New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002

Act No. 117 of 2002 as amended

This compilation was prepared on 18 August 2010
taking into account amendments up to Act No. 75 of 2010

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

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

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Contents

An Act to implement a New Business Tax System, and for related purposes

1 Short title [*see* Note 1]

This Act may be cited as the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 December 2002
2. Schedules 1 and 2	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002
3. Schedule 3, Parts 1 and 2	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002
4. Schedule 3, Part 3	Immediately after the commencement of Schedule 10 to this Act	24 October 2002
5. Schedule 4	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
6. Schedule 5, items 1 to 12	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002
7. Schedule 5, item 13	Immediately after the commencement of Schedule 10 to this Act	24 October 2002
8. Schedule 5, item 14	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002
9. Schedules 6 to 15	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	24 October 2002
10. Schedule 16	The day on which this Act receives the Royal Assent	2 December 2002
11. Schedules 17 and 18	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*	29 June 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

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.

Schedule 1—Consolidation: assessable income and deductions spread over several membership or non-membership periods

Income Tax Assessment Act 1997

1 At the end of subsection 701-30(3)

Add:

; and (c) so that each relevant item is either:

(i) allocated to only one of the non-membership periods or to a period that is all or part of the rest of the income year; or

(ii) apportioned among such periods (for example, by Subdivision 716-A (see note to this subsection)).

2 Subsection 701-30(3) (note)

Repeal the note, substitute:

Note: Other provisions of this Part are to be applied in working out the taxable income or loss, for example:

- section 701-40 (Exit history rule); and
- Subdivision 716-A (about assessable income and deductions spread over several membership or non-membership periods); and
- section 716-850 (about grossing up threshold amounts for periods of less than 365 days).

Subdivision 716 also affects the tax position of the head company of a group of which the entity has been a subsidiary member for some but not all of the income year.

3 Before Division 717

Insert:

Division 716—Miscellaneous special rules

Table of Subdivisions

Subdivision 716-A—Assessable income and deductions spread over several membership or non-membership periods

Guide to Subdivision 716-A

716-1 What this Division is about

Some items of assessable income, and some deductions, are in effect spread over 2 or more income years. This Division apportions the assessable income or deduction for each of those income years among periods within the income year when an entity is, or is not, a subsidiary member of a consolidated group.

This Division also apportions in a similar way some items of assessable income, and some deductions, for a single income year.

Table of sections

[This is the end of the Guide.]

Operative provisions

716-15 Assessable income spread over 2 or more income years

(1) This section applies if, apart from this Part, a provision of this Act would spread an amount (the ***original amount***) over 2 or more income years (whether or not because of a choice) by including part of the original amount in the same entity's assessable income for each of those income years.

Head company's assessable income

(2) If:

(a) for some but not all of an income year, an entity is a *subsidiary member of a *consolidated group; and

(b) a part of the original amount:

(i) would have been included in the assessable income of the *head company of the group for that income year if the entity had been a subsidiary member of the group throughout that income year; but

(ii) would have been included in the entity's assessable income for that income year if throughout that income year the entity had not been a subsidiary member of any *consolidated group;

the head company's assessable income for that income year includes a proportion of that part.

Note 1: Examples of when paragraph (2)(b) could be satisfied are:

- the head company is the entity referred to in subsection (1), but its connection with the original amount passes to the entity when the entity ceases to be a subsidiary member of the group (see section 701-40 (Exit history rule));
- the entity is the entity referred to in subsection (1) but joins a consolidated group part way through the income year, so that its connection with the original amount passes to the head company of the group (see section 701-5 (Entry history rule)).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the part of the original amount will be included in the head company's assessable income for the income year, either:

- because the head company is the entity referred to in subsection (1); or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

(3) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the income year and the *spreading period, and on which the entity was a *subsidiary member of the group;

divided by:

- the number of days that are in both the income year and the spreading period.

Entity's assessable income for a non-membership period

(4) If:

(a) for some but not all of an income year, an entity is a *subsidiary member of a *consolidated group; and

(b) a part of the original amount would have been included in the entity's assessable income for that income year if throughout that income year the entity had *not* been a subsidiary member of any *consolidated group;

the assessable income of the entity for a part of the income year that is a non-membership period for the purposes of section 701-30 includes a proportion of that part.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group, this section does not affect the part of the original amount that is assessable income of the entity for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(5) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the non-membership period and the *spreading period;

divided by:

- the number of days that are in both the income year and the spreading period.

Spreading period

(6) The ***spreading period*** for the original amount is the period by reference to which the respective parts of the original amount that, apart from this Part, would be included in an entity's assessable income for the 2 or more income years are worked out.

716-25 Deductions spread over 2 or more income years

(1) This section applies if, apart from this Part, a provision of this Act would spread an amount (the ***original amount***) over 2 or more income years (whether or not because of a choice) by entitling the same entity to deduct part of the original amount for each of those income years.

(2) However, this section does not apply if the deductions would be for the decline in value of a *depreciating asset.

Note: Such deductions arise under Division 40 (Capital allowances) and Division 328 (Simplified tax system).

Head company's deduction

(3) If for some but not all of an income year an entity is a *subsidiary member of a *consolidated group, and:

(a) the *head company of the group could have deducted for that income year a part of the original amount if the entity had been a subsidiary member of the group throughout that income year; but

(b) the entity could have deducted that part for that income year if throughout that income year the entity had not been a subsidiary member of any *consolidated group;

the head company can deduct for that income year a proportion of that part.

Note 1: Examples of when paragraphs (3)(a) and (b) could be satisfied are set out in note 1 to subsection 716-15(2).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the head company can deduct that part for the income year, either:

- because the head company is the entity referred to in subsection (1) of this section; or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

(4) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the income year and the *spreading period, and on which the entity was a *subsidiary member of the group;

divided by:

- the number of days that are in both the income year and the spreading period.

Entity's deduction for a non-membership period

(5) If:

(a) for some but not all of an income year, an entity is a *subsidiary member of a *consolidated group; and

(b) the entity could have deducted for that income year a part of the original amount if throughout that income year the entity had *not* been a subsidiary member of any *consolidated group;

the entity can deduct a proportion of that part for a part of the income year that is a non-membership period for the purposes of section 701-30.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the part of the original amount that the entity can deduct for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(6) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the non-membership period and the *spreading period;

divided by:

- the number of days that are in both the income year and the spreading period.

Spreading period

(7) The ***spreading period*** for the original amount is the period by reference to which the respective parts of the original amount that, apart from this Part, an entity could deduct for the 2 or more income years are worked out.

Note: For example, under section 82KZMD of the *Income Tax Assessment Act 1936* an item of expenditure on something is spread over the period over which that thing is to be provided, which is called the eligible service period. Deductions for the item for a sequence of income years are worked out by reference to how much of that period falls within each of those income years.

[The next section is section 716-70]

716-70 Capital expenditure that is fully deductible in one income year

(1) This section applies if, apart from this Part, an entity could deduct for a single income year the whole of an amount (the ***original amount***) of capital expenditure by the entity.

(2) If for some but not all of an income year an entity is a *subsidiary member of a *consolidated group or *MEC group, and:

(a) the *head company of the group could have deducted the original amount for that income year if the entity had been a subsidiary member of the group throughout that income year; but

(b) the entity could have deducted the original amount for that income year if throughout that income year the entity had *not* been a subsidiary member of any consolidated group or MEC group;

the head company can deduct for that income year a proportion of the original amount.

Note 1: Examples of when paragraphs (2)(a) and (b) could be satisfied are set out in note 1 to subsection 716-15(2).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the head company can deduct the original amount for the income year, either:

- because the head company is the entity referred to in subsection (1) of this section; or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

(3) The proportion is worked out by multiplying the original amount by:

- the number of days that are in the *spreading period, and on which the entity was a *subsidiary member of the group;

divided by:

- the number of days that are in the spreading period.

Entity's deduction for a non-membership period

(4) If:

(a) for some but not all of an income year, an entity is a *subsidiary member of a *consolidated group or *MEC group; and

(b) the entity could have deducted the original amount for that income year if throughout that income year the entity had *not* been a subsidiary member of any consolidated group or MEC group;

the entity can deduct a proportion of the original amount for a part of the income year that is a non-membership period for the purposes of section 701-30.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the entity's ability to deduct the original amount for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(5) The proportion is worked out by multiplying the original amount by:

- the number of days that are in both the non-membership period and the *spreading period;

divided by:

- the number of days that are in the spreading period.

Spreading period

(6) The ***spreading period*** for the original amount:

(a) starts when, apart from this Part, an entity would become entitled to deduct the amount for an income year; and

(b) ends at the end of the income year.

Assessable income and deductions arising from share of net income of a partnership or trust, or from share of partnership loss

716-75 Application

Sections 716-80 to 716-100 apply if, apart from this Part:

(a) an amount would be included in an entity's assessable income for an income year under section 92 (about income and deductions of partner) of the *Income Tax Assessment Act 1936* in respect of a partnership; or

(b) an entity could deduct an amount for an income year under section 92 of that Act in respect of a partnership; or

(c) an amount would be included in an entity's assessable income for an income year under section 97 (Beneficiary of a trust estate who is not under a legal disability) of that Act in respect of a trust; or

(d) an amount would be included in an entity's assessable income for an income year under section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act in respect of a trust.

