



# **New Business Tax System (Miscellaneous) Act (No. 1) 2000**

**No. 79, 2000**



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**An Act to implement the New Business Tax System  
by amending the law relating to taxation, and for  
related purposes**

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## **An Act to implement the New Business Tax System by amending the law relating to taxation, and for related purposes**

*[Assented to 30 June 2000]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *New Business Tax System  
(Miscellaneous) Act (No. 1) 2000*.

### **2 Commencement**

- (1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

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- (2) Schedules 1, 2 and 3, Part 1 of Schedule 4 and Schedule 6 commence on 1 July 2000.
  - (3) Part 2 of Schedule 4 commences on 1 July 2001.
  - (4) Schedule 5 is taken to have commenced immediately after Schedule 3 to the *New Business Tax System (Capital Gains Tax) Act 1999* commences.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

## Schedule 1—Intercompany dividend rebate

### *Income Tax Assessment Act 1936*

#### **1 Subsections 46F(2), (2A) and (2B)**

Repeal the subsections, substitute:

- (2) Subject to this section, a shareholder is not entitled to, and must not be allowed, a rebate under section 46 or 46A in respect of:
  - (a) if a dividend was paid to the shareholder by a company other than an exempting company, or by an exempting company and section 160APPA applies in relation to the dividend:
    - (i) the unfranked part of the dividend; or
    - (ii) any part of the dividend in respect of which a determination is made under paragraph 160AQCBA(3)(b) or 177EA(5)(b); or
  - (b) if a dividend was paid to the shareholder by an exempting company and section 160APPA does not apply in relation to the dividend—any part of the dividend.

Note: The heading to section 46F is replaced by the heading “**Rebate not allowable for certain dividends**”.

#### **2 After section 46F**

Insert:

##### **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
- (c) but for subparagraph 46F(2)(a)(i), the resident company would be entitled to a rebate under section 46 in respect of the unfranked amount of the original dividend; and
- (d) the resident company pays a dividend (the *flow-on dividend*) to a company that is not a resident (the *non-resident company*); and
- (e) the flow-on dividend is not a fully-franked dividend; and
- (f) the resident company declares that the unfranked amount of the flow-on dividend is an on-payment of the unfranked amount of the original dividend to the extent of a specified percentage (not exceeding 100%); and
- (g) when the original dividend is paid, when the declaration is made and when the flow-on dividend is paid, the resident company is:
  - (i) a resident; and
  - (ii) wholly owned by the non-resident company.

The deduction is from assessable income of the year of income in which the flow-on dividend is paid. The amount of the deduction is equal to the flow-on amount worked out using subsection (2).

- (2) The *flow-on amount* is:

$$\text{Percentage specified under paragraph (1)(f)} \times \text{Unfranked amount of the flow-on dividend}$$

*Flow-on declarations*

- (3) The declaration under paragraph (1)(f) (the *flow-on declaration*) must be made:
- (a) in writing; and
  - (b) before the flow-on dividend is paid.

The declaration cannot be revoked or varied.

- (4) The flow-on declaration is effective only to the extent to which the flow-on amount does not exceed the surplus in the resident company's unfranked non-portfolio dividend account immediately before the declaration is made.

Note: See section 46FB for the unfranked non-portfolio dividend account.



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*Effect of flow-on declaration on required franking amounts*

- (5) For the purposes of section 160APX, the class A and class C franked amounts of the flow-on dividend are taken to be increased as follows:
- (a) if there is a class A required franking amount, but no class C required franking amount, for the flow-on dividend—the class A franked amount is taken to be increased by an amount equal to the flow-on amount;
  - (b) if there is a class C required franking amount, but no class A required franking amount, for the flow-on dividend—the class C franked amount is taken to be increased by an amount equal to the flow-on amount;
  - (c) if there are both a class A required franking amount and a class C required franking amount for the flow-on dividend:
    - (i) the class A franked amount is taken to be increased by an amount equal to so much of the flow-on amount as is necessary to have the flow-on dividend franked to the class A required franking amount; and
    - (ii) the class C franked amount is taken to be increased by an amount equal to the remainder (if any) of the flow-on amount.

For the purposes of this section, there is no class A or class C required franking amount if that amount is nil.

*Wholly owned by non-resident company*

- (6) The resident company is wholly owned by the non-resident company if all the shares in the resident company are held by and beneficially owned by the non-resident company.
- (7) However, the company is not wholly owned by the non-resident company if a person is in a position to affect rights, in relation to the resident company, of the non-resident company.
- (8) The resident company is also not wholly owned by the non-resident company if at some future time a person will be in a position to affect rights as described in subsection (7).

*A person in a position to affect rights*

- (9) A person is in a position to affect rights of a company in relation to another company if the person has a right, power or option:
- (a) to acquire those rights from one or other of those companies; or
  - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (10) It does not matter whether the person has the right, power or option because of the constitution of one or other of those companies, any agreement or otherwise.

*Definitions*

- (11) In this section:

**fully-franked dividend** means a dividend whose franking percentage (within the meaning of section 160APA) is 100%.

**group company** has the same meaning as in section 160AFE.

**non-portfolio dividend** has the same meaning as in section 317.

**non-resident company** means a company that is not a resident.

**unfranked amount** for a dividend (including a dividend that is not a frankable dividend within the meaning of section 160APA) means so much of the dividend as has not been franked in accordance with section 160AQF or 160AQFA.

## **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) but for subparagraph 46F(2)(a)(i), the company would be entitled to a rebate under section 46 in respect of the unfranked amount of the dividend.

The amount of the credit is the unfranked amount of the dividend. The credit arises when the dividend is paid to the company.

*Debits*

- (5) An unfranked non-portfolio dividend debit arises for a company if the company makes a declaration under paragraph 46FA(1)(f) in relation to a dividend paid on a particular day. The amount of the debit is the flow-on amount under subsection 46FA(2). The debit arises when the declaration is made.

*Definitions*

- (6) In this section:

***group company*** has the same meaning as in section 160AFE.

***non-portfolio dividend*** has the same meaning as in section 317.

***unfranked amount*** for a dividend (including a dividend that is not a frankable dividend within the meaning of section 160APA) means so much of the dividend as has not been franked in accordance with section 160AQF or 160AQFA.

***Income Tax Assessment Act 1997***

**3 Section 12-5 (at the end of the table item relating to dividends)**

Add:

unfranked non-portfolio dividends ..... **46FA**

**4 Application of amendments**

- (1) The amendment made by item 1 applies to dividends paid on or after 1 July 2000.
- (2) The amendments made by items 2 and 3 apply to unfranked non-portfolio dividends paid to the resident company on or after 1 July 2000.

## **Schedule 2—Refunding excess imputation credits**

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 4-10(3A) (first sentence)**

Repeal the sentence, substitute “If you have \*tax offsets that are subject to the refundable tax offset rules and the total of those offsets exceeds your basic income tax liability, you can, after allowing certain other tax offsets, get a refund of the excess under section 67-30.”.

#### **2 Subsection 4-10(3A) (note)**

Omit “Note”, substitute “Note 1”.

#### **3 At the end of subsection 4-10(3A)**

Add:

Note 2: Division 67 sets out the refundable tax offset rules.

#### **4 Subsection 61-335(6)**

Repeal the subsection.

#### **5 Section 61-335 (note)**

Repeal the note, substitute:

Note: In certain circumstances you can get a refund of the tax offset under Division 67.

#### **6 Division 67**

Repeal the Division, substitute:

### **Division 67—Refundable tax offset rules**

#### **Guide to Division 67**

##### **67-10 What this Division is about**

This Division sets out the rules about refunds of tax offsets.
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## Table of sections

### Operative provisions

67-20	Which tax offsets this Division applies to
67-25	Tax offsets that are subject to the refundable tax offset rules
67-30	When you can get a refund of a tax offset
67-35	Amount of refund

*[This is the end of the Guide]*

## Operative provisions

### 67-20 Which tax offsets this Division applies to

This Division only applies to a \*tax offset if it is stated to be subject to the refundable tax offset rules.

### 67-25 Tax offsets that are subject to the refundable tax offset rules

#### *Franked dividends*

- (1) \*Tax offsets available under any of the following provisions of Part IIIAA of the *Income Tax Assessment Act 1936* are subject to the refundable tax offset rules:
- (a) section 160AQU (general);
  - (b) section 160AQX (beneficiaries of a trust);
  - (c) section 160AQY (trustees);
  - (d) section 160AQYA (superannuation funds, approved deposit funds (ADFs) and pooled superannuation trusts (PSTs));
  - (e) section 160AQZ (partners);
  - (f) section 160AQZA (life assurance companies);
  - (g) section 160ASEP (venture capital).

The tax offset referred to in paragraph (c) is subject to the refundable tax offset rules only if the trustee entitled to the rebate is liable to be assessed under section 98 or 99 of the *Income Tax Assessment Act 1936*.

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*Private health insurance*

- (2) Private health insurance tax offsets under Subdivision 61-H are subject to the refundable tax offset rules.

**67-30 When you can get a refund of a tax offset**

You can get a refund of \*tax offsets that are subject to the refundable tax offset rules if the total of those offsets exceeds the amount of income tax that you would have to pay if you had not got those tax offsets (but had got all your other tax offsets).

**67-35 Amount of refund**

The amount of the refund of \*tax offsets is the amount of the excess referred to in section 67-30.

***Income Tax Assessment Act 1936***

**6A Section 160APA**

Insert:

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

**6B Section 160APA**

Insert:

*exempt institution* means an entity whose ordinary and statutory income (within the meaning of the *Income Tax Assessment Act 1997*) are exempt from income tax because of Division 50 of that Act.

**6C Subparagraph 160AQT(1AB)(b)(iv)**

Repeal the subparagraph, substitute:

- (iv) a registered organisation; or
- (v) an exempt institution whose exempt status is disregarded in relation to the dividend under section 160ARDAB; and

**6D After subsection 160AQT(4)**

Insert:

- (4A) Disregard section 50-1 of the *Income Tax Assessment Act 1997* in determining, for the purposes of this section, whether a dividend is exempt income of an exempt institution whose exempt status is disregarded in relation to the dividend under section 160ARDAB.

**6E Subparagraph 160AQU(1)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) a trustee (other than the trustee of an eligible entity within the meaning of Part IX or of an exempt institution whose exempt status is disregarded in relation to the dividend under section 160ARDAB);

**6F At the end of section 160AQU**

Add:

- (3) Disregard section 50-1 of the *Income Tax Assessment Act 1997* in determining, for the purposes of subsection (1), the amount included under section 160AQT in the assessable income of an exempt institution whose exempt status is disregarded in relation to the dividend concerned under section 160ARDAB.

**6G Subsection 160AQW(1)**

After “section 128D”, insert “of this Act or section 50-1 of the *Income Tax Assessment Act 1997*”.

