of the financial position of the issuer of the security; and

(iii) other relevant matters;

it would be concluded that the disposal or redemption took place for the reason, or for reasons that included the reason, that there was an apprehension or belief that the issuer was, or would be likely to be, unable or unwilling to discharge all liability to pay amounts under the security;

a deduction is not allowable to the taxpayer under this section in respect of so much of the amount of the loss as is a loss of capital or a loss of a capital nature.

(5) A reference in this section to the disposal by a taxpayer of a security, or to the redemption of a security of a taxpayer, does not include a reference to the waiver or release by the taxpayer of:

(a) the whole or a part of the debt the subject of the security; or

(b) any other right of the taxpayer under the security.

(6) Subsection (5) does not, by implication, affect the meaning of an expression used in:

(a) a provision of this Act other than this section; or

(b) any other law of the Commonwealth.

(7) In this section:

issuer, in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the amount or amounts.

marketable security means a traditional security that is covered by paragraph (a) of the definition of ***security*** in subsection 159GP(1).

securities market means a market, exchange or other place at which, or a facility by means of which, offers to sell, purchase or exchange marketable securities are regularly made or accepted.

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73A Expenditure on scientific research

(1A) This section has effect subject to Division 245 of the *Income Tax Assessment Act 1997*.

(1) The following payments made, and expenditure incurred, during the year of income (other than any amount which is allowable as a deduction under any other section of this Act) by a person carrying on a business for the purpose of gaining or producing assessable income shall be allowable deductions:

(a) Payments to:

(i) an approved research institute for scientific research related to that business; or

(ii) an approved research institute, the object of which is the undertaking of scientific research related to the class of business to which that business belongs; and

(b) Expenditure of a capital nature on scientific research related to that business (except to the extent that it is expenditure on plant, machinery, land or buildings or on alterations, additions or extensions to buildings or in the acquisition of rights in or arising out of scientific research).

(2) Where, on or after the first day of the year of income ending on 30 June 1946, a taxpayer carrying on a business for the purpose of gaining or producing assessable income incurs expenditure of a capital nature in the construction or acquisition of a building, or part of a building, or in making any alteration or addition to a building, in which scientific research related to that business is to be carried on by or on behalf of the taxpayer, and the building, part of a building, alteration or addition, as the case may be, is of use for scientific research purposes only, an amount equal to one-third of that expenditure shall be an allowable deduction:

(a) from the assessable income of the year of income in which the building, part of a building, alteration or addition is first used by or on behalf of the taxpayer for such scientific research; and

(b) from the assessable income of each of the 2 years of income next succeeding that year of income, if the taxpayer

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continues to carry on that business during the year in which that assessable income was derived.

(2A) Subsection (2) does not apply to expenditure incurred by a taxpayer in the construction of a building or part of a building, in the making of an alteration or addition to a building or in the acquisition of a building or part of a building unless:

(a) either of the following subparagraphs applies:

(i) that construction or making commenced, or that acquisition occurred, before 21 November 1987;

(ii) any contract in respect of that construction, making or acquisition was entered into before 21 November 1987; and

(b) if the expenditure was incurred after 20 November 1987—the taxpayer intended, on 20 November 1987, that:

(i) scientific research, being research related to a business carried on by the taxpayer for the purpose of gaining or producing assessable income, would be carried on by or on behalf of the taxpayer in the building; and

(ii) the building, part of the building, alteration or addition, as the case may be, would be of use for scientific research purposes only.

(3) Where any expenditure or payment to which this section refers is incurred or made outside Australia and the business in relation to which it is so incurred or made is carried on partly in and partly out of Australia, the deduction allowable under this section shall be such part of the amount which would otherwise be allowable as the Commissioner considers reasonable in the circumstances.

(4) Where any expenditure has been allowed or is allowable as a deduction under subsection (2) and:

(a) the taxpayer sells, transfers or otherwise disposes of the building or any part thereof; or

(b) the building or any part thereof is destroyed;

the termination value of the building or part shall, to the extent of the expenditure so allowed or allowable as a deduction, be

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included in the assessable income of the year of income in which the disposal or destruction occurs:

Provided that where the Commissioner is of opinion that part only, or no part, of that termination value relates to the disposal or destruction of any property which was acquired or created by that expenditure, that part only, or no part, as the case may be, of the termination value shall be taken into account for the purposes of this subsection.

(4A) If:

(a) a person has purchased from another person a building, or part of a building, where the vendor had incurred capital expenditure of a kind in respect of which deductions are or have been allowable under subsection (2); and

(b) it would be concluded that, having regard to any connection between the vendor and the purchaser or to any other relevant circumstances, those persons were not dealing with each other at arm's length; and

(c) the purchase price is greater or lesser than the market value of the building, or the part of the building, at the time of the purchase;

the purchase price is, for all purposes of the application of this Act in relation to the vendor, taken to have been the amount of the market value of the property at the time of the purchase.