716-80 Head company's assessable income and deductions

(1) If for some but not all of the income year the entity is a *subsidiary member of a *consolidated group or *MEC group:

(a) the assessable income for that income year of the head company of the group includes the entity's share (worked out under section 716-90) of each of these:

(i) the total assessable income of the partnership or trust for the income year so far as it is reasonably attributable to a period, during the income year, throughout which the

entity was a *subsidiary member of the group but the partnership or trust was *not*;

(ii) a proportion (worked under subsection (2) of this section) of the total assessable income of the partnership or trust for the income year so far as it is *not* reasonably attributable to a particular period within the income year; and

(b) the head company of the group can deduct for that income year the entity's share (worked out under section 716-90) of each of these:

(i) the total deductions of the partnership or trust for the income year so far as they are reasonably attributable to a period covered by subparagraph (a)(i) of this subsection;

(ii) a proportion (worked under subsection (2) of this section) of the total deductions of the partnership or trust for the income year so far as they are *not* reasonably attributable to a particular period within the income year.

Note 1: If the entity is a subsidiary member of the group throughout the income year, the amount referred to in section 716-75 will be included in the head company's assessable income, or the head company can deduct that amount, for the income year because of section 701-1 (Single entity rule).

Note 2: While the entity, and the partnership or trust, are both subsidiary members of the group, section 701-1 (Single entity rule) attributes to the head company all assessable income and deductions giving rise to the amount referred to in section 716-75.

(2) The proportion is worked out by multiplying the amount concerned by:

- the number of days that are in the *spreading period, and on which the entity was a *subsidiary member of the group but the partnership or trust was *not*;

divided by:

- the number of days that are in the spreading period.

716-85 Entity's assessable income and deductions for a non-membership period

(1) The assessable income of the entity for a part of the income year that is a non-membership period for the purposes of section 701-30 includes the entity's share (worked out under section 716-90) of each of these:

(a) the total assessable income of the partnership or trust for the income year so far as it is reasonably attributable to the non-membership period;

(b) a proportion (worked under subsection (3) of this section) of the total assessable income of the partnership or trust for the income year so far as it is *not* reasonably attributable to a particular period within the income year.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the amount referred to in section 716-75 being assessable income of the entity for the income year.

(2) For a part of the income year that is a non-membership period for the purposes of section 701-30, the entity can deduct the entity's share (worked out under section 716-90) of each of these:

(a) the total deductions of the partnership or trust for the income year so far as they are reasonably attributable to the non-membership period;

(b) a proportion (worked under subsection (3) of this section) of the total deductions of the partnership or trust for the income year so far as they are *not* reasonably attributable to a particular period within the income year.

Note: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the entity's ability to deduct for the income year the amount referred to in section 716-75.

(3) The proportion is worked out by multiplying the amount concerned by:

- the number of days that are in both the non-membership period and the *spreading period;

divided by:

- the number of days that are in the spreading period.

716-90 Entity's share of assessable income or deductions of partnership or trust

(1) If paragraph 716-75(a) or (b) applies, the entity's share is worked out by dividing:

- the entity's individual interest as a partner in the net income of the partnership or in the partnership loss;

by:

- the amount of that net income or partnership loss;

and expressing the result as a percentage.

(2) If paragraph 716-75(c) or (d) applies, the entity's share is worked out by dividing:

- the share of the income of the trust to which the entity is presently entitled;

by:

- the amount of that income;

and expressing the result as a percentage.

716-95 Special rule if not all partnership or trust's assessable income or deductions taken into account in working out amount

(1) To the extent that the assessable income of the partnership or trust for the income year was *not* taken into account in working out the amount referred to in section 716-75, it is disregarded in applying paragraph 716-80(1)(a) or subsection 716-85(1).

Note: For example, if a trust's net income for an income year must be worked out under section 268-45 in Schedule 2F to the *Income Tax Assessment Act 1936*, the trust's assessable income attributed to a period (in the income year) for which it has a notional loss under section 268-30 of that Act is not taken into account.

(2) To the extent that the deductions of the partnership or trust for the income year were *not* taken into account in working out the amount referred to in section 716-75, they are disregarded in applying paragraph 716-80(1)(b) or subsection 716-85(2).

Note: For example, in the case described in the note to subsection (1) of this section, the trust's deductions attributed to that period are not taken into account in working out the trust's net income for the income year.

716-100 Spreading period

The ***spreading period*** for the amount referred to in section 716-75 is made up of each period:

(a) that is all or part of the income year; and

(b) throughout which the entity is a partner in the partnership or a beneficiary of the trust, as appropriate.

[The next Subdivision is Subdivision 716-Z]

Subdivision 716-Z—Other

Table of sections

716-800 Allocating amounts to periods if head company and subsidiary member have different income years

(1) The principles in this section apply if:

(a) an entity becomes, or stops being, a *subsidiary member of a *consolidated group; and

(b) the entity has an income year that starts and ends at a different time from when the income year of the *head company of the group starts and ends.

(2) Items are to be allocated to, or apportioned among, periods (whether consisting of all or part of an income year of the entity or *head company):

(a) in the most appropriate way having regard to the objects of this Part, and of particular provisions of this Part; and

(b) in particular, so as to ensure that what is in substance the same item is recognised only once for what is in substance the same purpose.

716-850 Grossing up threshold amounts for periods of less than 365 days

(1) Under some provisions of this Act, something that is relevant to working out:

(a) an entity's taxable income (if any); or

(b) the income tax (if any) payable on an entity's taxable income; or

(c) an entity's loss (if any) of a particular *sort;

is determined on the basis of a comparison between an amount worked out for an income year, or an amount derived from 2 or more such amounts, and another amount.

Note: The other amount assumes an income year of 365 days.

(2) This section affects how such a provision (the ***threshold provision***) operates for the purposes of subsection 701-30(3), which requires each thing covered by paragraph (1)(a), (b) or (c) of this section to be worked out for an entity for a non-membership period (under section 701-30) during an income year.

Note: A non-membership period is a period (of less than an income year) when the entity is not a subsidiary member of any consolidated group.

(3) An amount that would otherwise be worked out for the non-membership period, for the purposes of the comparison under the threshold provision, is instead:

(a) to be worked out by reference to the period (the ***reference period***) starting at the start of the income year and ending at the end of the non-membership period; and

(b) then to be grossed up by multiplying it by this fraction:

$$\frac{365}{\text{Number of days in reference period}}$$

4 Subsection 995-1(1)

Insert:

spreading period for an amount has the meaning given by sections 716-15, 716-25, 716-70 and 716-100.

Note: Those sections deal with assessable income and deductions spread over several periods of membership or non-membership of a consolidated group or MEC group.

Schedule 2—Consolidation: group continues when shelf company becomes new head company

Income Tax Assessment Act 1997

1 Paragraph 103-25(3)(a)

Omit "124-380(5)", substitute "124-380(7)".

2 At the end of section 124-360

Add:

(2) You are taken to have chosen to obtain the roll-over if:

(a) immediately before the time referred to in section 124-365 as the completion time, the original company is the *head company of a *consolidated group; and

(b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

3 After subsection 124-370(1)

Insert:

(1A) You are taken to have chosen to obtain the roll-over if:

(a) immediately before the time referred to in section 124-375 as the completion time, the original company is the *head company of a *consolidated group; and

(b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

4 Subsection 124-380(5)

Repeal the subsection, substitute:

Choice to be made by interposed company

(5) If:

(a) immediately before the completion time, the original company is the *head company of a *consolidated group; and

(b) immediately after the completion time, the interposed company is the head company of a *consolidatable group consisting only of itself and the *members of the group immediately before the completion time;

the interposed company must choose that the consolidated group is to continue in existence at and after the completion time.

Note: Sections 703-65 to 703-80 deal with the effects of the choice for the consolidated group.

(6) If subsection (5) of this section does not apply, the interposed company must choose that section 124-385 apply.

(7) In either case, the interposed company must make the choice within 2 months after the completion time, or within such further time as the Commissioner allows. The choice cannot be revoked.

Note: This is an exception to the general rule about choices in section 103-25.

5 Group heading before section 124-385

Repeal the group heading, substitute:

Consequences for the interposed company unless consolidated group continues

6 Before subsection 124-385(1)

Insert:

(1A) This section applies if the interposed company so chooses under subsection 124-380(6).

7 At the end of Subdivision 124-G

Add:

Additional consequences for member if shares are trading stock or revenue assets

124-390 Deferral of profit or loss on shares

(1) There are additional consequences if:

(a) under subsection 124-360(2), you are taken to obtain the roll-over and, at the time immediately before you *dispose of your *shares in the original company, some or all of them are your *trading stock or *revenue assets; or

(b) under subsection 124-370(1A), you are taken to obtain the roll-over and, at the time immediately before the original company redeems or cancels your shares in it, some or all of them are your trading stock or revenue assets.

Trading stock

(2) The amount included in your assessable income because of the *disposal, redemption or cancellation of each of your *shares in the original company that is your *trading stock at that time is equal to:

(a) if the share has been your trading stock ever since the start of the income year in which that time occurs—the total of:

(i) its *value as trading stock at the start of the income year; and

(ii) the amount (if any) by which its cost has increased since the start of the income year; or

(b) otherwise—its cost at that time.

(3) For each of the *shares in the interposed company that you acquired in return for those of your shares in the original company that were your *trading stock at that time, you are taken to have paid:

$$\frac{\text{Total of the amounts included in your assessable income under subsection (2) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

Note: The amount worked out under the formula becomes the cost of each of those shares in the interposed company.

Revenue assets

(4) For each of your *shares in the original company that is a *revenue asset at that time, your assessable income includes the total of the amounts that (apart from this subsection) would be subtracted from the gross disposal proceeds in calculating any profit or loss on your disposing of, or ceasing to own, that share at that time.

(5) For each of the *shares in the interposed company that you acquired in return for those of your shares in the original company that were *revenue assets at that time, you are taken to have paid:

$$\frac{\text{Total of the amounts included in your assessable income under subsection (4) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

8 At the end of subsection 703-5(2)

Add:

Note: The group does not cease to exist in some cases where a shelf company is interposed between the head company and its former members: see subsection 124-380(5) and section 703-70.