**6H At the end of section 160AQWA**

Add:

- (2) In determining the entitlement to a rebate under section 160AQX of an exempt institution whose exempt status is disregarded in relation to the trust amount concerned under section 160ARDAB, assume that section 50-1 of the *Income Tax Assessment Act 1997* had not been enacted.

**6I Subparagraph 160AQX(1)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) a registered organisation (other than a trustee); or



- (iii) an exempt institution (other than a trustee) whose exempt status is disregarded in relation to the trust amount under section 160ARDAB; and

## **6J After Division 7 of Part IIIAA**

Insert:

### **Division 7AA—Franking rebates for certain exempt institutions**

#### **160ARDAA Definitions**

- (1) In this Division:

**ABN** has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

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

**associate** has the same meaning as in section 318.

**controller**, in relation to an exempt institution, has the meaning given by subsections (2) to (6) (inclusive).

**notional trust amount**, in relation to an exempt institution, is an amount that would be a trust amount of the institution if section 50-1 of the *Income Tax Assessment Act 1997* had not been enacted.

**related transaction**, in relation to a dividend or notional trust amount, means an act, transaction or circumstance that has occurred, will occur, or may reasonably be expected to occur as part of, in connection with or as a result of:

- (a) the payment or receipt of the dividend; or
- (b) the arising of the entitlement to, or the distribution or receipt of, the notional trust amount; or
- (c) any arrangement entered into in association with:
  - (i) the payment or receipt of the dividend; or
  - (ii) the arising of the entitlement to, or the distribution or receipt of, the notional trust amount.

*Controller of exempt institution that is a company*

- (2) An entity is a **controller** of an exempt institution that is a company if the entity is a controller of the company (for CGT purposes) within the meaning of section 140-20 of the *Income Tax Assessment Act 1997*.

*Controller of exempt institution other than a company—basic meaning*

- (3) Subject to subsections (5) and (6), an entity is a **controller** of an exempt institution that is not a company if:
- (a) a group in relation to the entity has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the institution; or
  - (b) a group in relation to the entity is able (directly or indirectly) to control the application of the capital or income of the institution; or
  - (c) a group in relation to the entity is capable, under a scheme, of gaining the beneficial enjoyment referred to in paragraph (a) or the control referred to in paragraph (b); or
  - (d) the institution or, if the institution is a trust, the trustee of the trust:
    - (i) is accustomed; or
    - (ii) is under an obligation; or
    - (iii) might reasonably be expected; to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or
  - (e) a group in relation to the entity is able (directly or indirectly) to remove or appoint the trustee of the trust if the institution is a trust; or
  - (f) a group in relation to the entity has more than a 50% stake in the income or capital of the institution; or
  - (g) entities in a group in relation to the entity are the only entities that, under the terms of:
    - (i) the constitution of the institution or the terms on which the institution is established; or
    - (ii) the terms of the trust if the institution is a trust;

can obtain the beneficial enjoyment of the income or capital of the institution.

- (4) For the purposes of subsection (3), each of the following constitute a **group** in relation to an entity:
- (a) the entity acting alone;
  - (b) an associate of the entity acting alone;
  - (c) the entity and one or more associates of the entity acting together;
  - (d) 2 or more associates of the entity acting together.

*Controller of exempt institution that is not a company—deemed absence of control*

- (5) If:
- (a) at a particular time, an entity is a controller of an exempt institution that is not a company; and
  - (b) the Commissioner, having regard to all relevant circumstances, considers that it is reasonable that the entity be taken not to be a controller of the institution at the particular time;
- the entity is taken *not* to be a controller of the institution at the particular time.
- (6) Without limiting paragraph (5)(b), the Commissioner may have regard under that paragraph to the identity of the beneficiaries of the trust at any time before and at any time after the entity began to be a controller of the institution if the institution is a trust.

### **160ARDAB Certain exempt institutions eligible for rebates in relation to franking credits**

- (1) The exempt status of an exempt institution is disregarded for the purposes of determining its entitlement to a rebate under Division 6, 6A or 7 of this Part in relation to a dividend or notional trust amount if:
- (a) it satisfies subsection (2), (3), (4), (5) or (6); and
  - (b) section 160ARDAC (anti-avoidance provision) does not apply to the dividend or notional trust amount; and
  - (c) subsection (8) (chains of exempt institutions) does not apply to the notional trust amount.

- (2) The institution's exempt status is disregarded if the institution:
- (a) is covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 of the *Income Tax Assessment Act 1997*; and
  - (b) is endorsed as exempt from income tax under Subdivision 50-B of the *Income Tax Assessment Act 1997*; and
  - (c) is a resident.

Note: Paragraph (c)—see subsection (7).

- (3) The institution's exempt status is disregarded if the institution:
- (a) is endorsed under paragraph 30-120(a) of the *Income Tax Assessment Act 1997*; and
  - (b) is a resident.

Note: Paragraph (b)—see subsection (7).

- (4) The institution's exempt status is disregarded if:
- (a) the institution's name is specified in a table in a section in Subdivision 30-B of the *Income Tax Assessment Act 1997*; and
  - (b) the institution has an ABN; and
  - (c) the institution is a resident.

Note: Paragraph (c)—see subsection (7).

- (5) The institution's exempt status is disregarded if:
- (a) a declaration by the Treasurer is in force in relation to the institution under subsection 30-85(2) of the *Income Tax Assessment Act 1997*; and
  - (b) the regulations do not provide that the institution's exempt status is not to be disregarded for the purposes of this Division.
- (6) The institution's exempt status is disregarded if the institution is prescribed by the regulations as an institution whose exempt status is to be disregarded for the purposes of this Division.
- (7) For the purposes of this section, the institution is a **resident** if the institution has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia at all times during the year of income in which the dividend is paid or the entitlement to the notional trust amount arises.

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- (8) The institution's exempt status is not disregarded in relation to a notional trust amount if the notional trust amount arises because of a dividend paid to, or a notional trust amount of, another exempt institution.

**160ARDAC Franking rebates denied in certain circumstances**

- (1) The exempt institution's exempt status is not disregarded in relation to a dividend or notional trust amount if subsection (2), (4), (5), (6), (7), (9) or (10) is satisfied. None of those subsections limits any of the others.
- (2) The institution's exempt status is not disregarded if:
- (a) there is a related transaction in relation to the dividend or notional trust amount; and
  - (b) because of the related transaction:
    - (i) the amount or value of the benefit derived by the institution because of the dividend is, will be, or may reasonably be expected to be, less than the amount or value of the dividend at the time when the dividend was paid; or
    - (ii) the amount or value of the benefit derived by the institution because of the notional trust amount is, will be, or may reasonably be expected to be, less than the amount or value of the notional trust amount at the time when the notional trust amount arose.

The amount or value of the dividend or notional trust amount is to be increased to include the value of any franking rebate to which the institution would be entitled if this section did not apply to the dividend or notional trust amount.

- (3) Subsection (2) does not apply to the dividend or notional trust amount if:
- (a) the only reason why paragraph (2)(b) is satisfied is that the institution has incurred, will incur, or may reasonably be expected to incur, expenses for the purpose of obtaining the dividend or notional trust amount (and the associated franking rebate); and
  - (b) the expenses are, in the Commissioner's opinion, reasonable in relation to the value of the dividend or notional trust amount.

- (4) Subject to subsection (11), the institution's exempt status is not disregarded if:
- (a) there is a related transaction in relation to the dividend or notional trust amount; and
  - (b) because of the related transaction, the institution or another entity:
    - (i) makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment to any entity; or
    - (ii) transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property to any entity; or
    - (iii) 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.
- (5) Subject to subsection (11), the institution's exempt status is not disregarded if:
- (a) there is a related transaction in relation to the dividend or notional trust amount; and
  - (b) because of the related transaction:
    - (i) the company that paid the dividend or an associate of that company; or
    - (ii) the trustee of the trust in relation to which the notional trust amount arises or an associate of that trustee;has obtained, will obtain or may reasonably be expected to obtain a benefit, advantage, right or privilege.
- Note:       Section 160ARDAE makes special provision in relation to benefits provided by an exempt institution to its controller.
- (6) The institution's exempt status is not disregarded in relation to a dividend if:
- (a) the dividend to any extent takes the form of property other than money; and
  - (b) the terms and conditions on which the dividend is paid are such that the institution:
    - (i) does not receive immediate custody and control of the property; or

- 
- (ii) does not have the unconditional right to retain custody and control of the property in perpetuity to the exclusion of the company or an associate of the company; or
    - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.
  - (7) The institution's exempt status is not disregarded in relation to a notional trust amount that arises in a year of income if the total value of the payments of money, and transfers of property, by the trustee to the institution from the trust that:
    - (a) occur during the year of income; and
    - (b) are attributable to notional trust amounts that arose during the year of income;
 are less than the total amount of those notional trust amounts.
  - (8) Subsection (7) does not apply to a notional trust amount if the Commissioner is satisfied, having regard to all the circumstances, that it would be reasonable to treat the notional trust amount as having been distributed to the institution during the year of income.
  - (9) The institution's exempt status is not disregarded in relation to a notional trust amount if:
    - (a) the trustee of the trust in relation to which the notional trust amount arises makes a distribution to the institution in relation to the notional trust amount; and
    - (b) the distribution to any extent takes the form of property other than money; and
    - (c) the terms and conditions on which the distribution is made are such that the institution:
      - (i) does not receive immediate custody and control of the property; or
      - (ii) does not have the unconditional right to retain custody and control of the property in perpetuity to the exclusion of the trustee or an associate of the trustee; or
      - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.
  - (10) Subject to subsection (11), the institution's exempt status is not disregarded if:
    - (a) an arrangement is entered into as part of, or in association with, the payment of the dividend or the arising of the
-

- entitlement to, or the distribution of, the notional trust amount; and
- (b) because of the arrangement the institution or another entity has acquired or will acquire (whether directly or indirectly) property, other than property comprising the dividend or notional trust amount, from:
    - (i) the company or an associate of the company; or
    - (ii) the trustee of the trust in relation to which the notional trust amount arises or an associate of the trustee.
- (11) Subsection (4), (5) or (10) does not apply to the dividend or notional trust amount if:
- (a) the institution has the choice of:
    - (i) receiving payment of the dividend or notional trust amount; or
    - (ii) being issued with shares in the company that paid the dividend or fixed interests in the trust estate in relation to which the notional trust amount arises; and
  - (b) the institution is under no obligation (whether express or implied and whether legally enforceable or not) either to choose to take, or to choose not to take, the shares or interests rather than receiving payment of the dividend or notional trust amount; and
  - (c) the institution chooses to be issued with the shares or fixed interests; and
  - (d) subsection (4), (5) or (10) would, but for this subsection, apply to the dividend or notional trust amount because the institution makes that choice; and
  - (e) making that choice furthers the purpose for which the institution was established; and
  - (f) the institution does not make that choice for the purpose, or purposes that include the purpose, of benefiting:
    - (i) the company that paid the dividend; or
    - (ii) the trustee of the trust in relation to which the notional trust amount arises; or
    - (iii) an associate of that company or trustee (other than the institution); and
  - (g) any benefit obtained by the company, trustee or associate because the institution makes that choice is an ordinary



incident of issuing the shares or interests to the institution or of the institution's holding of those shares or interests; and

- (h) the following deal with one another on an arm's length basis in relation to any related transaction or arrangement in relation to the dividend or notional trust amount that, but for this subsection, would have prevented the institution's exempt status from being disregarded in relation to the dividend or notional trust amount:
  - (i) the institution;
  - (ii) the company that paid the dividend or the trustee of the trust in relation to which the notional trust amount arises;
  - (iii) any other entity involved in, connected with or party to the related transaction or arrangement.