(5) If the purchase of the building is a creditable acquisition by the vendor, references in subsection (4A) to the purchase price are taken to be references to that price reduced by the amount of the net input tax credit to which the purchaser is entitled for the acquisition.

(6) In this section:

an approved research institute means the Commonwealth Scientific and Industrial Research Organization, or any university, college, institute, association or organization which is approved in writing for the purposes of this section by that Organization, by the Chief Executive Officer of the NHMRC or by the Research

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Secretary, as an institution, association or organization for undertaking scientific research which is or may prove to be of value to Australia.

NHMRC means the National Health and Medical Research Council established by section 5B of the *National Health and Medical Research Council Act 1992*.

Research Secretary means the Secretary of the Department administered by the Minister administering the *Australian Research Council Act 2001*.

scientific research means any activities in the fields of natural or applied science for the extension of knowledge.

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

(7) An approval for the purposes of subsection (6) may:
  (a) operate as from a date, whether before or after the date of the approval, specified in the instrument of approval; and
  (b) be withdrawn at any time.

(8) In this section, any reference to scientific research related to a business or class of business shall be read as including a reference to:
  (i) any scientific research which may lead to or facilitate an extension, or an improvement in the technical efficiency, of that business, or, as the case may be, of businesses of that class; and
  (ii) any scientific research of a medical nature which is of special relation to the welfare of workers employed in that business or, as the case may be, in businesses of that class.

(9) This section does not apply in relation to payments made, or expenditure incurred, after 30 June 1995.

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73AA Section 73A roll-over relief in the case of certain CGT roll-overs

Roll-over relief where CGT roll-over relief allowed

(1) This section applies to the disposal of a building, or part of a building, by a taxpayer (in this section called the ***transferor***) to another taxpayer (in this section called the ***transferee***) if:

(b) subject to subsection (7), deductions have been allowed or are allowable under subsection 73A(2) to the transferor in respect of the building or the part of the building; and

(c) the disposal involves a CGT event; and

(d) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A of the *Income Tax Assessment Act 1997* for the CGT event.
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the building or part is partnership property, and there is a roll-over under Subdivision 122-B of the *Income Tax Assessment Act 1997* for the disposal by the partners of the CGT assets consisting of their interests in the building or part.
3	Marriage or relationship breakdown	There is a roll-over under Subdivision 126-A of the *Income Tax Assessment Act 1997* for the CGT event.
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* for the CGT event.

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No balancing charges

(2) Subsection 73A(4) (which deals with balancing charges) does not apply to the disposal of the building or the part of the building by the transferor.

Transferee to inherit certain characteristics from transferor

(3) Section 73A applies as if:

(a) the transferee had acquired the building or the part of the building for a consideration equal to the cost of the building or the part of the building to the transferor; and

(b) deductions were not allowable to the transferee under subsection 73A(2) in respect of:

(i) so much of the cost of the building or the part of the building to the transferor as was allowed or allowable as a deduction to the transferor under that subsection in respect of the building or the part of the building; or

(ii) if there have been 2 or more prior successive applications of this section—so much of the cost of the building or the part of the building to the transferor as was allowed or allowable as a deduction to the prior successive transferors under that subsection in respect of the building or the part of the building; and

(c) deductions were not allowable to the transferor under subsection 73A(2) in respect of the building or the part of the building for the year of income in which the disposal took place or for a subsequent year of income.

Subsection 73A(2A)—special rules

(4) If subsection 73A(2A) applies to the transferor and in relation to the building or the part of the building, that subsection applies in relation to the transferee and in relation to the building or the part of the building.

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Disposal by transferee where no roll-over relief—inheritance of deductions

(5) If:

(a) after the disposal of the building or the part of the building to the transferee, the building or the part of the building is lost or destroyed or the transferee disposes of the building or the part of the building; and

(b) in the case of a disposal by the transferee—this section does not apply to the disposal;

then, for the purposes of the application of subsection 73A(4) in relation to the loss, destruction or disposal, the total of:

(c) the deductions allowed or allowable to the transferor under subsection 73A(2) in relation to the building or the part of the building; and

(d) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under subsection 73A(2) in relation to the building or the part of the building;

are taken to have been deductions allowed or allowable to the transferee under subsection 73A(2) in relation to the building or the part of the building.

*Meaning of **cost***

(6) A reference in this section to the cost of a building or of a part of a building to the transferor is a reference to expenditure of a capital nature incurred by the transferor in the construction or acquisition of the building or the part of the building, or in making any alteration or addition to the building or to the part of the building.

Second or subsequent application of section—paragraph (1)(b) does not apply

(7) If, apart from this subsection, this section has applied to the disposal of the building or the part of the building to the transferee, then, in working out whether this section applies to a subsequent disposal of the building or the part of the building by:

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(a) the transferee; or

(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.