9 Subsection 703-60(3) (link note)

Repeal the link note.

10 After section 703-60

Insert:

Effects of choice to continue group after shelf company becomes new head company

703-65 Application

Sections 703-70 to 703-80 set out the effects if a company (the ***interposed company***) chooses under subsection 124-380(5) that a *consolidated group is to continue in existence at and after the time referred to in that subsection as the completion time.

Note: The choice is one of the conditions for a compulsory roll-over under Subdivision 124-G on an exchange of shares in the head company of a consolidated group for shares in the interposed company.

703-70 Consolidated group continues in existence with interposed company as head company and original company as a subsidiary member

(1) The *consolidated group is taken *not* to have ceased to exist under subsection 703-5(2) because the company referred to in subsection 124-380(5) as the original company ceases to be the *head company of the group.

(2) To avoid doubt, the interposed company is taken to have become the *head company of the *consolidated group at the completion time, and the original company is taken to have ceased to be the head company at that time.

Note: A further result is that the original company is taken to have become a subsidiary member of the group at that time. Section 703-80 deals with the original company's tax position for the income year that includes the completion time.

(3) A provision of this Part that applies on an entity becoming a *subsidiary member of a *consolidated group does *not* apply to an entity being taken to have become such a member as a result of this section, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that there is no resetting under section 701-10 of the tax cost of assets of the original company that become assets of the interposed company because of subsection 701-1(1) (the single entity rule).

(4) To avoid doubt, subsection (3) does not affect the application of subsection 701-1(1) (the single entity rule).

703-75 Interposed company treated as substituted for original company at all times before the completion time

(1) Everything that happened in relation to the original company before the completion time:

(a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and

(b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be taken to have happened in relation to the interposed company before that time;

just as if, at all times before the completion time:

(c) the interposed company had been the original company; and

(d) the original company had been the interposed company.

Note: This section treats the original company and the interposed company as having in effect exchanged identities throughout the period before the completion time, but without affecting any of the original company's other attributes.

(2) To avoid doubt, subsection (1) also covers everything that, immediately before the completion time, was taken, because of:

(a) section 701-1 (Single entity rule); or

(b) section 701-5 (Entry history rule); or

(c) one or more previous applications of this section; or

(d) section 719-90 (about the effects of a change of head company of a MEC group);

to have happened in relation to the original company.

(3) Subsections (1) and (2) have effect:

(a) for the head company core purposes in relation to an income year ending after the completion time; and

(b) for the entity core purposes in relation to an income year ending after the completion time; and

(c) for the purposes of determining the respective balances of the *franking accounts of the original company and the interposed company at and after the completion time.

(4) Subsections (1) and (2) have effect subject to:

(a) section 701-40 (Exit history rule); and

(b) a provision of this Act to which section 701-40 is subject because of section 701-85 (about exceptions to the core rules in Division 701).

Note: An example of provisions covered by paragraph (b) of this subsection is Subdivision 717-E (about transferring to a company leaving a consolidated group various surpluses under the CFC and FIF rules in Parts X and XI of the *Income Tax Assessment Act 1936*).

703-80 Effects on the original company's tax position

In applying section 701-30 to the original company for the income year that includes the completion time, disregard a non-membership period that starts before the completion time.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group. Its application can also affect the entity's tax position in later income years.

Note 2: Under section 703-75 the interposed company inherits the original company's tax position for the part of the income year that ends before the completion time, with the consequence that the original company's taxable income, income tax payable, and losses of any sort, for that part are each nil.

Because of section 703-75 and this section, the only tax payable by the original company for the income year arises because of the application of section 701-30 to non-membership periods in the income year after the completion time.

[The next Division is Division 705.]

11 Application of certain amendments

The amendments made by items 1 to 7 apply on and after 1 July 2002.

Schedule 3—Consolidation: effect on cost base rules etc. of loss of pre-CGT status of membership interests

Part 1—Basic amendments

Income Tax Assessment Act 1997

1 After section 705-55

Insert:

705-57 Adjustment to tax cost setting amount where loss of pre-CGT status of membership interests in joining entity

Object

(1) The object of this section is to ensure that provisions that cause *membership interests in the joining entity to stop being *pre-CGT assets, with a resultant increase in their *cost base and *reduced cost base, do not increase *tax cost setting amounts for *trading stock, *depreciating assets or *revenue assets of the joining entity, where those amounts are above the joining entity's *terminating values for the assets.

When section applies

(2) This section applies if:

(a) a *membership interest that a *member of the joined group holds in the joining entity at the joining time had previously stopped being a *pre-CGT asset in the circumstances covered by any of subsections (3) to (5); and

(b) the *cost base or *reduced cost base of the membership interest just after it stopped being a pre-CGT asset exceeded (the excess being the ***loss of pre-CGT status adjustment amount***) its cost base or reduced cost base just before it stopped being a pre-CGT asset; and

(c) an asset (a ***revenue etc. asset***) that is *trading stock, a *depreciating asset or a *revenue asset becomes that of the

*head company of the joined group because subsection 701-1(1) (the single entity rule) applies when the joining entity becomes a *subsidiary member of the group; and

(d) the revenue etc. asset's *tax cost setting amount (after any application of section 705-40, 705-45 or 705-50) exceeds the joining entity's *terminating value for the asset.

Loss of pre-CGT status because Division 149 etc. applied while interest held by member

(3) The first circumstance for the purpose of paragraph (2)(a) is where Division 149 of this Act, subsection 160ZZS(1) of the *Income Tax Assessment Act 1936* or Subdivision C of Division 20 of Part IIIA of that Act applied to cause the *membership interest to stop being a *pre-CGT asset while the *member held the membership interest.

Loss of pre-CGT status because Division 149 etc. applied before current holding by member

(4) The second circumstance for the purpose of paragraph (2)(a) is where:

(a) either:

(i) the *member *acquired the *membership interest directly from another entity; or

(ii) the member acquired the membership interest indirectly from another entity or from itself as a result of 2 or more acquisitions; and

(b) Division 149 of this Act, subsection 160ZZS(1) of the *Income Tax Assessment Act 1936* or Subdivision C of Division 20 of Part IIIA of that Act applied to cause the membership interest to stop being a *pre-CGT asset while the other entity held the membership interest or while the member held the membership interest on the previous occasion; and

(c) if subparagraph (a)(i) applies—at the time of the acquisition, the member *controlled (for value shifting purposes) the other entity, or vice versa, or a third entity controlled (for value shifting purposes) the member and the other entity; and

(d) if subparagraph (a)(ii) applies—the same entity:

(i) was a party to each acquisition and at the time of the acquisition controlled (for value shifting purposes) the other party; or

(ii) was a party to each acquisition and at the time of the acquisition was controlled (for value shifting purposes) by the other party; or

(iii) was not a party to each acquisition but, at the time of the acquisition, controlled (for value shifting purposes) the parties to the acquisition;

or any combination of subparagraphs (i) to (iii) occurred in relation to different acquisitions.

Loss of pre-CGT status because of acquisition from another entity

(5) The third circumstance for the purpose of paragraph (2)(a) is where:

(a) either:

(i) the *member acquired the *membership interest after 16 May 2002 directly from another entity; or

(ii) the member acquired the membership interest indirectly from another entity or from itself as a result of 2 or more acquisitions, all of which took place after 16 May 2002; and

(b) the membership interest stopped being a *pre-CGT asset because of the acquisition from the other entity or from the member while the member held the membership interest on a previous occasion; and

(c) if subparagraph (a)(i) applies—at the time of the acquisition, the member *controlled (for value shifting purposes) the other entity, or vice versa, or a third entity controlled (for value shifting purposes) the member and the other entity; and

(d) if subparagraph (a)(ii) applies—the same entity:

(i) was a party to each acquisition and at the time of the acquisition controlled (for value shifting purposes) the other parties; or

(ii) was a party to each acquisition and at the time of the acquisition was controlled (for value shifting purposes) by the other party; or

(iii) was not a party to each acquisition but, at the time of the acquisition, controlled (for value shifting purposes) the parties to the acquisition;

or any combination of subparagraphs (i) to (iii) occurred in relation to different acquisitions.

Reduction in revenue etc. asset's tax cost setting amount

(6) The revenue etc. asset's *tax cost setting amount (after any application of section 705-40, 705-45 or 705-50) is instead the amount that would apply if, in working out the step 1 amount in the table in section 705-60, the *cost base and *reduced cost base of the *membership interest were reduced by the sum of the loss of pre-CGT status adjustment amounts for the membership interest and all other membership interests that have loss of pre-CGT status adjustment amounts.

Limit on reduction

(7) However, the reduction only takes place to the extent that it does not result in the asset's *tax cost setting amount being less than the joining entity's *terminating value for the asset.

Note: The reduction under this section is converted into a capital loss available over a period of 5 income years starting with the income year in which the joining time occurs: see CGT event L1.

2 After section 705-160

Insert:

705-163 Modified application of section 705-57

Object

(1) The object of this section is to ensure that, in working out *tax cost setting amounts for *trading stock, *depreciating assets or *revenue assets of entities that become *subsidiary members of the group at the formation time, section 705-57 (about loss of pre-CGT status of certain *membership interests) only applies if the *membership interests held directly by the *head company of the group are affected.

Modified application of section 705-57—basic modification

(2) For the purposes of applying section 705-57 in accordance with this Subdivision, a reference in that section to a *membership interest that a *member of the joined group holds in the joining entity at the joining time is taken to be a reference to a *membership interest that the *head company of the *consolidated group holds directly in an entity becoming a *subsidiary member at the formation time.