Note: Subparagraph (11)(a)(ii)—for **fixed interest** see subsections (12) to (15).

*A vested and indefeasible interest constitutes a fixed interest*

- (12) For the purposes of subsection (11), a taxpayer's interest in a trust estate is a fixed interest if it is a vested and indefeasible interest in the corpus of the trust estate.

*Case where interest not defeasible*

- (13) If:
  - (a) the trust is a unit trust and the taxpayer holds units in the unit trust; and
  - (b) the units are redeemable or further units are able to be issued; and
  - (c) where units in the unit trust are listed for quotation in the official list of an approved stock exchange (within the meaning of section 470)—the units held by the taxpayer will be redeemed, or any further units will be issued, for the price at which other units of the same kind in the unit trust are offered for sale on the approved stock exchange at the time of the redemption or issue; and
  - (d) where the units are not listed as mentioned in paragraph (c)—the units held by the taxpayer will be redeemed, or any further units will be issued, for their market value at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the taxpayer's interest, as a unit holder, in the corpus of the trust estate is defeasible.

*Commissioner may determine an interest to be vested and indefeasible*

(14) If:

- (a) a taxpayer has an interest in the corpus of a trust estate; and
- (b) apart from this subsection, the interest would not be a vested or indefeasible interest; and
- (c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:
  - (i) the circumstances in which the interest is capable of not vesting or the defeasance can happen; and
  - (ii) the likelihood of the interest not vesting or the defeasance happening; and
  - (iii) the nature of the trust; and
  - (iv) any other matter the Commissioner thinks relevant;the Commissioner may determine that the interest is to be taken to be vested and indefeasible.

*Effect of determination*

- (15) A determination made under subsection (14) has effect according to its terms.

### **160ARDAD Controller liable to pay amount in respect of refund in some cases**

- (1) A controller of an exempt institution is liable to pay an amount in respect of a refund paid to the institution under Division 67 of the *Income Tax Assessment Act 1997* if:
- (a) the institution claimed the refund on the basis of an entitlement to a rebate under Division 6, 6A or 7 of this Part; and
  - (b) the institution was not entitled to the rebate because of the operation of section 160ARDAC in relation to a related transaction or arrangement; and

- (c) the controller or an associate of the controller benefited from the related transaction or arrangement; and
- (d) some or all of the amount that the institution is liable to pay in respect of the refund remains unpaid after the day on which the amount becomes due and payable; and
- (e) the Commissioner gives the controller written notice:
  - (i) stating that the controller is liable to pay an amount under this section; and
  - (ii) specifying the amount that the controller is liable to pay.

Except as provided for in subsection (5), this subsection does not affect any liability the institution has in relation to the refund.

Note: Section 160ARDAF also provides that the exempt institution's present entitlement to a notional trust amount is disregarded for the purposes of Division 6 of Part III.

- (2) An entity that is dissatisfied with a decision of the Commissioner under subsection (1) in relation to the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (3) The amount the controller is liable to pay under subsection (1):
  - (a) is the amount specified under subparagraph (1)(e)(ii); and
  - (b) becomes due and payable at the end of the period of 14 days that starts on the day on which the notice referred to in paragraph (1)(e) is given.
- (4) The amount the controller is liable to pay under subsection (1) must not exceed the amount or value of the benefit that the controller or associate obtained from the related transaction or arrangement.
- (5) The total of:
  - (a) the amounts that the Commissioner recovers in relation to the refund from controllers under subsection (1); and
  - (b) the amounts the Commissioner recovers in relation to the refund from the exempt institution;
 must not exceed the amount of the refund.

**160ARDAE Treatment of benefits provided by an exempt institution to a controller**

- (1) A benefit given by an exempt institution to a controller of the institution, or an associate of a controller of the institution, is dealt with under this section if:
  - (a) the controller or associate:
    - (i) pays a dividend to the institution; or
    - (ii) is trustee of the trust in relation to which a notional trust amount of the institution arises; and
  - (b) the benefit is, or was, given to the controller or associate at any time during the period that starts 3 years before, and ends 3 years after, the dividend is paid or the notional trust amount arises.
- (2) The controller or associate is taken, for the purposes of subsection 160ARDAC(5), to have obtained the benefit because of a related transaction in relation to the dividend or notional trust amount.
- (3) The controller or associate is taken, for the purposes of section 160ARDAD, to have benefited from a related transaction or arrangement that caused section 160ARDAC to apply to the dividend or notional trust amount at least to the extent of the benefit given to the controller or associate by the exempt institution.
- (4) Subsection (2) or (3) does not apply to a benefit if the Commissioner is satisfied, having regard to all the circumstances, that it would be unreasonable to apply that subsection.

**160ARDAF Present entitlement of exempt institution disregarded in certain circumstances**

The present entitlement of an exempt institution to a share of trust income is disregarded for the purposes of Division 6 of Part III if:

- (a) the institution claims a refund under Division 67 of the *Income Tax Assessment Act 1997* on the basis of a rebate under Division 6, 6A or 7 of this Part in relation to a notional trust amount that related to that share of trust income; and
- (b) the institution was not entitled to the rebate because of the operation of section 160ARDAC in relation to a related transaction or arrangement.

## **7 Application of amendments**

The amendments made by this Schedule that relate to tax offsets under Part IIIAA of the *Income Tax Assessment Act 1936* apply to offsets that relate to dividends paid on or after 1 July 2000.

## **Schedule 3—Company rate changes (franking account consequentials)**

### ***Income Tax Assessment Act 1936***

#### **1 Section 160APA (paragraph (baa) of the definition of *applicable general company tax rate*)**

Omit “36%”, substitute “34%”.

#### **2 Section 160APA (paragraph (cb) of the definition of *applicable general company tax rate*)**

Omit “36%”, substitute “34%”.

#### **3 At the end of section 160AQG**

Add:

- (4) If a company has a franking year that includes, but does not start on, 1 July 2000, subsections (1) to (3) apply to the company as if the following periods were separate franking years:
- (a) the period starting at the start of the company’s franking year and ending on 30 June 2000;
  - (b) the period starting on 1 July 2000 and ending at the end of the franking year.

#### **4 Subparagraph 160AQH(1)(b)(iva)**

Repeal the subparagraph, substitute:

- (iva) if the dividend is a class C franked dividend—the amount worked out in relation to the dividend using the formula in subsection 160AQT(1AB) (whether or not that subsection applies to the dividend) and a statement to the effect that the applicable general company tax rate used in that formula was 34%; and

#### **5 Subsection 160AQJC(4) (formula)**

Repeal the formula, substitute:

$$\text{Class C deficit deferral amount} \times \frac{34}{66}$$

## 6 Before section 160ASF

Insert:

### 160ASEA Some provisions of this Division cease to apply to events occurring on or after 1 July 2000

The following provisions of this Division do not apply to an event that occurs on or after 1 July 2000:

Provisions ceasing to apply from 1 July 2000		
Item	Provision	Event
1	section 160ASI [see instead section 160ATD]	a class A or class B franking credit or debit arises after class C conversion time
2	section 160ASJ [see instead section 160ATE]	a company ceases to be a life assurance company

## 7 Paragraph 160ASK(1)(e) (formula)

Repeal the formula, substitute:

$$\text{Amount of class A franking debit} \times \frac{39}{61} \times \frac{66}{34}$$

## 8 Paragraph 160ASK(2)(e) (formula)

Repeal the formula, substitute:

$$\text{Amount of class B franking debit} \times \frac{33}{67} \times \frac{66}{34}$$

## 9 Paragraph 160ASL(2)(a) (formula)

Repeal the formula, substitute:

$$\left[ \begin{array}{l} \text{Amount (if} \\ \text{any) that will} \\ \text{be the class A} \\ \text{franked} \\ \text{amount of the} \\ \text{earlier} \\ \text{dividend} \end{array} \times \frac{39}{61} \times \frac{66}{34} \right] + \left[ \begin{array}{l} \text{Amount (if} \\ \text{any) that will} \\ \text{be the class B} \\ \text{franked} \\ \text{amount of the} \\ \text{earlier} \\ \text{dividend} \end{array} \times \frac{33}{67} \times \frac{66}{34} \right]$$

**10 Paragraph 160ASL(2)(b) (formula)**

Repeal the formula, substitute:

$$\left[ \begin{array}{c} \text{Class A} \\ \text{required} \\ \text{franking} \\ \text{amount (if any)} \\ \text{of the earlier} \\ \text{dividend} \end{array} \times \frac{39}{61} \times \frac{66}{34} \right] + \left[ \begin{array}{c} \text{Class B} \\ \text{required} \\ \text{franking} \\ \text{amount (if any)} \\ \text{of the earlier} \\ \text{dividend} \end{array} \times \frac{33}{67} \times \frac{66}{34} \right]$$

**11 Paragraph 160ASL(3)(a) (formula)**

Repeal the formula, substitute:

$$\left[ \begin{array}{c} \text{Amount (if any) that} \\ \text{will be the class A} \\ \text{franked amount of the} \\ \text{earlier dividend} \end{array} \right] + \left[ \begin{array}{c} \text{Amount (if any) that} \\ \text{will be the class B} \\ \text{franked amount of the} \\ \text{earlier dividend} \end{array} \times \frac{33}{67} \times \frac{66}{34} \right]$$

**12 Paragraph 160ASL(3)(b) (formula)**

Repeal the formula, substitute:

$$\left[ \begin{array}{c} \text{Class A required} \\ \text{franking amount (if} \\ \text{any) of the earlier} \\ \text{dividend} \end{array} \right] + \left[ \begin{array}{c} \text{Class B required} \\ \text{franking amount (if} \\ \text{any) of the earlier} \\ \text{dividend} \end{array} \times \frac{33}{67} \times \frac{66}{34} \right]$$

**13 At the end of Part IIIAA**

Add:

**Division 14—Transitional provisions for conversion to 34%  
rate on 1 July 2000**

**160ATA Conversion of account balances on 1 July 2000**

- (1) On 1 July 2000, a company's franking accounts are dealt with as follows:
- (a) first:
- (i) the company's class C franking account balance (if any) at the start of that day is converted under section 160ATB to reflect the new company tax rate; and



- (ii) the company's venture capital sub-account balance (if any) at the start of that day is converted under section 160ATB to reflect the new company tax rate;
  - (b) then, any other credits and debits that occur on that day are processed.
- (2) For the purposes of this Division, if 1 July 2000 is the first day of a franking year for the company, the balance in a franking account or sub-account of the company at the start of that day includes any credit arising for that account on that day under section 160APL (carry forward of surplus from previous franking year) or 160ASEE (carry forward of venture capital sub-account surplus from previous franking year).
- (3) Section 160ATD tells you how to deal with franking credits and debits that arise on or after 1 July 2000 but reflect tax paid at the old company tax rates.