78A Certain gifts not to be allowable deductions

(1) In this section:

agreement includes any agreement, arrangement or understanding, whether formal or informal or express or implied, and whether or not enforceable by legal proceedings (whether or not the agreement, arrangement or understanding was intended to be so enforceable).

associate, in relation to the donor of a gift, means:

(a) in the case of a donor being a natural person:

(i) a relative of the donor;

(ii) a partner of the donor;

(iii) if a partner of the donor is a natural person—the spouse of that partner;

(iv) a trustee of a trust estate where the donor or a person who is an associate of the donor by virtue of subparagraph (i), (ii), (iii) or (v) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

(v) a company where:

(A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor, of a person who is an associate of the donor by virtue of subparagraph (i), (ii), (iii) or (iv) or of a company that is an associate of the donor by

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virtue of another application of this subparagraph; or

(B) the donor is, the persons who are associates of the donor by virtue of subparagraphs (i), (ii), (iii) and (iv) are, or the donor and the persons who are associates of the donor by virtue of those paragraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or

(b) in the case of a donor being a company:

(i) a partner of the donor company;

(ii) if a partner of the donor company is a natural person—the spouse of that partner;

(iii) another person where:

(A) the donor company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, whether those directions, instructions or wishes are communicated directly to the donor company or its directors, or through any interposed companies; or

(B) that person is, or that person and the persons who, if that person were the donor, would be associates of that person by virtue of paragraph (a) or by virtue of another subparagraph of this paragraph are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the donor company;

(iv) a trustee of a trust estate where the donor company or a person who is an associate of the donor company by virtue of subparagraph (i), (ii), (iii), (v) or (vi) benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust,

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either directly or through any interposed companies, partnerships or trusts;

(v) another company where:

(A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor company, of a person who is an associate of the donor company by virtue of subparagraph (i), (ii), (iii), (iv) or (vi) or of a company that is an associate of the donor company by virtue of another application of this subparagraph; or

(B) the donor company is, the persons who are associates of the donor company by virtue of subparagraphs (i), (ii), (iii), (iv) and (vi) are, or the donor company and the persons who are associates of the donor company by virtue of those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or

(vi) another person who, if a third person who is an associate of the donor company by virtue of subparagraph (iii) were the donor, would be an associate of that third person by virtue of paragraph (a) or by virtue of another subparagraph of this paragraph.

(2) Subject to this section, a gift of money, or of property other than money, made by a person (in this section referred to as the ***donor***) to a fund, authority, institution or person is not an allowable deduction under Division 30 of the *Income Tax Assessment Act 1997* where:

(a) by reason of any act, transaction or circumstance that has occurred, will occur, or may reasonably be expected to occur, being an act, transaction or circumstance occurring as part of, in connexion with or as a result of:

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(i) the making or receipt of the gift; or

(ii) any agreement or scheme entered into in association with the making or receipt of the gift;

the amount or value of the benefit derived by the fund, authority, institution or person as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift;

(b) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), any fund, authority, institution or person other than the fund, authority, institution or person to which the gift was made, makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment, or transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property, to any person or incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation;

(c) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), the donor or an associate of the donor has obtained, will obtain or may reasonably be expected to obtain any benefit, advantage, right or privilege other than the benefit of any deduction that, but for this section, would be allowable from the assessable income of the donor under Division 30 of the *Income Tax Assessment Act 1997*; or

(d) by reason of any agreement or scheme entered into as part of or in association with the making of the gift, any property, other than property comprising the gift, has been acquired or will be acquired, whether directly or indirectly, from the donor or an associate of the donor by that fund, authority, institution or person or by another fund, authority, institution or person.

(3) Without limiting the application of subsection (2), where the terms and conditions on which a gift of property other than money is made are such that the fund, authority, institution or person to

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which the gift is made does not receive immediate custody and control of the property, does not have the unconditional right to retain custody and control of the property in perpetuity to the exclusion of the donor or an associate of the donor or does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property, paragraph (2)(c) shall be deemed to apply in relation to that gift.

(4) Paragraph (2)(a) does not prevent a deduction under Division 30 of the *Income Tax Assessment Act 1997* from being allowed from the assessable income of the donor where the amount or value of the benefit derived by the fund, authority, institution or person as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift by reason only that the fund, authority, institution or person has incurred, will incur, or may reasonably be expected to incur, expenses for the purpose of obtaining or soliciting the gift, being expenses that, in the opinion of the Commissioner, are reasonable in relation to the value of the gift.

(5) This section does not prevent a deduction under section 30-15 of the *Income Tax Assessment Act 1997* (because of item 4, 5 or 6 of the table in that section) from being allowed from the assessable income of the donor in respect of a gift of property other than money by reason only that the terms and conditions on which the gift was made are such, or the effect of any arrangement (within the meaning of that Act) entered into in association with the making or receipt of the gift is such, that the value of the gift may be reduced in accordance with section 30-220 of that Act.

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