Modified application of section 705-57—additional modifications where section 705-145 applies

(3) Also, if an entity (the ***first entity***) that becomes a *subsidiary member holds a *membership interest (the ***subject membership interest***) in another entity (the ***second entity***) that becomes a subsidiary member, section 705-57 (as modified in accordance with subsection (2)) is to be applied in relation to the subject membership interest as follows.

(4) First work out whether there would be a reduction under that section in the *tax cost setting amount for the subject membership interest that is used as mentioned in subsection 705-145(3) (the ***subsection 705-145(3) tax cost setting amount***) if:

(a) the subject membership interest, if it is not a revenue etc. asset of the first entity, were taken to be such an asset; and

(b) paragraphs 705-57(2)(c) and (d) and subsection 705-57(7) did not apply to the subject membership interest.

(5) Next, if there would be such a reduction (whose amount is the ***notional section 705-57 reduction amount***):

(a) apply section 705-57 to reduce the *tax cost setting amount for any revenue etc. asset of the second entity; and

(b) if the second entity holds a *membership interest in another entity that becomes a *subsidiary member—apply section 705-57 in relation to that interest in accordance with subsection (3) of this section;

and for those purposes:

(c) the subject membership interest is taken to be a membership interest that the *head company of the group holds directly in the second entity at the formation time; and

(d) the requirements of paragraphs 705-57(2)(a) and (b) are taken to be satisfied in relation to the subject membership interest; and

(e) the subject membership interest is taken to have a *cost base and *reduced cost base equal to the subsection 705-145(3) tax cost setting amount; and

(f) the subject membership interest is taken to have a loss of pre-CGT status adjustment amount equal to the notional section 705-57 reduction amount.

Note: If the head company actually held any membership interests in the second entity, or if other entities becoming subsidiary members held membership interests in the second entity to which this subsection also applied, those membership interests would also be taken into account in working out the reduction under paragraph (a) and in applying paragraph (b).

Section 705-57 not to apply where membership interests effectively acquired on normal market basis

(6) If:

(a) apart from this subsection, subsection 705-57(6) would apply in accordance with this Subdivision to the revenue etc. assets of an entity (the ***subject entity***) that becomes a *subsidiary member of the group at the formation time; and

(b) at the formation time, the *head company of the group holds all of the *membership interests in the subject entity; and

(c) subsection 705-57(6) would apply because a circumstance covered by subsection 705-57(4) (about loss of pre-CGT status because Division 149 etc. applied) existed; and

(d) the application of Division 149 of this Act, or the provision of the *Income Tax Assessment Act 1936*, as mentioned in paragraph 705-57(4)(b) of this Act happened because the entity that became the *head company of the group (the ***potential head entity***) *acquired all of the *membership interests in the other entity mentioned in that paragraph directly or indirectly from another entity (the ***vendor***); and

(e) at the time of the acquisition, the potential head entity did not control (for value shifting purposes) the vendor, and vice-versa, and another entity did not control (for value shifting purposes) the potential head entity and the vendor; and

(f) the acquisition, or each of the acquisitions, mentioned in subsection 705-57(4) was a *same asset roll-over or was one to which any of sections 160ZZN to 160ZZOC, 160ZZPA and 160ZZPJ of the *Income Tax Assessment Act 1936* applied;

then subsection 705-57(6) does not apply as mentioned in paragraph (a) of this subsection.

Part 2—Consequential CGT amendments

Income Tax Assessment Act 1997

3 Section 100-15 (at the end of the note)

Add "or CGT event L1".

4 Section 102-30 (after table item 7)

Insert:

7A	The head company of a consolidated group	The head company of a consolidated group must apply the capital loss from CGT event L1 over at least 5 income years	section 104-500

5 Section 104-5 (after table row relating to event number K8)

Insert:

L1	Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group *[See section 104-500]*	Just after entity becomes subsidiary member	*no capital gain*	amount of reduction

6 At the end of Division 104

Add:

Subdivision 104-L—Consolidated groups

Table of sections

104-500 Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1

(1) ***CGT event L1*** happens if, under section 705-57 (including in its application in accordance with Subdivisions 705-B to 705-E), there

is a reduction in the *tax cost setting amount of assets of an entity that becomes a *subsidiary member of a *consolidated group.

(2) The time of the event is just after the entity becomes a *subsidiary member of the group.

(3) For the head company core purposes mentioned in subsection 701-1(2), the *head company makes a ***capital loss*** equal to the reduction.

(4) The amount of the capital loss that can be applied to reduce the head company's *capital gains for the first income year ending after the entity becomes a *subsidiary member of the group (the ***first income year***) cannot exceed 1/5 of the *capital loss.

(5) The amount of the *net capital loss from the first income year, to the extent the amount is attributable to the *capital loss (the extent being the ***event L1 attributable loss***), that can be applied to reduce the head company's *capital gains for a later income year cannot exceed the amount worked out for the year using the following table:

Limit on applying event L1 attributable loss

Item	For this income year:	The amount of the event L1 attributable loss that can be applied cannot exceed:
1	For the second income year ending after the entity became a *subsidiary member	The difference between: (a) 2/5 of the *capital loss; and (b) the amount of the capital loss that was applied in accordance with subsection (4) for the first income year.
2	For the third income year ending after the entity became a *subsidiary member	The difference between: (a) 3/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amount of the event L1 attributable loss that was applied to reduce the entity's *capital gains for the next income year after the first income year.

Limit on applying event L1 attributable loss		
Item	**For this income year:**	**The amount of the event L1 attributable loss that can be applied cannot exceed:**
3	For the fourth income year ending after the entity became a *subsidiary member	The difference between: (a) 4/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.
4	For the fifth income year ending after the entity became a *subsidiary member, or for any later income year	The difference between: (a) the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.

7 Section 110-10 (after table row relating to event number K7)

Insert:

L1	Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group	104-500

Part 3—Transitional provisions

Income Tax (Transitional Provisions) Act 1997

8 After Division 701A

Insert:

Division 701B—Other modifications of provisions of Income Tax Assessment Act 1997

Table of sections

701B-1 Modified application of CGT Consolidation provisions to allow immediate availability of capital loss for CGT event L1

(1) This section applies if:

(a) CGT event L1 happens; and

(b) members of the consolidated group mentioned in subsection 104-500(1) of the *Income Tax Assessment Act 1997* held all of the membership interests in the entity mentioned in that subsection from the end of 30 June 2002 until the entity became a subsidiary member of the group; and

(c) before the end of the fourth income year of the head company of the group ending after the entity became a subsidiary member of the group, the entity ceases to be a subsidiary member; and

(d) all of the assets, other than those excepted under subsection (2), that the head company held when the entity became a subsidiary member, because the entity was taken by subsection 701-1(1) (the single entity principle) of the *Income Tax Assessment Act 1997* to be a part of the head company, continued to be held by the head company until the entity ceased to be a subsidiary member.

Excepted assets

(2) For the purposes of paragraph (1)(d), excepted assets are assets that:

(a) the head company disposed of in the ordinary course of a business that the head company carried on by virtue of the entity being taken by subsection 701-1(1) of the *Income Tax Assessment Act 1997* to be a part of the head company; and

(b) were minor assets, having regard to the nature and size of that business.

Immediate availability of capital loss or net capital loss

(3) If this section applies, neither subsection 104-500(4) nor subsection 104-500(5) of the *Income Tax Assessment Act 1997* applies in relation to the head company for the income year in which the entity ceases to be a subsidiary member of any later income year.

Schedule 4—Consolidation: new Subdivisions 705-C (where a consolidated group is acquired by another) and 705-D (where multiple entities are linked by membership interests)

Income Tax Assessment Act 1997

1 Subsection 701-15(1)

Repeal the second sentence.

2 Subparagraph 705-15(c)(i)

After "joined group", insert "at the same time".

3 Section 705-165

Repeal the link note.

4 At the end of Division 705

Add:

Subdivision 705-C—Case where a consolidated group is acquired by another

Guide to Subdivision 705-C

705-170 What this Subdivision is about

When a consolidated group is acquired by another consolidated group, modifications are made to the operation of Division 701 (the core rules) and Subdivision 705-A (tax cost setting amount where a single entity joins a consolidated group) basically to ensure that the tax cost setting amount for assets of the acquired group that become those of the acquiring group reflects the cost to the latter group of acquiring the former.

Table of sections

[This is the end of the Guide.]

Application and object

705-175 Application and object of this Subdivision

Application

(1) This Subdivision applies if all of the *members of a *consolidated group (the ***acquired group***) become members of another consolidated group (the ***acquiring group***) at a particular time (the ***acquisition time***) as a result of the *acquisition of *membership interests in the *head company of the acquired group.

Object

(2) The object of this Subdivision is:
  (a) to modify the rules in Division 701 (the core rules) to complement the treatment of the acquired group as a single entity that applied before the acquisition time; and
  (b) to modify Subdivision 705-A (which basically determines the tax cost setting amount for assets of an entity joining a consolidated group) to ensure that the *tax cost setting amount for assets of the acquired group that become those of the acquiring group reflects the cost to the latter group of acquiring the former.

Modified application of Division 701 in relation to acquired group etc.

705-180 Modifications of Division 701

Certain provisions of Division 701 not to apply

(1) If, because an entity ceases to be a *subsidiary member of the acquired group when this Subdivision applies, a provision of Division 701 (other than section 701-25) would otherwise apply, in relation to the acquired group for the head company core purposes set out in subsection 701-1(2) or for the entity core purposes set out in subsection 701-1(3), the provision does not so apply.

Modified application of section 701-5

(2) Section 701-5 (the entry history rule) applies in relation to the acquiring group for the head company core purposes set out in subsection 701-1(2) as if entities that are or have been the *subsidiary members of the acquired group were or had been parts of the *head company of the acquired group.