**160ATB Conversion of balance of class C franking account to reflect the new company tax rate**

- (1) If a company has a class C franking surplus at the start of 1 July 2000:
- (a) a class C franking debit of the company arises equal to that surplus; and
  - (b) a class C franking credit of the company arises equal to the amount of that debit multiplied by the conversion factor in subsection (5).
- (2) If a PDF has a venture capital sub-account surplus at the start of 1 July 2000:
- (a) a venture capital debit of the PDF arises equal to that surplus; and
  - (b) a venture capital credit of the PDF arises equal to the amount of that debit multiplied by the conversion factor in subsection (5).
- (3) If a company has a class C franking deficit at the start of 1 July 2000:
- (a) a class C franking credit of the company arises equal to that deficit; and

- (b) a class C franking debit of the company arises equal to the amount of that credit multiplied by the conversion factor in subsection (5).
- (4) If a PDF has a venture capital sub-account deficit at the start of 1 July 2000:
  - (a) a venture capital credit of the PDF arises equal to that deficit; and
  - (b) a venture capital debit of the PDF arises equal to the amount of that credit multiplied by the conversion factor in subsection (5).
- (5) The conversion factor is:

$$\frac{36}{64} \times \frac{66}{34}$$

**160ATD Special treatment of some franking credits and debits arising on or after 1 July 2000**

- (1) If:
    - (a) any of the events specified in the event column of the following table occurs in relation to a company on or after 1 July 2000; and
    - (b) the event:
      - (i) is not a franking credit or debit arising under this Division; and
      - (ii) is not a franking credit arising under section 160APL; and
      - (iii) is not a franking debit arising under section 160APX, 160AQB, 160AQCB, 160AQCBA, 160AQCC, 160AQCNA, 160AQCNC or 160AQCNC;
- the adjustments specified in the adjustments column for that item are made to the company's franking accounts:

Certain credits and debits arising on or after 1 July 2000		
Item	Event	Adjustments
1	a class A franking credit of the company arises under this Part and the company is not a life assurance company	<p>(a) a class A franking debit arises equal to the amount of the class A franking credit; and</p> <p>(b) a class C franking credit also arises equal to the amount worked out using the formula:</p> $\frac{\text{Amount of the class A franking credit}}{61} \times \frac{39}{61} \times \frac{66}{34}$
2	a class A franking debit of the company arises under this Part and the company is not a life assurance company	<p>(a) a class A franking credit arises equal to the amount of the class A franking debit; and</p> <p>(b) a class C franking debit also arises equal to the amount worked out using the formula:</p> $\frac{\text{Amount of the class A franking debit}}{61} \times \frac{39}{61} \times \frac{66}{34}$
3	a class B franking credit of a company arises under this Part	<p>(a) a class B franking debit arises at that time equal to the amount of the class B franking credit; and</p> <p>(b) a class C franking credit also arises at that time equal to the amount worked out using the formula:</p> $\frac{\text{Amount of the class B franking credit}}{67} \times \frac{33}{67} \times \frac{66}{34}$
4	a class B franking debit of a company arises under this Part	<p>(a) a class B franking credit arises at that time equal to the amount of the class B franking debit; and</p> <p>(b) a class C franking debit also arises at that time equal to the amount worked out using the formula:</p> $\frac{\text{Amount of the class B franking debit}}{67} \times \frac{33}{67} \times \frac{66}{34}$

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Certain credits and debits arising on or after 1 July 2000		
Item	Event	Adjustments
5	a class C franking credit of a company arises under this Part and the amount of the credit reflects an applicable general company tax rate of 36%	<p>(a) a class C franking debit arises at that time equal to the amount of the class C franking credit; and</p> <p>(b) a class C franking credit also arises at that time equal to the amount worked out using the formula:</p> $\text{Amount of the class C franking credit} \times \frac{36}{64} \times \frac{66}{34}$
6	a class C franking debit of a company arises under this Part and the amount of the debit reflects an applicable general company tax rate of 36%	<p>(a) a class C franking credit arises at that time equal to the amount of the class C franking debit; and</p> <p>(b) a class C franking debit also arises at that time equal to the amount worked out using the formula:</p> $\text{Amount of the class C franking debit} \times \frac{36}{64} \times \frac{66}{34}$
7	a venture capital credit of the PDF arises under this Part and the amount of the credit reflects an applicable general company tax rate of 36%	<p>(a) a venture capital debit of the PDF arises at that time equal to the amount of the venture capital credit; and</p> <p>(b) a venture capital credit of the PDF also arises at that time equal to the amount worked out using the formula:</p> $\text{Amount of the venture capital credit} \times \frac{36}{64} \times \frac{66}{34}$
8	a venture capital debit of a PDF arises under this Part and the amount of the debit reflects an applicable general company tax rate of 36%	<p>(a) a venture capital credit of the PDF arises at that time equal to the amount of the venture capital debit; and</p> <p>(b) a venture capital debit also arises at that time equal to the amount worked out using the formula:</p> $\text{Amount of the venture capital debit} \times \frac{36}{64} \times \frac{66}{34}$

- (2) For the purposes of items 5, 6, 7 and 8 of the table in subsection (1), the amount of a credit or debit ***reflects an applicable general company tax rate of 36%*** if:
- (a) the applicable general company tax rate used to calculate the amount of the debit or credit is 36%; or
  - (b) the credit or debit arises in relation to an estimated debit determination and the determination is made on the basis of:
    - (i) action seeking a reduction in an amount of company tax for a year of income for which the general company tax rate is 36%; or
    - (ii) a payment of an initial payment of tax or a company tax instalment in relation to a year of income for which the general company tax rate is 36%; or
  - (c) the debit arises under subsection 160AQC(3) or section 160ASEI and the amount specified in the application for the estimated debit concerned is taken to be based on a 36% general company tax rate under section 160ATI; or
  - (d) the credit or debit is equal to the amount of an earlier debit or credit and the earlier debit or credit reflected an applicable general company tax rate of 36%.

Note 1: Paragraph (a)—the applicable general company tax rate will always be involved in the calculation of a credit or debit if an “adjusted amount” is used in the calculation.

Note 2: Paragraph (d) covers provisions such as sections 160APV, 160APVB, 160APVF, 160AQCA, 160AQCCB and 160AQCM.

## **160ATE Provisions relating to companies that cease to be life assurance companies**

### *Conversion of class A franking surplus*

- (1) If:
- (a) a company is a life assurance company on 1 July 2000; and
  - (b) at a particular time (the ***transition time***) after 1 July 2000, the company ceases to be a life assurance company (other than by ceasing to be a company); and
  - (c) at the transition time the company has a class A franking surplus;
- then, immediately after the transition time:

- (d) a class A franking debit of the company equal to that class A franking surplus arises; and
- (e) a class C franking credit of the company also arises that is worked out using the formula:

$$\text{Amount of class A franking surplus} \times \frac{39}{61} \times \frac{66}{34}$$

*Conversion of class A franking deficit*

(2) If:

- (a) a company is a life assurance company on 1 July 2000; and
- (b) at a particular time (the ***transition time***) after 1 July 2000, the company ceases to be a life assurance company (other than by ceasing to be a company); and
- (c) at the transition time the company has a class A franking deficit;

then, immediately after the transition time:

- (d) a class A franking credit of the company arises equal to that class A franking deficit; and
- (e) a class C franking debit of the company also arises that is worked out using the formula:

$$\text{Amount of class A franking deficit} \times \frac{39}{61} \times \frac{66}{34}$$

**160ATF Series of dividends crossing over 1 July 2000**

(1) This section deals with the situation in which:

- (a) a company pays a number of class C franked dividends under a resolution made before 1 July 2000; and
- (b) some of the dividends (the ***first series dividends***) are paid before 1 July 2000; and
- (c) some of the dividends (the ***second series dividends***) are paid on or after 1 July 2000.

(2) For the purposes of this Part:

- (a) the first series dividends and the second series dividends are to be taken to have been made under separate resolutions; and

- 
- (b) any declaration (the *original declaration*) made under section 160AQF or 160ASEL in relation to the dividends is taken to have effect only in relation to the first series dividends; and
  - (c) if the company does not make a declaration under section 160AQF or 160ASEL in relation to the second series dividends before the reckoning day for the second series dividends, then:
    - (i) in a case where the first series dividends were class C franked dividends—the company is to be taken to have made a declaration under section 160AQF that each dividend in the second series is a class C franked dividend to the extent of the same percentage as in the original declaration; and
    - (ii) in a case where the first series dividends were also franked with a venture capital franked amount—the company is to be taken to have made a declaration under section 160ASEL that each dividend in the second series is a venture capital dividend to the extent of the same percentage as in the original declaration.

Note 1: Paragraph (a) means that the 2 series of dividends will have separate reckoning days (see the definition of *reckoning day* in section 160APA). The reckoning day for the second series dividends will be the day on which the first of the second series dividends is paid. This in turn affects the calculation of the required franking amount for the second series dividends.

Note 2: Paragraph (b) means that the company may make a fresh declaration under section 160AQF in relation to the second series dividends. The company may wish to do this to ensure that the second series dividends are franked to the new required franking amount that will need to be calculated under Division 4. It will also mean that the company may make a fresh declaration under section 160ASEL.

### **160ATG Dividends paid under resolution made before 1 July 2000 but with a reckoning day after 1 July 2000**

- (1) This section deals with the situation in which:
    - (a) a company pays a class C franked dividend or class C franked dividends under a resolution made before 1 July 2000; and
    - (b) no dividend is paid under the resolution before 1 July 2000.
  - (2) For the purposes of this Part:
-

- (a) despite subsection 160AQF(2), the company may:
  - (i) vary any declaration it made under section 160AQF or 160ASEL in relation to the dividend or dividends; or
  - (ii) revoke any declaration it made under section 160AQF or 160ASEL in relation to the dividend or dividends and make a fresh declaration under that section in relation to the dividend or dividends;  
before the reckoning day for the dividend or dividends; and
- (b) a declaration varied, or a fresh declaration made, under this section cannot itself be varied or revoked.

### 160ATH Modifying the operation of subsection 160AQE(3)

*When this section applies*

- (1) This section deals with the situation in which:
  - (a) subsection 160AQE(3) is applied to work out the provisional required franking amount for a dividend (the **current dividend**) paid on or after 1 July 2000; and
  - (b) the earlier franked dividend referred to in that subsection was paid before 1 July 2000.