Modified application of section 701-25

(3) The application of section 701-25 (which ensures tax-neutral consequences for a head company ceasing to hold assets when an entity leaves a group), in relation to the acquired group for the head company core purposes set out in subsection 701-1(2) and for the entity core purposes set out in subsection 701-1(3), is modified as follows:

(a) the reference in subsection (4) of that section to the end of the income year is taken to be a reference to the end of the income year that ends or, if subsection 701-30(3) as modified by subsection (4) of this section applies, of the income year that is taken to end, when the entity ceases to be a *subsidiary member of the acquired group;

(b) the section applies (as modified by paragraph (a) of this subsection) to the entity that is the *head company of the acquired group ceasing to be a *member of that group in the same way as it applies to an entity that is a subsidiary member of that group ceasing to be a subsidiary member.

Modified application of section 701-30

(4) If the acquired group only exists for part of the income year, section 701-30 (about an entity not being a subsidiary member of a group for a whole income year) applies in relation to the acquired group for the head company core purposes in the same way as it applies to work out the taxable income, tax payable on that taxable income and loss of each *sort for an entity for a non-membership period.

Modified application of Subdivision 705-A in relation to acquiring group

705-185 Subdivision 705-A has effect with modifications

(1) Subdivision 705-A has effect in relation to the acquiring group for the head company core purposes set out in subsection 701-1(2) as if:

(a) the only *member of the acquired group that is a joining entity of the acquiring group were the entity that, just before the acquisition time, was the *head company of the acquired group; and

(b) the operation of this Part for the head company core purposes in relation to the head company and the entities that were *subsidiary members of the acquired group continued to have effect for the purposes of Subdivision 705-A.

Note 1: This means that for Subdivision 705-A purposes the subsidiary members of the acquired group are treated as part of the head company of that group, and as a result their assets (other than e.g. internal membership interests) have their tax costs set at the acquisition time.

Note 2: It also means e.g. that for Subdivision 705-A purposes the terminating values of the assets of those subsidiary members are worked out as if the assets were those of the head company at the acquisition time, and hence will be based (if applicable) on the tax cost setting amounts for assets that were set at the time entities became subsidiary members of the acquired group.

(2) However, that effect of Subdivision 705-A is subject to modifications set out in this Subdivision.

Note: The modifications of Subdivision 705-A made in this Subdivision constitute the second exception to Subdivision 705-A: see paragraph 705-15(b).

Modifications of Subdivision 705-A for the purposes of this Subdivision

705-190 Modified application of section 705-50

Object

(1) The object of this section is to ensure that there is no reduction in the *tax cost setting amount of *over-depreciated assets that were brought into the acquired group by an entity on becoming a *subsidiary member, where the over-depreciation will already be corrected as a result of distributions made to the acquired group before that time.

Exclusion of pre-joining distributions to members of acquired group

(2) If, before it became a *subsidiary member of the acquired group, an entity that is a subsidiary member of the acquired group at the acquisition time paid a dividend to which paragraph 705-50(2)(b) applies, paragraph 705-50(3)(b) also has effect as if the reference in that paragraph to a taxpayer who was not entitled to a rebate of income tax under section 46 or 46A of the *Income Tax Assessment Act 1936* included a reference to:

(a) if the acquired group existed at that time—a *member of that group; or

(b) if not—an entity that later became a member of that group.

705-195 Modified application of subsection 705-65(6)

Object

(1) The object of this section is to ensure that certain rights or options held by *members of the acquiring group that are part of the cost of acquiring the acquired group are taken into account in working out the acquiring group's *allocable cost amount for the acquired group.

Certain rights or options relating to the acquired group to be treated in same way as membership interests under step 1 of allocable cost amount

(2) Subsection 705-65(6) has effect as if it also treated as a *membership interest in the *head company of the acquired group a right or option (including a contingent right or option), created or issued by a *subsidiary member of the acquired group, to acquire a membership interest in the subsidiary member, where that right or option was held at the acquisition time by a *member of the acquiring group.

705-200 Modified application of section 705-85

Object

(1) The object of this section is to ensure that if either of the following are not held by *members of either group:

(a) certain employee share interests in *subsidiary members of the acquired group;

(b) certain rights or options to acquire *membership interests in subsidiary members of the acquired group;

and are therefore part of the cost of acquiring the acquired group, they increase the acquiring group's *allocable cost amount for the acquired group.

Increase for certain membership interests in subsidiary members of acquired group

(2) Subsections 705-85(1) and (2) have effect as if a *membership interest in a *subsidiary member of the acquired group were a membership interest in the *head company of that group.

Increase for certain rights and options to acquire membership interests in subsidiary members of acquired group

(3) Paragraph 705-85(3)(a) has effect as if it also increased the step 2 amount worked out under section 705-70 by the *market value of any right or option (including a contingent right or option), created or issued by a *subsidiary member the acquired group, to acquire a *membership interest in the subsidiary member, where that right or

option was held at the acquisition time by a person other than a *member of the acquiring group or acquired group.

705-205 Modified application of section 705-125

Object

(1) The object of this section is to make it clear that, in view of the fact that *pre-CGT factors are worked out for assets of the acquired group on acquisition by the acquiring group, pre-CGT factors formerly worked out for assets of entities when they became *subsidiary members of the acquired group cease to have any relevance.

Pre-CGT factors for assets of members on joining acquired groups no longer relevant

(2) Section 705-125 (which provides for a pre-CGT factor to be worked out for assets of the acquired group) has effect as if a note were added at the end of the section stating that *pre-CGT factors worked out for assets of entities when they became *subsidiary members of the acquired group cease to have any relevance when the acquired group ceases to exist in circumstances in which this Subdivision applies.

Subdivision 705-D—Where multiple entities are linked by membership interests

Guide to Subdivision 705-D

705-210 What this Subdivision is about

When entities that are linked by membership interests join a consolidated group, the tax cost setting amount for the assets of each entity that becomes a subsidiary member is worked out by modifying the rules in Subdivision 705-A, so that the amount reflects the cost to the group of acquiring the entities.

Table of sections

[This is the end of the Guide.]

Application and object

705-215 Application and object of this Subdivision

Application

(1) This Subdivision has effect for the head company core purposes set out in subsection 701-1(2) if:

(a) 2 or more entities (each of which is a ***linked entity***) become members of a *consolidated group at the same time as a result of an event that happens in relation to one of them; and

(b) the case is not covered by Subdivision 705-C.

Note: This is the third exception to Subdivision 705-A: see paragraph 705-15(c). In order for this Subdivision to have effect, one of the entities would need to hold directly or indirectly, just before the joining time, membership interests in all of the other entities.

Example: Entities A and B are not members of a consolidated group, but members of such a group, together with entity A, jointly hold all the membership interests in entity B. Members of the group then acquire all the membership interests in entity A and as a result of this event both entities, which are linked by the membership interests that one holds in the other, become members of the group.

Object

(2) The object of this Subdivision is to modify the rules in Subdivision 705-A (which basically determine the tax cost setting amount for assets of an entity joining an existing consolidated group) so that they take account of the different circumstances that apply where linked entities join.

Modified application of Subdivision 705-A

705-220 Subdivision 705-A has effect with modifications

(1) Subdivision 705-A has effect in relation to each linked entity becoming a *subsidiary member of the *consolidated group in the same way as that Subdivision operates in relation to an entity becoming a subsidiary member of a consolidated group in circumstances covered by that Subdivision.

(2) However, that effect of Subdivision 705-A is subject to modifications set out in this Subdivision.

705-225 Order in which tax cost setting amounts are to be worked out where linked entities have membership interests in other linked entities

Object

(1) The object of this section is to ensure that where, on becoming *subsidiary members, linked entities hold assets consisting of *membership interests in other linked entities, the *head company's cost of becoming the holder of the assets of all of the linked entities correctly reflects the group's cost of acquiring the linked entities.

Tax cost setting amounts to be worked out from top down

(2) The *tax cost setting amounts for the assets of linked entities holding *membership interests must be worked out before the tax cost setting amounts for the assets of the linked entities in which the membership interests are held.

Note: The tax cost setting amount in respect of assets of any linked entity in which members of the group, but no linked entity, hold membership interests can be worked out in any order in relation to the calculations for other linked entities.

Tax cost setting amount for higher linked entity's membership interests to be used in working out lower linked entity's tax cost setting amount

(3) The *tax cost setting amount worked out for assets of a linked entity mentioned in subsection (2) consisting of *membership interests in another such entity is to be used as the amount for those interests under subsection 705-65(1) (step 1 of allocable cost amount) in working out the tax cost setting amount for assets of that other linked entity.

Note 1: Subsection 705-65(1) adds together amounts worked out in accordance with section 705-65 representing the cost of the membership interests that each member of the group holds in the linked entity. If any of those membership interests is held by another linked entity, subsection (3) of this section will replace the amount otherwise applicable with the tax cost setting amount that will have been worked out for the interests in accordance with subsection (2) of this section.

Note 2: The tax cost setting amount worked out for the membership interests has no relevance other than for the purpose mentioned in subsection (3) of this subsection. This is because, under the single entity principle, intra group membership interests are ignored while entities are members of the group. If an entity ceases to be a member, section 701-15 and Division 711 set the tax cost of membership interests in the entity at that time.

Value shifting etc. provisions not to apply to later CGT events involving membership interests

(4) However, despite subsection (3), subsection 705-65(4) (which prevents the later operation of value shifting etc. provisions) still applies to the *membership interests.

Rights and options to acquire membership interests

(5) For the purposes of this section, if, on becoming a *subsidiary member, a linked entity holds a right or option (including a contingent right or option), created or issued by another linked entity, to acquire a *membership interest in that other linked entity,

that right or option is treated as if it were a membership interest in that other linked entity.

705-230 Adjustment in working out step 4 of allocable cost amount for successive distributions through interposed linked entities

Object

(1) The object of this section is to ensure that, in working out the group's *allocable cost amount for the linked entities, there is only one reduction under step 4 in the table in section 705-60 (about pre-formation time distributions out of certain profits) for distributions of the same profits.

When section applies

(2) This section applies if, apart from this section:

(a) in working out the group's *allocable cost amount for a linked entity, there would be a reduction under step 4 in the table in section 705-60 for a distribution (the ***first distribution***) made by the entity; and

(b) in working out the group's allocable cost amount for a second linked entity, there would also be a reduction under that step for any of the first distribution that the second linked entity successively distributed as mentioned in paragraph 705-95(a).

No step 4 reduction in respect of successive distribution of amount for which there has already been a step 4 reduction

(3) If this section applies, there is no reduction as mentioned in paragraph (2)(b).

705-235 Adjustment to allocation of allocable cost amount to take account of owned losses of certain linked entities

Object

(1) The object of this section is to prevent a distortion under section 705-35 in the allocation of *allocable cost amount to a

linked entity where that entity has *membership interests in another linked entity that has certain tax losses.

Adjustment to allocation of allocable cost amount

(2) If:

(a) a linked entity has *membership interests in a second linked entity; and

(b) in working out the group's *allocable cost amount for the second linked entity, an amount is required to be subtracted (the ***loss subtraction amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the *tax cost setting amount for the assets of the first linked entity, the *market value of the first linked entity's membership interests in the second linked entity is increased by the first linked entity's interest in the loss subtraction amount (see subsection (3)).

First entity's interest in loss subtraction amount

(3) The first linked entity's interest in the loss subtraction amount is worked out using the formula:

$$\frac{\text{*Market value of first linked entity's * membership interests in second linked entity}}{\text{Market value of all membership interests in second linked entity}} \times \text{Loss subtraction amount}$$

705-240 Modified application of section 705-57

Object

(1) The object of this section is to ensure that, in working out *tax cost setting amounts for *trading stock, *depreciating assets or *revenue assets of the linked entities, section 705-57 (about loss of pre-CGT status of certain membership interests) only applies if the *membership interests held directly by the *head company of the group are affected.

Modified application of section 705-57—basic modification

(2) For the purposes of applying section 705-57 in accordance with this Subdivision, a reference in that section to a *membership interest that a *member of the joined group holds in the joining entity at the joining time is taken to be a reference to a membership interest that the *head company of the *consolidated group holds directly in a linked entity at the time the linked entity becomes a *subsidiary member.

Modified application of section 705-57—additional modifications where section 705-225 applies

(3) Also, if a linked entity (the ***first linked entity***) holds a *membership interest (the ***subject membership interest***) in another linked entity (the ***second linked entity***), section 705-57 (as modified in accordance with subsection (2)) is to be applied in relation to the subject membership interest as follows.

(4) First work out whether there would be a reduction under that section in the *tax cost setting amount for the subject membership interest that is used as mentioned in subsection 705-225(3) (the ***subsection 705-225(3) tax cost setting amount***) if:

(a) the subject membership interest, if it is not a revenue etc. asset of the first linked entity, were taken to be such an asset; and

(b) paragraphs 705-57(2)(c) and (d) and subsection 705-57(7) did not apply to the subject membership interest.

(5) Next, if there would be such a reduction (whose amount is the ***notional section 705-57 reduction amount***):

(a) apply section 705-57 to reduce the *tax cost setting amount for any revenue etc. asset of the second linked entity; and

(b) if the second linked entity holds a *membership interest in another linked entity—apply section 705-57 in relation to that interest in accordance with subsection (3) of this section;

and for those purposes:

(c) the subject membership interest is taken to be a membership interest that the *head company of the group holds directly in the second linked entity; and

(d) the requirements of paragraphs 705-57(2)(a) and (b) are taken to be satisfied in relation to the subject membership interest; and

(e) the subject membership interest is taken to have a *cost base and *reduced cost base equal to the subsection 705-225(3) tax cost setting amount; and

(f) the subject membership interest is taken to have a loss of pre-CGT status adjustment amount equal to the notional section 705-57 reduction amount.

Note: If the head company actually held any membership interests in the second linked entity, or if other linked entities held membership interests in the second linked entity to which this subsection also applied, those membership interests would also be taken into account in working out the reduction under paragraph (a) and in applying paragraph (b).

705-245 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members

Object

(1) The object of this section is to ensure that, where linked entities hold *membership interests in other linked entities, the pre-CGT status of membership interests held by the *head company, and not the pre-CGT status of membership interests held by other linked entities, is used to work out the *pre-CGT factor under section 705-125 for assets of the other linked entities.

Pre-CGT factor to be worked out from top down

(2) If linked entities hold *membership interests in any other linked entities, the *pre-CGT factor for the assets of linked entities holding membership interests must be worked out before the pre-CGT factor for the assets of the linked entities in which the membership interests are held.

[The next Division is Division 707.]

5 Subsection 711-5(1)

Repeal the second sentence.

6 Paragraph 711-65(1)(a) (second occurring)

Repeal the paragraph, substitute:

(b) section 711-70 (about the multiple exit of *subsidiary members) does not apply; and

(c) the leaving entity does not cease to be a subsidiary member of the old group where Subdivision 705-C (about the old group joining another consolidated group) applies.

7 Subsection 711-70(1)

After "one of them", insert "(other than where Subdivision 705-C applies)".

Schedule 5—Consolidation: allocable cost amount for a joining trust

Part 1—New provisions inserted in the Income Tax Assessment Act 1997

1 At the end of section 705-125

Add:

Modification if joining entity is a trust

(4) If the joining entity is a trust, a *membership interest in it is not taken into account under paragraph (3)(a) unless the membership interest is either a unit or an interest in the trust.

2 Paragraph 711-15(1)(c)

Omit "finally,", substitute "next,".

3 At the end of subsection 711-15(1)

Add:

; and (d) finally, if the leaving entity is a trust—for each membership interest in the trust that satisfies these conditions:

(i) it is neither a unit nor an interest in the trust;

(ii) the member of the old group that held it began to hold it only because money or property was settled on the trust;

(iii) it either had no *cost base or it had a cost base of nil;

reducing the result under paragraph (c) to nil.

Note: Compare the treatment of such interests when an entity joins a group: see section 713-20.

4 At the end of section 711-65

Add:

Modification if leaving entity is a trust

(8) If the leaving entity is a trust, a *membership interest in it is not taken into account under this section unless the membership interest is either a unit or an interest in the trust.

5 Subsection 711-70(5)

Repeal the link note, substitute:

Modification if leaving entity is a trust

(6) A *membership interest in a trust that is one of the multiple exit entities is not taken into account under this section unless the membership interest is either a unit or an interest in the trust.

[The next Division is Division 713.]

6 After Division 711

Insert:

Division 713—Rules for particular kinds of entities

Table of Subdivisions

Subdivision 713-A—Trusts

Table of sections

Working out a joined group's allocable cost amount for a joining trust

713-20 Increasing the step 1 amount for settled capital that could be distributed tax free in respect of discretionary interests

(1) The object of this section is to increase the step 1 amount worked out under section 705-65 (for the purpose of working out the joined group's allocable cost amount) if:

(a) the joining entity is a trust; and

(b) some or all of the *membership interests in the trust are neither units nor interests in the trust; and

(c) some or all of the trust capital is settled capital that could be distributed tax free at the joining time.

The increase in the step 1 amount takes account of the settled capital that could be distributed tax free.

Note 1: As a result, the settled capital that could be distributed tax free is treated in a way that is analogous to the group's cost of acquiring the trust: see subsection 705-10(2).

Note 2: Paragraph (1)(b) reflects the position that a distribution in respect of a unit or interest in the trust is generally covered by CGT event E4 and so is not tax-free: see section 104-70.

(2) The step 1 amount worked out under section 705-65 is increased by the amount worked out under the following method statement if, at the joining time, there are *membership interests (the ***discretionary interests***) in the trust each of which satisfies these conditions:

(a) it is neither a unit nor an interest in the trust;

(b) the entity that owned it at the joining time began to own it only because money or property was settled on the trust;

(c) it either has no *cost base or it has a cost base of nil.

Note: If a membership interest has a cost base greater than nil, the cost base is already taken into account in working out the step 1 amount under section 705-65.

Method statement

Step 1. Add up:

(a) each amount settled on the trust before or at the joining time; and

(b) the *market value of each item of property settled on the trust before or at the joining time, worked out as at when the item was settled;

except to the extent that that amount or market value forms part of the *cost base of a *membership interest in the trust that was taken into account in working out the step 1 amount under section 705-65.

Step 2. Work out how much of the step 1 amount would have been paid in respect of the discretionary interests if, at the joining time:

(a) the entire trust capital and trust income had been realised and distributed; and

(b) the trust had ended.

Note: This may involve determining how a power of appointment would have been exercised. Section 713-50 lists matters to have regard to in determining this.

Step 3. Reduce the step 2 amount by so much of it as:

(a) would have been included in the assessable income of any *member of the trust who owned any of the discretionary interests at the joining time; or

(b) would have been taken into account in working out a *capital gain or *capital loss made by such a member.

Step 4. Work out how much of the step 1 amount consists of one or more of these:

(a) an amount settled on the trust directly by the *head company of the *consolidated group (whether or not the group was in existence when the amount or item was settled on the trust);

(b) an amount settled on the trust directly by any other entity *not* excluded by subsection (3) (which covers entities that are not independent and unconnected donors to the trust);

(c) the *market value of an item of property settled on the trust directly by the head company;

(d) the market value of an item of property settled on the trust directly by any other entity *not* excluded by subsection (3).