*Effect on required franking amount—companies other than life assurance companies*

- (2) If the company is not a life assurance company at the beginning of the reckoning day for the current dividend, the component **EFA** in the formula in subsection 160AQE(3) is worked out using the following formula:

$$\text{Class C franked amount} \times \frac{36}{64} \times \frac{66}{34}$$

where:

**class C franked amount** is the amount that is the class C franked amount of the earlier dividend.

*Effect on required franking amount—life assurance companies*

- (3) If the company is a life assurance company at the beginning of the reckoning day for the current dividend, the component **EFA** in the



formula in subsection 160AQE(3) is worked out using the following formula:

$$\left[ \begin{array}{c} \text{Class A franked} \\ \text{amount} \end{array} \right] + \left[ \begin{array}{c} \text{Class C franked} \\ \text{amount} \end{array} \times \frac{36}{64} \times \frac{66}{34} \right]$$

where:

**class A franked amount** is the amount (if any) that is the class A franked amount of the earlier dividend.

**class C franked amount** is the amount (if any) that is the class C franked amount of the earlier dividend.

#### **160ATI Estimated debit application may specify the rate used in determining the amount specified in the application**

An application made under section 160AQDAA or 160ASEK on or after 9 June 2000 and before 1 July 2000 may specify whether the amount specified in the application is based on a 36% or a 34% general company tax rate. If no rate is specified, the application is taken to specify that the amount specified in the application is based on a 36% general company tax rate.

### **14 Application of amendments**

- (1) The amendment made by item 1 applies to:
  - (a) franking deficit tax for franking years ending on or after 1 July 2000; and
  - (b) deficit deferral tax in relation to instalments under section 221AZK paid during a franking year ending on or after 1 July 2000.
- (2) The amendment made by item 2 applies to:
  - (a) the payment of a class C franked dividend to a shareholder in a company on or after 1 July 2000; and
  - (b) a trust amount or partnership amount that relates, directly or indirectly, to the payment of a class C franked dividend to a shareholder in a company on or after 1 July 2000.
- (3) The amendment made by item 4 applies to dividends paid on or after 1 July 2000.

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- (4) The amendment made by item 5 applies to deficit deferral tax in relation to instalments under section 221AZK paid during a franking year ending on or after 1 July 2000.
- (5) The amendments made by items 7 and 8 apply to dividends paid on or after 1 July 2000.
- (6) The amendments made by items 9 to 12 apply to dividends that are current dividends for the purposes of section 160ASL of the *Income Tax Assessment Act 1936* and are paid on or after 1 July 2000.

## **Schedule 4—Infrastructure borrowings rebate**

### **Part 1—Amendments commencing on 1 July 2000**

#### ***Income Tax Assessment Act 1936***

**1 Paragraph 159GZZZZG(1)(d)**

Omit “36%”, substitute “34%”.

**2 Paragraph 159GZZZZG(2)(e)**

Omit “36%”, substitute “34%”.

**3 Paragraph 159GZZZZG(3)(e)**

Omit “36%”, substitute “34%”.

**4 Paragraph 159GZZZZG(4)(e)**

Omit “36%”, substitute “34%”.

**5 Application of amendments**

The amendments made by this Part apply to assessments for the 2000-01 year of income and later years of income.

## **Part 2—Amendments commencing on 1 July 2001**

### ***Income Tax Assessment Act 1936***

#### **6 Paragraph 159GZZZZG(1)(d)**

Omit “34%”, substitute “30%”.

#### **7 Paragraph 159GZZZZG(2)(e)**

Omit “34%”, substitute “30%”.

#### **8 Paragraph 159GZZZZG(3)(e)**

Omit “34%”, substitute “30%”.

#### **9 Paragraph 159GZZZZG(4)(e)**

Omit “34%”, substitute “30%”.

#### **10 Application of amendments**

The amendments made by this Part apply to assessments for the 2001-02 year of income and later years of income.

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## Schedule 5—Venture capital franking rebates

### *Income Tax Assessment Act 1936*

#### **1 Subsections 124ZM(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) If a company pays a dividend to a shareholder at a time when the company is a PDF, so much (if any) of the dividend as has not been franked in accordance with section 160AQF is exempt from income tax.
- (1A) The rest of this section applies to so much of the dividend as has been franked.

#### *Usual case*

- (1B) Subsections (2) to (8) (inclusive) apply if the assessable income of a year of income of a taxpayer who or that is:
  - (a) a company or a natural person (other than a company or natural person in the capacity of a trustee); or
  - (b) a corporate unit trust in relation to that year of income; or
  - (c) a public trading trust in relation to that year of income; or
  - (d) an eligible entity within the meaning of Part IX in relation to that year of income;

would (apart from subsection (2)) include:

- (e) the franked amount of the dividend; or
- (f) a trust amount or partnership amount in relation to the dividend in relation to which there would be a flow-on franking amount.

This subsection does not apply to cases dealt with in subsections (1C) and (1D).

#### *Taxpayers who qualify for venture capital franking rebate*

- (1C) If a taxpayer (other than a life assurance company) is entitled to a venture capital franking rebate in relation to the dividend under section 160ASEP, then:

- (a) so much of the franked amount of the dividend as is venture capital franked is exempt income of the taxpayer; and
  - (b) the remaining franked amount is, subject to subsection (3), exempt income of the taxpayer.
- (1D) If a life assurance company is entitled to a venture capital franking rebate in relation to the dividend under section 160ASEP, then:
  - (a) the amount worked out using the following formula is exempt income of the life assurance company:
$$\text{Venture capital franked amount} \times \frac{\text{CS / RA income}}{\text{Total income}}$$
where:
    - CS/RA income** is the amount of the life assurance company's assessable income for the year of income in which the dividend is received that is allocated to the CS/RA class of business under subsection 116CE(4).
    - total income** is the life assurance company's assessable income for the year of income in which the dividend is paid.
    - venture capital franked amount** has the meaning given by subsection (9); and
  - (b) the remaining franked amount is, subject to subsection (3), exempt income of the life assurance company.
- (2) Subject to subsection (3), the following is exempt income of the taxpayer:
  - (a) if paragraph (1B)(e) applies—the franked amount;
  - (b) if paragraph (1B)(f) applies—so much of the trust amount or partnership amount as would constitute the flow-on franking amount.
- (3) Paragraphs (1C)(b) and (1D)(b) and subsection (2) do not exempt, and are taken never to have exempted, an amount if the taxpayer's return of income of the year of income is prepared on the basis that the amount is included in the taxpayer's assessable income of that year.

## 2 Subsection 124ZM(9)

Insert:

***remaining franked amount*** means:

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- (a) in a case where the taxpayer is not a life assurance company—so much of the franked amount of the dividend as exceeds the venture capital franked amount; and
- (b) in a case where the taxpayer is a life assurance company—so much of the franked amount of the dividend as exceeds the amount worked out under paragraph (1D)(a).

### **3 Subsection 124ZM(9)**

Insert:

*venture capital franked amount* for a dividend means so much of the dividend as has been venture capital franked in accordance with section 160ASEL.

### **4 Section 160APA (at the end of paragraph (a) of the definition of *applicable general company tax rate*)**

Add:

- (iv) the calculation of a venture capital debit under section 160ASEH in relation to a year of income;

### **5 Section 160APA (after paragraph (aa) of the definition of *applicable general company tax rate*)**

Insert:

- (ab) in relation to the class C franking credit that arises under section 160APVI on the payment of venture capital deficit tax by a PDF in respect of a franking year—the general company tax rate used to work out the amount of the venture capital deficit tax;

### **6 Section 160APA (definition of *class C franking account assessment*)**

Repeal the definition, substitute:

*class C franking account assessment* means:

- (a) the ascertainment of the class C franking account balance and of any class C franking deficit tax payable; or
- (b) the ascertainment of the venture capital sub-account balance within the class C franking account and of any venture capital deficit tax payable.

**7 Section 160APA (definition of *estimated debit*)**

Repeal the definition, substitute:

*estimated debit* means:

- (a) an estimated class A debit; or
- (b) an estimated class B debit; or
- (c) an estimated class C debit; or
- (d) an estimated venture capital debit.

**8 Section 160APA (definition of *estimated debit determination*)**

Repeal the definition, substitute:

*estimated debit determination* means:

- (a) an estimated class A debit determination; or
- (b) an estimated class B debit determination; or
- (c) an estimated class C debit determination; or
- (d) an estimated venture capital debit determination.

**9 Section 160APA**

Insert:

*estimated venture capital debit* means an estimated venture capital debit specified in an estimated venture capital debit determination.

**10 Section 160APA**

Insert:

*estimated venture capital debit determination* means a determination made by the Commissioner under section 160ASEK.

**11 Section 160APA (definition of *franking deficit tax*)**

Repeal the definition, substitute:

*franking deficit tax* means:

- (a) class A franking deficit tax; or
- (b) class B franking deficit tax; or
- (c) class C franking deficit tax; or
- (d) venture capital deficit tax.



## **12 Section 160APA**

Insert:

*qualifying SME investment* means an SME investment that is made in accordance with Division 1 of Part 4 of the *Pooled Development Funds Act 1992*.

## **13 Section 160APA**

Insert:

*section 124ZZB SME assessable income* for a PDF for a year of income is the assessable income allocated to the PDF's SME assessable income for the year of income under section 124ZZB.

## **14 Section 160APA**

Insert:

*SME investment* has the same meaning as in section 124ZS.

## **15 Section 160APA**

Insert:

*venture capital deficit tax* means tax payable in accordance with the Venture Capital Deficit Tax Act.

Note: See also section 160ASEN.

## **16 Section 160APA**

Insert:

*Venture Capital Deficit Tax Act* means the *New Business Tax System (Venture Capital Deficit Tax) Act 2000*.

## **17 Section 160APA**

Insert:

*venture capital franked amount* for a dividend means so much of the dividend as has been venture capital franked in accordance with section 160ASEL.

## **18 Section 160APA**

Insert:

*venture capital franked dividend* means a dividend the whole or a part of which has been venture capital franked in accordance with section 160ASEL.

## 19 Section 160APA

Insert:

*venture capital sub-account* means a venture capital sub-account that a PDF maintains within its class C franking account.

Note: See section 160ASEB.

## 20 Section 160APA

Insert:

*venture capital sub-account balance*, in relation to a PDF, means:

- (a) if the PDF has a venture capital sub-account surplus—the amount of that surplus; and
- (b) if the PDF has a venture capital sub-account deficit—the amount of that deficit; and
- (c) in any other case—nil.

## 21 Section 160APA

Insert:

*venture capital sub-account deficit* means a deficit calculated under subsection 160ASEC(2).

## 22 Section 160APA

Insert:

*venture capital sub-account surplus* means a surplus calculated under subsection 160ASEC(1).