Step 5. The step 1 amount worked out under section 705-65 is increased by the *lesser* of:

(a) the step 3 amount worked out under this method statement; and

(b) the step 4 amount worked out under this method statement.

(3) This subsection excludes these entities for the purposes of step 4 of the method statement in subsection (2):

Entities that are not independent and unconnected donors to the trust

Item	This entity is excluded:
1	An entity that is a *member of the *consolidated group at the joining time
2	An entity that has been a *member of the *consolidated group at any time before the joining time, even if it was not such a member when it settled the amount or item of property on the joining entity
3	An entity that, because of a *scheme, will or may become a *member of the *consolidated group at some time after the joining time
4	An entity that, when the amount or item of property was settled on the joining entity, was an *associate of an entity covered by item 1, 2 or 3
5	An entity that, in settling the amount or item of property on the joining entity, acted in accordance with the directions, instructions or wishes of one or more entities, at least one of which is covered by item 1, 2, 3 or 4 (whether those directions, instructions or wishes were communicated directly or indirectly, including through interposed entities)

Entities that are not independent and unconnected donors to the trust	
Item	**This entity is excluded:**
6	A company or trust that an entity covered by item 1, 2 or 3 would be taken to *control (for value shifting purposes) when the company or trust settled the amount or item of property on the joining entity, if each entity covered by item 1, 2, 3 or 4 had been at that time an *associate of every other entity covered by item 1, 2, 3 or 4
7	A partnership if, when the partnership settled the amount or item of property on the joining entity, a *member of the partnership was an entity covered by item 1, 2, 3, 4 or 6

713-25 Undistributed, realised profits that accrue to joined group before joining time and could be distributed tax free in respect of discretionary interests—step 3 in working out allocable cost amount

(1) For the purposes of step 3 in the table in section 705-60, if the joining entity is a trust, the step 3 amount is the sum of the trust's realised profits, to the extent that:

(a) they accrued to the joined group before the joining time (as defined in subsection 705-90(7)); and

(b) as at the joining time, they have not been distributed to *members of the trust; and

(c) if each of them were distributed as mentioned in paragraphs 705-90(7)(a) and (b):

(i) they would be distributed *otherwise* than in respect of a unit or an interest in the trust; or

(ii) their non-assessable parts for the purposes of section 104-70 would *not* be taken into account in working out whether or not a *capital gain had been made because of CGT event E4;

except to the extent that they recouped losses of any *sort that accrued to the joined group before the joining time (as defined in subsection 705-90(8)).

Note: If the joining entity, or an entity interposed between the head company and the joining entity, is a non-fixed trust, this section may involve determining how a power of appointment would have been exercised. Section 713-50 lists matters to have regard to in determining this.

Trusts not covered

(2) Subsection (1) does not apply to a trust that is a *corporate tax entity at the joining time.

Note: This excludes corporate unit trusts and public trading trusts, which are covered by the imputation system.

Determining destination of distribution by non-fixed trust

713-50 Factors to consider

In working out, for the purposes of this Part, how much of something a *non-fixed trust would have distributed to an entity, or in respect of a *membership interest in the trust, have regard to all relevant factors, including:

(a) the pattern of any previous distributions by the trust; and

(b) by whom the trust has from time to time been *controlled (for value shifting purposes).

[The next Division is Division 716.]

Part 2—Consequential amendment

Income Tax Assessment Act 1997

7 Section 705-60 (table item 3)

Repeal the item, substitute:

3	Add to the result of step 2 the step 3 amount worked out under: (a) section 705-90, which is about undistributed, frankable profits accruing to the joined group before the joining time; or (b) if the joining entity is a trust (and not a *corporate tax entity)—section 713-25, which is about undistributed, realised profits accruing to the joined group before the joining time that could be distributed tax free in respect of discretionary interests	To increase the allocable cost amount: (a) to reflect the undistributed, taxed profits and so prevent double taxation; or (b) if the joining entity is a trust—to reflect the undistributed, realised profits that could be distributed tax free in respect of discretionary interests

8 Subsection 705-65(1)

After "joining time:", insert:

Note: If the joining entity is a trust, the step 1 amount may be increased by section 713-20 for settled capital that could be distributed tax free in respect of discretionary interests in the trust.

9 Subsection 705-90(1)

After "this section", insert "unless the joining entity is a trust that is *not* a *corporate tax entity at the joining time".

10 At the end of subsection 705-90(1)

Add:

Note: If the joining entity is such a trust, the step 3 amount is instead worked out in accordance with section 713-25.

11 At the end of subsection 705-90(7)

Add:

Note: If an entity interposed between the head company and the joining entity is a non-fixed trust, this subsection may involve determining how a power of appointment would have been exercised. Section 713-50 lists matters to have regard to in determining this.

12 Section 705-105

Omit "and 705-100", substitute ", 705-100 and 713-25".

Income Tax (Transitional Provisions) Act 1997

13 At the end of section 700-1

Add:

(2) Section 713-50 of the *Income Tax Assessment Act 1997* (about factors to consider in determining destination of distribution by non-fixed trust) applies for the purposes of this Part in the same way as it applies for the purposes of Part 3-90 of that Act.

14 At the end of subsection 701-30(2)

Add:

Note: If an entity interposed between the head company and the transitional entity is a non-fixed trust, this subsection may involve determining how a power of appointment would have been exercised. Section 713-50 of the *Income Tax Assessment Act 1997* (applying because of section 700-1 of this Act) lists matters to have regard to in determining this.

Schedule 6—Consolidation: losses

Part 1—Maintaining same ownership to utilise transferred losses

Income Tax Assessment Act 1997

1 Paragraph 707-210(4)(c)

Repeal the paragraph, substitute:

(c) nothing happened, after the time the loss was transferred from the test company to the *head company of a *consolidated group, to *membership interests or voting power:

(i) in an entity that was at that time a *subsidiary member of the group; or

(ii) in an entity that was at that time interposed between the test company and the head company;

that would affect whether the test company would meet the conditions in section 165-12 for the income year; and

2 Subparagraph 707-210(4)(d)(ii)

Omit "a subsidiary member of that other group".

Part 2—Utilising losses head company transfers to itself

Income Tax Assessment Act 1997

3 Paragraph 707-335(1)(a)

Omit "from another entity".

4 Paragraph 707-335(3)(e)

Repeal the paragraph, substitute:

(e) the principle that, if the transferee transferred the losses to itself under Subdivision 707-A after the start of the income year, the amount of the losses it can utilise for the income year should be worked out as if:

(i) the losses had been included in the bundle from the start of the income year; and

(ii) the available fraction for the bundle had been 1 from the start of the income year until the time of the transfer; and

Part 3—Effect of exit history rule

Income Tax Assessment Act 1997

5 At the end of Subdivision 707-D

Add:

707-410 Exit history rule does not treat entity as having made a loss

(1) To avoid doubt, if the *head company of a *consolidated group makes a loss of a particular *sort and an entity ceases to be a *subsidiary member of the group, the entity is *not* taken because of section 701-40 (the exit history rule):

(a) to have made the loss; or

(b) to have made another loss of the same sort because of the circumstances that caused the head company to make the loss.

(2) It does not matter whether the *head company makes the loss because of a transfer under Subdivision 707-A (whether from the entity or another entity) or because of another provision.

Schedule 7—Consolidation: foreign tax credits and exit history rule

Income Tax Assessment Act 1997

1 Section 717-20 (link note)

Repeal the link note.

2 At the end of Subdivision 717-A

Add:

717-30 Exit history rule does not treat leaving entity as having foreign tax credits

(1) This section operates in relation to an income year if:

(a) an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group before the end of that income year; and

(b) the *head company of the group has *excess foreign tax credits from an earlier income year.

(2) To avoid doubt, the leaving entity is *not* taken because of section 701-40 (the exit history rule) to have those *excess foreign tax credits.

(3) It does not matter whether the *head company has those *excess foreign tax credits because of section 717-10 or 717-15 (whether in relation to the leaving entity or another entity) or because of another provision.

[The next Subdivision is Subdivision 717-D.]

Schedule 8—Consolidation: MEC groups

Income Tax Assessment Act 1997

1 Division 719 (heading to Guide)

Repeal the heading.

2 Before section 719-1

Insert:

Subdivision 719-B—MEC groups and their members

3 Section 719-1 (heading)

Repeal the heading, substitute:

719-4 What this Subdivision is about

4 Paragraph 719-5(4)(d)

Repeal the paragraph, substitute:

(d) if:

(i) a company specified in the notice under paragraph (c) was a member of another MEC group immediately before that time; and

(ii) all of the eligible tier-1 companies in that other MEC group became eligible tier-1 companies of the top company at that time;

each eligible tier-1 company in that other MEC group is specified in the notice under paragraph (c);

5 Paragraph 719-40(1)(f)

Repeal the paragraph, substitute:

(f) if:

(i) a company specified in the notice under paragraph (e) was a member of another MEC group immediately before that time; and

(ii) all of the eligible tier-1 companies in that other MEC group became eligible tier-1 companies of the top company at that time;

each eligible tier-1 company in that other MEC group is specified in the notice under paragraph (e).

6 Application of amendments

The amendments made by this Schedule to subsections 719-5(4) and 719-40(1) of the *Income Tax Assessment Act 1997* apply in relation to a notice, whether given before, at or after the commencement of this item.

7 Subsection 719-80(2) (link note)

Repeal the link note.

8 After section 719-80

Insert:

Effects of change of head company

719-85 Application

Sections 719-90 to 719-95 set out the effects if:

(a) a company (the ***old head company***) is the *head company of a *MEC group at the end of an income year; and

(b) a different company (the ***new head company***) is the head company of the group at the start of the next income year (the ***transition time***).

Note: This case can arise from the operation of section 719-75, which treats an entity that is the provisional head company of the group at a certain time in the income year as being the group's head company at all times in the income year when the group is in existence.