## 23 After section 160APVH

Insert:

### 160APVI Credit for PDF when it pays venture capital deficit tax

- (1) There arises, on the day on which a PDF pays venture capital deficit tax for a franking year, a class C franking credit equal to the adjusted amount in relation to:

- 
- (a) the amount paid; or
  - (b) if the amount paid was calculated under subsection 5(2) of the Venture Capital Deficit Tax Act—the amount worked out using the formula:

$$\text{Amount paid} \times \frac{100}{130}$$

- (2) The credit under subsection (1) is reduced by the amount (if any) of the class C franking deficit at the end of the franking year.

**24 After subsection 160AQCBA(2)**

Insert:

- (2A) This section applies to the streaming of venture capital franking rebate benefits as if:
  - (a) references to a franking debit include references to a venture capital debit; and
  - (b) references to the franked amount of the dividend include references to the venture capital franked amount of the dividend.

**25 Paragraph 160AQCBA(16)(c)**

Omit “or 160AQY”, substitute “, 160AQY or 160ASEP”.

**26 Subparagraph 160AQCBA(17)(a)(ii)**

Omit “or 160AQY”, substitute “, 160AQY or 160ASEP”.

**27 At the end of subsection 160AQCBA(17)**

Add:

- ; (c) if the relevant franking benefit is a franking rebate under section 160ASEP—the first shareholder qualifies for franking rebates under Subdivision G of Division 12A in relation to the year of income and the other shareholder does not.

**28 Subparagraph 160AQH(1)(b)(i)**

Omit “and the class C franked amount of the dividend (if any)”, substitute “, the class C franked amount of the dividend (if any) and, if the company is a PDF, the venture capital franked amount of the dividend (if any)”.

## **29 At the end of paragraph 160AQH(1)(b)**

Add:

- (vii) if the dividend is a venture capital franked dividend—a statement to the effect that the venture capital franking is only relevant for a taxpayer who is:
  - (A) the trustee of a fund that is a complying superannuation fund for the purposes of Part IX in relation to the year of income; or
  - (B) the trustee of a fund that is a complying ADF for the purposes of Part IX in relation to the year of income; or
  - (C) the trustee of a unit trust that is a pooled superannuation trust for the purposes of Part IX in relation to the year of income; or
  - (D) a life assurance company; or
  - (E) a registered organisation; and

## **30 After subsection 160AQJ(1B)**

Insert:

- (1C) The amount of tax that a PDF would otherwise be liable to pay under subsection (1B) in relation to a franking year is reduced by the amount (if any) of the venture capital deficit tax the PDF is liable to pay in relation to that franking year under section 160ASEN.

## **31 After subsection 160AQJC(2)**

Insert:

- (2A) If the company is a PDF, the class C deficit deferral amount is reduced by the extent (if any) to which the refund gives rise to, or increases, a liability of the PDF to venture capital deficit tax because of the operation of subsection 4(2) of the Venture Capital Deficit Tax Act. The reduction under this subsection is reduced by

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the extent (if any) to which the refunds produced a reduction in the PDF's class C franking deficit tax under subsection 160AQJ(1C).

### **32 At the end of section 160AQT**

Add:

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

- (a) because of subsection 124ZM(3), an amount of a dividend paid to a shareholder by a company is not exempt income of the shareholder under paragraph 124ZM(1C)(b) or 124ZM(1D)(b); and
- (b) the dividend is not otherwise exempt income of the shareholder;

then:

- (c) the dividend is taken not to be exempt income of the shareholder; and
- (d) subsections (1AB) and (1C) apply to the dividend as if references to the franked amount of the dividend in those subsections were references to the remaining franked amount as defined in section 124ZM.

### **33 Subsection 160ARXA(1) (subparagraph (a)(iii) of the definition of *franking tax shortfall*)**

Repeal the subparagraph, substitute:

- (iii) the class C franking tax shortfall in relation to the company and the franking year; or
- (iv) the venture capital franking tax shortfall in relation to the company and the franking year; and

### **34 Subsection 160ARXA(1) (at the end of the definition of *statement franking tax*)**

Add:

- ; or (d) the venture capital statement franking tax in relation to the company, the franking year and the time.

### **35 Subsection 160ARXA(1)**

Insert:

*venture capital franking tax shortfall*, in relation to a PDF and a franking year, means the amount (if any) by which the PDF's

venture capital statement franking tax for that year at the time at which it was lowest is less than the PDF's venture capital proper franking tax for that year.

**36 Subsection 160ARXA(1)**

Insert:

*venture capital proper franking tax*, in relation to a PDF and a franking year, means the venture capital deficit tax properly payable by the PDF in respect of that year.

**37 Subsection 160ARXA(1)**

Insert:

*venture capital statement franking tax*, in relation to a PDF, a franking year and a time, means the venture capital deficit tax that would have been payable by the PDF in respect of that year if the tax were assessed at that time taking into account taxation statements by the PDF.

**38 Subparagraph 160ARY(1)(a)(ii)**

After "160AQU", insert "or 160ASEP".

**39 Paragraph 160ARY(1)(b))**

After "160AQU" (twice occurring), insert "or 160ASEP".

**40 At the end of subsection 160ARZ(1)**

Add:

; and (d) the venture capital deficit tax (if any) payable by the company for the franking year.

**41 After sub-subparagraph 160ARZD(1)(c)(ii)(BA)**

Insert:

(BB) if the shortfall is a venture capital franking tax shortfall—the venture capital deficit tax that would have been payable by the company for that year if the tax were assessed on the basis of the company's return under subsection 160ARE(1) or 160ARF(1) in relation to that year;

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## **42 Paragraph 160ASC(b)**

Repeal the paragraph, substitute:

- (b) a reference to income and expenditure were a reference to matters relevant to ascertaining:
  - (i) the class A franking account balance; or
  - (ii) the class B franking account balance; or
  - (iii) the class C franking account balance; or
  - (iv) the venture capital sub-account balance;
 and, if the company is a former exempting company, includes a reference to matters relevant to working out the class A exempting account balance or the class C exempting account balance; and

## **43 At the end of section 160ASC**

Add:

- (2) A PDF does not need to maintain records under this section in relation to a venture capital sub-account if the PDF does not establish a venture capital sub-account.

## **44 After Division 12 of Part IIIAA**

Insert:

### **Division 12A—Venture capital franking**

#### **Subdivision A—Establishing a venture capital sub-account within the class C franking account**

#### **160ASEB PDF may establish a venture capital sub-account within its class C franking account**

A PDF may establish a venture capital sub-account within its class C franking account.

**Subdivision B—Ascertaining whether there is a surplus or deficit in the venture capital sub-account**

**160ASEC Ascertainment of surplus or deficit**

- (1) The surplus in a PDF's venture capital sub-account at a particular time in a franking year is the excess calculated using the formula:

$$\begin{array}{r} \text{Venture capital credits} \\ \text{at that time} \end{array} - \begin{array}{r} \text{Venture capital debits} \\ \text{at that time} \end{array}$$

where:

*venture capital credits at that time* has the meaning given by subsection (4).

*venture capital debits at that time* has the meaning given by subsection (4).

- (2) The deficit in a PDF's venture capital sub-account at a particular time in a franking year is the excess calculated using the formula:

$$\begin{array}{r} \text{Venture capital debits} \\ \text{at that time} \end{array} - \begin{array}{r} \text{Venture capital credits} \\ \text{at that time} \end{array}$$

where:

*venture capital credits at that time* has the meaning given by subsection (4).

*venture capital debits at that time* has the meaning given by subsection (4).

- (3) The venture capital sub-account may be in deficit even though the class C franking account as a whole is in surplus. Similarly, the venture capital sub-account may be in surplus even though the class C franking account as a whole is in deficit.

Note: This can happen because:

- (a) only amounts coming from particular sources can be credited or debited to the venture capital sub-account; and
- (b) the PDF may anticipate future venture capital credits to a greater or lesser extent than it anticipates future class C franking credits generally; and
- (c) the venture capital credits and debits do not necessarily arise at the same time as the relevant class C franking credits and debits (see subsections 160ASED(4) and (9)).



- (4) In this section:

*venture capital credits* at a particular time in a franking year is the total of the PDF's venture capital credits arising in the franking year and before that time.

*venture capital debits* at a particular time in a franking year is the total of the PDF's venture capital debits arising in the franking year and before that time.

## **Subdivision C—Venture capital credits and debits**

### **160ASED Venture capital credits and debits**

#### *Venture capital credits*

- (1) A class C franking credit of a PDF is a venture capital credit of the PDF to the extent to which it is reasonably attributable to a payment of tax by the PDF in relation to a CGT event in relation to a qualifying SME investment of the PDF. This subsection does not apply to a class C franking credit that arises under subsection 160APL(3).

Note 1: Venture capital credits also arise under:

- (a) section 160ASEE (carry-forward of surplus from previous franking year); and
- (b) section 160ASEF (lapsing of estimated venture capital debit determinations); and
- (c) subsection 160ASEN(3) (receipt of refund that creates or increases venture capital sub-account deficit).

Note 2: Subsection 160APL(3) exclusion—the venture capital sub-account has its own provision for the carrying forward of end of franking year surpluses (see section 160ASEE).

- (2) In determining the extent to which the class C franking credit is reasonably attributable to a payment of tax by the PDF in relation to the CGT event, have regard to:
- (a) the extent to which the credit can reasonably be attributed to a payment of tax by the PDF in relation to its section 124ZZB SME assessable income for a year of income; and
  - (b) the extent to which the section 124ZZB SME assessable income can reasonably be attributed to the CGT event.

- (3) Subject to subsection (4), the venture capital credit arises at the same time as the class C franking credit arises.
- (4) Before a PDF's assessment day (the *assessment day*) for a year of income, the PDF may elect to have the venture capital credits that would otherwise arise under subsection (1) during that year of income arise on the assessment day. If the PDF makes this election, the venture capital credits:
  - (a) are taken not to have arisen on the day on which the relevant class C franking credits arose; and
  - (b) are taken to arise on the assessment day.
- (5) The PDF's *assessment day* for a year of income is the earlier of:
  - (a) the day on which the PDF furnishes its return of income for the year of income; or
  - (b) the day on which the Commissioner makes an assessment of the amount of the PDF's taxable income for that year of income under section 166.

*Venture capital debits*

- (6) A class C franking debit of a PDF is a venture capital debit of the PDF to the extent to which it is reasonably attributable to a reduction amount in relation to a venture capital credit of the PDF.

Note: Venture capital debits also arise under:

- (a) section 160ASEG (declaration is made attaching venture capital credits to a dividend); and
  - (b) section 160ASEI (estimated venture capital debit determinations); and
  - (c) subsection 160ASEM(2) (failure to empty the sub-account in certain circumstances); and
  - (d) section 160AQCBA (streaming venture capital franking rebate benefits) (see section 160ASEJ); and
  - (e) section 160ASEH (PDF's total venture capital credits for the franking year exceeding the PDF's CGT limit for the relevant year of income).
- (7) A *reduction amount* in relation to a venture capital credit of the PDF is:
    - (a) an amount received as a refund of a payment of tax; or

- 
- (b) an amount, in respect of a credit under paragraph 221AZM(1)(b) or (c), applied by the Commissioner against a liability of the PDF; or
  - (c) an amount applied by the Commissioner against a liability of the PDF; or
  - (d) a reduction mentioned in section 160APZ;  
to the extent to which the amount or reduction is attributable to a payment of tax that gives rise to a venture capital credit of the PDF.
- (8) Subject to subsection (9), the venture capital debit arises at the same time as the relevant class C franking debit arises.
  - (9) If the venture capital credit referred to in subsection (7) does not arise until after the relevant class C franking debit arises, the venture capital debit arises when the venture capital credit arises.

Note: This subsection deals with the situation in which the PDF elects under subsection (4) to have its venture capital credits arise on its assessment day. It brings the related intervening venture capital debits to account on the same day.

#### **160ASEE Venture capital credit—carry forward of venture capital sub-account surplus**

If a PDF has a venture capital sub-account surplus at the end of a franking year, there arises at the beginning of the next franking year a venture capital credit of the PDF equal to that venture capital sub-account surplus.

#### **160ASEF Venture capital credit—lapsing of estimated venture capital debit determination**

- (1) On the day on which the termination time in relation to an estimated venture capital debit of a PDF occurs, there arises a venture capital credit of the PDF equal to the estimated venture capital debit.
- (2) If, on a particular day, the Commissioner serves on a PDF a notice of an estimated venture capital debit determination that is in substitution for an earlier determination, there arises on that day a venture capital credit of the PDF equal to the amount of the venture capital debit that arose because of the earlier determination.

**160ASEG Venture capital debit—declaration made under section 160ASEL**

A venture capital debit of a PDF arises when the PDF makes a declaration under section 160ASEL that a dividend is a venture capital franked dividend to a specified extent. The amount of the debit is the venture capital franked amount of the dividend.

Note: The debit occurs as soon as the declaration is made (and not when the dividend is later paid). By way of contrast, the debit made to the class C franking account under section 160AQB only occurs when the dividend is paid.

**160ASEH Venture capital debit—CGT limit for year of income exceeded**

- (1) A venture capital debit of a PDF arises on the last day of a year of income if the PDF's net venture capital credits for the year of income exceeds whichever is the lesser of:
  - (a) the adjusted amount of the PDF's CGT limit for that year of income; and
  - (b) the adjusted amount of the tax paid by the PDF on its SME income component for that year of income.

The amount of the debit is equal to the excess.

- (2) The PDF's *net venture capital credits* for the year of income is:

Venture capital credits – Venture capital debits

where:

*venture capital credits* is the total venture capital credits of the PDF that arise under subsection 160ASED(1) and relate to tax in relation to taxable income of that year of income.

*venture capital debits* is the total venture capital debits of the PDF that relate to tax in relation to taxable income of that year of income.

Note: The venture capital credits that are counted for the purposes of this subsection do not include the credit that carries over the surplus in the venture capital sub-account from one franking year to the next. This arises under section 160ASEE and not under subsection 160ASED(1).

- (3) The PDF's *CGT limit* for the year of income is worked out using the formula:

$$\frac{\text{Ordinary capital gains from venture capital CGT events}}{\text{Ordinary capital gains from all SME CGT events}} \times \frac{\text{Section 124ZZB SME assessable income}}{\text{SME tax rate}}$$

where:

**ordinary capital gains from all SME CGT events** means the total of the ordinary capital gains for the year of income for CGT events in relation to SME investments of the PDF.

**ordinary capital gains from venture capital CGT events** means the total of ordinary capital gains for the year of income for CGT events in relation to shares in companies that are qualifying SME investments.

**SME tax rate** is the tax rate applicable to the SME income component of the PDF for the year of income.

Note: **Section 124ZZB SME assessable income** is defined in section 160APA.

- (4) The **tax paid by the PDF on its SME income component** for the year of income is the tax paid by the PDF on its SME income component after allowing tax offsets referred to in section 4-10 of the *Income Tax Assessment Act 1997*.

- (5) In this section:

**ordinary capital gain** has the meaning given by section 124ZW.

**SME income component** has the same meaning as in section 124ZU.

**SME investment** has the meaning given by section 124ZW.

## **160ASEI Venture capital debit—estimated venture capital debit determination**

If, on a particular day, the Commissioner serves on a PDF notice of an estimated venture capital debit determination, there arises on that day a venture capital debit of the PDF equal to the estimated venture capital debit specified in the notice.

**160ASEJ Venture capital debit—PDF that streams dividends or other benefits**

Under section 160AQCBA, a venture capital debit of a PDF arises if:

- (a) the PDF streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its shareholders in a way mentioned in subsection 160AQCBA(2); and
- (b) the Commissioner makes a determination under paragraph 160AQCBA(3)(a) in respect of a dividend paid or other benefit given by the PDF; and
- (c) the franking credit benefit obtained relates to rebates allowable under section 160ASEP.

**Subdivision D—Determination of estimated venture capital debit**

**160ASEK Determination of estimated venture capital debit**

- (1) If a PDF:
  - (a) has taken liability reduction action in relation to a payment of tax for which a venture capital credit arises under subsection 160ASED(1); or
  - (b) has paid a company tax instalment for which a venture capital credit arises under subsection 160ASED(1);the PDF may lodge an application with the Commissioner for:
  - (c) the determination of an estimated venture capital debit in relation to the liability reduction action or the company tax instalment; or
  - (d) the determination of such an estimated venture capital debit in substitution for an earlier determination.
- (2) An estimated venture capital debit in relation to a company tax instalment must relate to the refund of that instalment under section 221AZL or 221AZQ.
- (3) The application must:
  - (a) be made before the termination time; and
  - (b) be in the approved form; and

- 
- (c) specify the amount of the estimated venture capital debit applied for.
  - (4) The Commissioner:
    - (a) may determine an estimated venture capital debit not greater than the amount specified in the application; and
    - (b) must serve notice of any such determination on the PDF.
  - (5) If:
    - (a) a PDF lodges an application with the Commissioner on a particular day (the ***application day***); and
    - (b) at the end of the 21st day after the application day, the Commissioner has neither:
      - (i) served notice of an estimated venture capital debit determination on the PDF; nor
      - (ii) refused to make an estimated venture capital debit determination;

the Commissioner is taken, on the 22nd day after the application day, to have:

    - (c) determined an estimated venture capital debit in accordance with the application; and
    - (d) served notice of the determination on the PDF.
  - (6) A notice of an estimated venture capital debit determination has no effect if it is served after the termination time.

## **Subdivision E—Venture capital franking declaration**

### **160ASEL PDF with a venture capital sub-account may declare class C franked dividend to be a venture capital franked dividend**

- (1) A PDF that has a venture capital sub-account may frank a dividend paid by the PDF as a venture capital franked dividend in accordance with this section if:
  - (a) the dividend is a class C franked dividend; and
  - (b) the dividend is paid under a resolution under which:
    - (i) dividends are to be paid to all shareholders in the PDF; and

- (ii) the amount of the dividend per share is the same for each of those dividends.
- (2) The dividend is venture capital franked to the extent of the amount worked out using the formula in subsection (3) if:
  - (a) the PDF declares the dividend to be a venture capital franked dividend to a specified extent in the declaration that it makes under subsection 160AQF(1AAA) in relation to the dividend; and
  - (b) the extent to which the dividend is declared to be a venture capital franked dividend is the same for all dividends to be paid under the resolution.
- Note 1: Section 160ASEM requires the PDF to declare the dividend to be a venture capital franked dividend if the venture capital sub-account is in surplus when the subsection 160AQF(1AAA) declaration is made.
- Note 2: The PDF may anticipate future credits to the sub-account by making a declaration under this subsection even though the sub-account is in deficit or by making a declaration under this subsection that will put the sub-account into deficit.
- Note 3: If this subsection is not satisfied, the dividend is not a venture capital franked dividend.
- (3) Subject to subsection (4), the extent to which the dividend is venture capital franked is worked out using the formula:  
$$\text{Amount of dividend} \times \text{Percentage specified under paragraph (2)(a)}$$
- (4) If the amount worked out under subsection (3) exceeds the class C franked amount of the dividend, the extent to which the dividend is venture capital franked is reduced by the amount of the excess.

**160ASEM Requirement to empty the venture capital sub-account when PDF has a venture capital sub-account surplus**

- (1) If a PDF:
    - (a) pays dividends under a resolution under which the dividends are to be paid to all shareholders in the PDF; and
    - (b) makes a declaration under subsection 160AQF(1AAA) in relation to the dividends; and
    - (c) has a surplus in its venture capital sub-account immediately before it makes the declaration;the PDF must make a declaration under section 160ASEL so that:
-



- 
- (d) the dividend is venture capital franked to the same extent to which it is class C franked; or
  - (e) there is a nil surplus, or a deficit, in the sub-account immediately after the declaration is made.
- (2) A venture capital debit of the PDF arises when a dividend is paid if the PDF does not venture capital frank the dividend to the extent required by subsection (1). The amount of the debit is:
- $$\text{Subsection (1) franked amount} - \text{Actual franked amount}$$
- where:
- actual franked amount*** is the venture capital franked amount of the dividend.
- subsection (1) franked amount*** is the amount that would have been the venture capital franked amount of the dividend if it had been franked in accordance with subsection (1).

## **Subdivision F—Venture capital deficit tax**

### **160ASEN Liability to venture capital deficit tax**

- (1) A PDF is liable to pay venture capital deficit tax if it has a venture capital sub-account deficit at the end of a franking year.
  - Note 1: Venture capital deficit tax is imposed by the Venture Capital Deficit Tax Act.
  - Note 2: Under subsection 4(2) of that Act, for the purposes of working out the PDF's liability for venture capital deficit tax, a refund of income tax in relation to the PDF's taxable income for a year of income that is received within 6 months after the end of the franking year that ends in or at the same time as the year of income is taken to have been received on the last day of the franking year.
- (2) The Commissioner may, in the Commissioner's discretion, remit part of the venture capital deficit tax if the amount of the venture capital deficit tax is worked out under subsection 5(2) of the Venture Capital Deficit Tax Act. The amount remitted must not exceed the difference between:
  - (a) the amount of the venture capital deficit tax; and
  - (b) the amount that would have been the amount of that tax if it had been calculated under subsection 5(1) of the Venture Capital Deficit Tax Act.

(3) If:

- (a) a PDF receives a refund of income tax in relation to the PDF's taxable income for a year of income; and
- (b) the receipt of the refund creates or increases a deficit in the PDF's venture capital sub-account under subsection 4(2) of the Venture Capital Deficit Tax Act;

a venture capital credit of the PDF arises equal to the extent to which the receipt of the refund creates or increases that deficit. The credit arises when the refund is received.

### **Subdivision G—Venture capital franking rebates for certain taxpayers**

#### **160ASEO Taxpayers who qualify for venture capital franking rebates**

- (1) To qualify for franking rebates under this Subdivision in relation to dividends that a PDF pays in a year of income, a taxpayer must be:
  - (a) the trustee of a fund that is a complying superannuation fund for the purposes of Part IX in relation to the year of income; or
  - (b) the trustee of a fund that is a complying ADF for the purposes of Part IX in relation to the year of income; or
  - (c) the trustee of a unit trust that is a pooled superannuation trust for the purposes of Part IX in relation to the year of income; or
  - (d) a life assurance company; or
  - (e) a registered organisation.
- (2) A trustee of a fund does not qualify under paragraph (1)(a) or (b) if the fund is a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*).

#### **160ASEP Venture capital franking rebate**

##### *General rule for rebate*

- (1) Subject to subsections (2) and (3), if:
  - (a) a PDF pays a dividend to a shareholder in a year of income; and

- (b) the dividend is a venture capital franked dividend to a particular extent; and
- (c) the dividend is not exempt income of the shareholder (disregarding section 124ZM); and
- (d) the dividend is not paid as part of a dividend stripping operation; and
- (e) the shareholder is a resident at the time the dividend is paid; and
- (f) the shareholder qualifies for franking rebates under this Subdivision in relation to the dividends paid by the PDF in that year of income; and
- (g) the shareholder is not:
  - (i) a partnership; or
  - (ii) a trustee (other than the trustee of an eligible entity within the meaning of Part IX); and
- (h) the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A; and
- (i) if the shareholder is a life assurance company—the assets of the shareholder from which the dividend was derived were included in the insurance funds of the shareholder at any time during the period:
  - (i) starting at the beginning of the year of income of the shareholder in which the dividend was paid; and
  - (ii) ending at the time when the dividend was paid;

the shareholder is entitled to a rebate of tax in the shareholder's assessment in respect of income of the year of income equal to the amount worked out using the following formula:

$$\text{Venture capital franked amount of the dividend} \times \frac{\text{Company tax rate}}{1 - \text{Company tax rate}}$$

where:

**company tax rate** means the applicable general company tax rate.

*Amount of the rebate for life assurance companies*

- (2) If the shareholder is a life assurance company, the rebate the shareholder is entitled to is worked out using the formula:

$$\text{Subsection (1) rebate} \times \frac{\text{CS / RA income}}{\text{Total income}}$$

where:

**CS/RA income** is the amount of the shareholder's assessable income for the year of income that is allocated to the CS/RA class of business under subsection 116CE(4).

**subsection (1) rebate** is the rebate that the shareholder would otherwise be entitled to under subsection (1).

**total income** is the shareholder's assessable income for the year of income.

*Rebate for registered organisations*

- (3) If the shareholder is a registered organisation within the meaning of section 116E, the shareholder is entitled to the rebate under subsection (1) in relation to a dividend only if the dividend is income derived from the shareholder's CS/RA business.

## 45 Application of amendments

The amendments made by this Schedule apply to CGT events in relation to a qualifying SME investment of a PDF that happen on or after the day on which Schedule 3 to the *New Business Tax System (Capital Gains Tax) Act 1999* commences.

## Schedule 6—Low-value pools

### *Income Tax Assessment Act 1997*

#### **1 Section 10-5 (table item headed “depreciation”)**

Repeal the item, substitute:

##### **depreciation**

excess of termination value over written down value	
generally .....	42-190, 42-192, 42-223
for some cars .....	42-240
lesser of termination value or cost (plant pooled under Subdivision 42-L).....	42-390
excess of termination value over pool closing balance (low-value pools) .....	42-475(3)
leased plant or lease, disposal of .....	45-5
leasing entity, disposal of .....	45-15, 45-20
partnership interest, disposal of .....	45-10

#### **2 Subsection 42-20(1)**

After “\*pool”, insert “or a \*low-value pool”.

#### **3 Subsection 42-20(1)**

After “Subdivision 42-L”, insert “or Subdivision 42-M”.

#### **4 At the end of subsection 42-30(2)**

Add:

; or (d) section 42-475 for plant in a \*low-value pool.

#### **5 After subsection 42-90(3)**

Insert:

- (3A) If the last entity had the \*plant in a \*low-value pool for the income year in which the \*balancing adjustment event occurred, its cost may be limited to its \*termination value.

## 6 Section 42-167

Repeal the section, substitute:

### 42-167 Plant whose cost does not exceed \$300

- (1) Despite sections 42-160 and 42-165, your deduction is the \*plant's \*cost for the income year in which you become its owner or \*quasi-owner if:
  - (a) that cost does not exceed \$300; and
  - (b) you:
    - (i) became the owner or quasi-owner of the plant under a contract entered into before 1 July 2000; or
    - (ii) constructed it and the construction started before that day; or
    - (iii) acquired it in some other way before that day.
- (2) Despite sections 42-160 and 42-165, your deduction is the \*plant's \*cost for the income year in which you become its owner or \*quasi-owner (regardless of when you acquired or constructed it) if:
  - (a) that cost does not exceed \$300; and
  - (b) you are a \*small business taxpayer for that income year.

## 7 At the end of Division 42

Add:

### Subdivision 42-M—Low-value pools

#### Guide to Subdivision 42-M

#### 42-445 What this Subdivision is about

This Subdivision allows you to calculate your depreciation deductions for certain plant through a low-value pool.

#### Table of sections

##### Operative provisions

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42-450	Creating a low-value pool
42-455	Allocating plant to low-value pools
42-460	Rules for plant in low-value pools
42-465	Private or exempt use of plant
42-470	Deductions for plant in low-value pools
42-475	Balancing adjustment events

*[This is the end of the Guide.]*

## **Operative provisions**

### **42-450 Creating a low-value pool**

You may choose to create a **low-value pool** by recording in writing the first income year in which you allocate \*plant to it.

### **42-455 Allocating plant to low-value pools**

- (1) You may choose to allocate \*low-cost plant to a \*low-value pool for the income year in which you become its owner or \*quasi-owner.
- (2) **Low-cost plant** is \*plant whose \*cost is less than \$1,000.
- (3) You may also choose to allocate \*plant to a \*low-value pool for an income year if:
  - (a) you have deducted or can deduct an amount for depreciation of the plant for a previous income year using the \*diminishing value method; and
  - (b) the \*undeducted cost of the plant at the start of the income year is less than \$1,000.

### **42-460 Rules for plant in low-value pools**

- (1) Once you have made a choice to allocate \*low-cost plant to a \*low-value pool for an income year, you must allocate all low-cost plant of which you become the owner or \*quasi-owner in that income year or a later one to such a pool.
  - (2) However, you cannot allocate any \*plant to a \*low-value pool for an income year if you are a \*small business taxpayer for that year.
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- (3) Once you allocate \*plant to a \*low-value pool, it must remain in the pool.
- (4) You cannot allocate \*low-cost plant to a \*low-value pool if:
  - (a) its \*cost does not exceed \$300; and
  - (b) you:
    - (i) became the owner or \*quasi-owner of the plant under a contract entered into before 1 July 2000; or
    - (ii) constructed it and the construction started before that day; or
    - (iii) acquired it in some other way before that day.
- (5) You cannot allocate \*plant to a \*low-value pool if you have allocated it to a pool under Subdivision 42-L.

#### **42-465 Private or exempt use of plant**

- (1) When you allocate \*plant to a \*low-value pool, you must make an estimate of the percentage (if any) of your proposed use of the plant that will be for purposes other than the \*purpose of producing assessable income.
- (2) For \*low-cost plant, you must reduce its \*cost by an amount representing the percentage (if any) you estimated for it under subsection (1).
- (3) For \*plant referred to in subsection 42-455(3), you must reduce its \*undeducted cost at the start of the income year by that percentage.

#### **42-470 Deductions for plant in low-value pools**

- (1) You calculate your depreciation deduction for \*plant in a \*low-value pool for an income year in this way:
  - (a) take  $18\frac{3}{4}\%$  of the \*costs of \*low-cost plant you allocated to the pool for that year; and
  - (b) add to it  $37\frac{1}{2}\%$  of the sum of:
    - (i) the \*pool closing balance for the previous income year; and
    - (ii) the \*undeducted costs of plant, at the start of the income year, that you allocated to the pool for that year under subsection 42-455(3).



- (2) The ***pool closing balance*** of a \*low-value pool for an income year is the sum of:
- (a) the \*pool closing balance of the pool for the previous income year; and
  - (b) the \*costs of \*low-cost plant you allocated to the pool for that year; and
  - (c) the \*undeducted costs of any \*plant you allocated to the pool for that year under subsection 42-455(3) as at the start of that year;

less the depreciation deductions for the pool worked out under subsection (1).

Note: The pool closing balance may be reduced under section 42-475 if a balancing adjustment event happens.

#### **42-475 Balancing adjustment events**

- (1) If a \*balancing adjustment event happens to \*plant in a \*low-value pool in an income year, the \*pool closing balance for that year is reduced by the \*termination value of the plant.
- (2) If you had made an estimate for that \*plant under section 42-465, the \*pool closing balance for that year is reduced by that part of the \*termination value of the plant that represents the percentage of your use of the plant you estimated would be for the \*purpose of producing assessable income.
- (3) If the sum of the \*termination values, or the part of it, applicable under subsection (1) or (2) exceeds the \*pool closing balance of the pool for that year, the excess is included in your assessable income.

#### **8 Section 46-60**

After “Subdivision 42-L”, insert “or Subdivision 42-M”.

#### **9 Subsection 995-1(1)**

Insert:

***low-cost plant*** has the meaning given by section 42-455.

#### **10 Subsection 995-1(1)**

Insert:

*low-value pool* has the meaning given by section 42-450.

**11 Subsection 995-1(1)**

Insert:

*pool closing balance* has the meaning given by section 42-470.

***Income Tax Assessment Act 1936***

**12 Subsection 102AAZ(3)**

Omit “Subdivision 42-L”, substitute “Subdivisions 42-L and 42-M”.

**13 Section 317 (definition of *depreciation provision*)**

Omit “Subdivision 42-L”, substitute “Subdivisions 42-L and 42-M”.

**14 Subsection 398(3)**

Omit “Subdivision 42-L”, substitute “Subdivisions 42-L and 42-M”.

**15 Application of amendments**

- (1) The amendments made by this Schedule, to the extent that they relate to:
  - (a) plant whose cost does not exceed \$300; or
  - (b) low-cost plant (plant whose cost is less than \$1,000);apply to assessments for the income year in which 1 July 2000 occurs and later income years.
- (2) The amendments made by this Schedule, to the extent that they relate to plant that you can allocate to a low-value pool under subsection 42-455(3) of the *Income Tax Assessment Act 1997*, apply to assessments for the 2000-01 income year and later income years.

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[Minister’s second reading speech made in—  
*House of Representatives on 9 December 1999*  
*Senate on 6 March 2000*]

(240/99)

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