The old head company is also taken to become a subsidiary member of the group at the transition time, and the new head company is taken to cease being a subsidiary member at that time. Section 719-95 ensures that these results do not change the tax position of the group.

719-90 New head company treated as substituted for old head company at all times before the transition time

(1) Everything that happened in relation to the old head company before the transition time is taken to have happened in relation to

the new head company instead, just as if the new head company had been the old head company at all times before the transition time.

Note: This section treats the new head company as having in effect assumed the identity of the old head company throughout the period before the transition time, but without affecting any of the other attributes of the old head company.

(2) To avoid doubt, subsection (1) also covers everything that, immediately before the transition time, was taken, because of:

(a) section 701-1 (Single entity rule); or

(b) section 701-5 (Entry history rule); or

(c) section 703-75 (about the effects of choice to continue consolidated group after shelf company becomes new head company); or

(d) one or more previous applications of this section;

to have happened in relation to the old head company.

(3) Subsections (1) and (2) have effect:

(a) for the head company core purposes in relation to an income year ending after the transition time; and

(b) for the entity core purposes in relation to an income year ending after the transition time.

(4) Subsections (1) and (2) have effect subject to:

(a) section 701-40 (Exit history rule); and

(b) a provision of this Act to which section 701-40 is subject because of section 701-85 (about exceptions to the core rules in Division 701).

Note: An example of provisions covered by paragraph (b) of this subsection is section 707-410, which ensures that section 701-40 (Exit history rule) does not result in a leaving entity inheriting a loss of any sort.

719-95 No consequences of old head company becoming, and new head company ceasing to be, subsidiary member of the group

(1) A provision of this Part that applies on an entity becoming a *subsidiary member of a *MEC group does *not* apply to an entity being taken to have become such a member because the entity stopped being the *head company of the group as mentioned in

section 719-85, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that section 701-5 (Entry history rule) does not apply. See instead section 719-90.

(2) To avoid doubt, subsection (1) does not affect the application of subsection 701-1(1) (the single entity rule).

(3) A provision of this Part that applies on an entity ceasing to be a *subsidiary member of a *MEC group does *not* apply to an entity being taken to cease being such a member because the entity became the *head company of the group as mentioned in section 719-85, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that section 701-40 (Exit history rule) does not apply. See instead section 719-90.

Subdivision 719-C—MEC group cost setting rules: joining cases

Guide to Subdivision 719-C

719-150 What this Subdivision is about

When an entity (other than an eligible tier-1 company) becomes a subsidiary member of a MEC group, the tax cost of its assets is set at a tax cost setting amount that is worked out in accordance with Divisions 701 and 705 as modified by this Subdivision. Assets of eligible tier-1 companies becoming members of a MEC group do not have their tax cost set.

Table of sections

[This is the end of the Guide.]

Application and object

719-155 Application and object of this Subdivision

Application

(1) This Subdivision applies if an entity (the ***MEC joining entity***) becomes a *subsidiary member of a *MEC group at a time (the ***MEC joining time***).

Object

(2) The object of this Subdivision is to modify the tax cost setting rules in Divisions 701 and 705 so that they take account of the special characteristics of *MEC groups.

Modified application of tax cost setting rules for joining

719-160 Tax cost setting rules for joining have effect with modifications

(1) This section has effect for the head company core purposes set out in subsection 701-1(2).

General modifying rule

(2) The provisions mentioned in subsection (3) operate, for the purposes of setting the *tax cost of an asset of the MEC joining entity, as if each *subsidiary member of the group (including the MEC joining entity) that is an *eligible tier-1 company at the MEC joining time were a part of the *head company of the group, rather than a separate entity.

Note 1: This subsection means that references in those provisions to matters internal to the group operate as if eligible tier-1 companies in the group were parts of the head company of the group. For example:

(a) provisions operating if the head company holds (whether directly or indirectly) membership interests in another entity operate even if an eligible tier-1 company actually holds those interests; and

(b) provisions operating if the head company owns or controls another entity operate even if one or more eligible tier-1 companies actually own or control that other entity; and

(c) provisions operating if an entity is interposed between the head company and another entity operate even if the first entity is actually interposed between an eligible tier-1 company and the other entity.

Note 2: If the MEC joining entity is an eligible tier-1 company, this subsection means the assets of the entity do not have their tax cost reset at the MEC joining time. This is because Subdivision 705-A (and related provisions) reset the tax cost of assets of *subsidiary* members of a group, but not assets of the head company.

(3) The provisions are:

(a) section 701-10 (about setting the tax cost of assets that an entity brings into the group); and

(b) Subdivision 705-A; and

(c) any other provision of this Act giving Subdivision 705-A a modified effect in circumstances other than those covered by that Subdivision.

Note: An example of provisions covered by paragraph (c) are the provisions of Subdivision 705-B giving Subdivision 705-A a modified effect when a consolidated group is formed.

719-165 Trading stock value not set for assets of eligible tier-1 companies

Subsection 701-35(4) (setting value of trading stock at tax-neutral amount) does not apply to the assets of the MEC joining entity if it is an *eligible tier-1 company at the MEC joining time.

Subdivision 719-F—Losses

Table of sections

719-300 Application

(1) Sections 719-305, 719-310, 719-315, 719-320 and 719-325 operate only if:

(a) a company (the ***ongoing head company***) is the *head company of a *MEC group for an income year or a period in an income year; and

(b) an event (the ***application event***) described in subsection (2) or (3) happens at a time in the income year in relation to the group.

(2) One application event is that another company (the ***new tier-1 member***) becomes both a *member of the *MEC group and an *eligible tier-1 company of the *top company for the group.

(3) The other application event is that the *MEC group comes into existence as a result of a *special conversion event happening to the *potential MEC group derived from the ongoing head company.

Note: This application event happens only if the ongoing head company was the head company of a consolidated group just before the special conversion event.

Exceptions for events involving subsidiary members of group

(4) Those sections do not operate because of the event described in subsection (2) if the new tier-1 member was a *subsidiary member of the *MEC group immediately before the event.

(5) Those sections do not operate because of the event described in subsection (3) if all the other companies that are described in paragraph 719-40(1)(c) and are involved in the *special conversion event were *subsidiary members of the *consolidated group just before the event.

(6) Subsections (4) and (5) have effect despite subsection (1).

719-305 Subdivision 707-C affects utilisation of losses made by ongoing head company while it was head company

(1) For income years ending after the application event happened, Subdivision 707-C affects the *utilisation of all losses (the ***prior***

group losses) of any *sort that the ongoing head company made (apart from Subdivision 707-A) for an income year that:

(a) was an income year during which the *MEC group was in existence (or, if the application event involved the MEC group coming into existence because of a *special conversion event involving a *consolidated group, the consolidated group was in existence); and

(b) was before the income year in which the event happened.

Prior group losses taken to have been transferred at time of event

(2) The ongoing head company is taken to have transferred the prior group losses to itself under Subdivision 707-A at the time of the application event, for the purposes of:

(a) the application of Subdivision 707-C in relation to the *utilisation of the prior group losses and other losses; and

(b) future applications of this section and section 719-310.

Available fraction for bundle of losses

(3) For the purpose of working out the *available fraction for the *bundle of the prior group losses at the time of the transfer, work out the ongoing head company's *modified market value at the time of the application event as if:

(a) the ongoing head company had become a *member of a *consolidated group at the time; and

(b) each *subsidiary member of the MEC group or consolidated group of which the ongoing head company was the *head company just before the event were a part of the ongoing head company (and not a separate entity) at the time of the event; and

(c) each subsidiary member of that group at an earlier time had been a part of the ongoing head company (and not a separate entity) at the earlier time.

Deemed transfer does not affect year of loss

(4) Subdivision 707-C affects the *utilisation as if each of the prior group losses had been made by the ongoing head company for the income year for which the company actually made the loss (and

not the income year in which the application event happened). Subsection (2) has effect subject to this subsection.

719-310 Adjustment of available fractions for bundles of losses previously transferred to ongoing head company

(1) This section affects the *available fraction for each *bundle of losses that were transferred to the ongoing head company under Subdivision 707-A before the application event.

(2) The ***available fraction*** for the *bundle is reduced or maintained just after the event by multiplying it by this fraction:

$$\frac{\text{Market value of the ongoing head company just before the application event}}{\text{Market value of the ongoing head company just after the application event}}$$

Note: The market value of the ongoing head company at the time just before or just after the application event will be worked out on the basis that subsidiary members of the MEC group or consolidated group headed by the ongoing head company at that time are part of the ongoing head company, because of section 701-1 (the single entity rule).

(3) Item 3 of the table in subsection 707-320(2) does *not* apply to affect the *available fraction for the *bundle because of:

(a) the transfer mentioned in section 719-305; or

(b) the transfer (if any) to the ongoing head company of a loss of any *sort under Subdivision 707-A at the time of the application event from an entity that became a *subsidiary member of the *MEC group as a result of the event.

719-315 Further adjustment of available fractions for all bundles

(1) If, because of the application event:

(a) there is under section 719-305 an *available fraction for the *bundle of prior group losses; and

(b) section 719-310 affects the available fraction for one or more other bundles of losses;

this section affects the available fraction for *every* one of those bundles.

(2) The ***available fraction*** (as affected by section 719-305 or 719-310) is reduced by multiplying it by this fraction:

$$\frac{\text{*Available fraction for the *bundle of prior group losses}}{\text{Sum of the *available fraction for every *bundle of losses whose available fraction is affected by this section}}$$

(3) For the purposes of working out the fraction in subsection (2), use the value of an *available fraction for a *bundle of losses apart from:

(a) this section; and

(b) if item 5 of the table in subsection 707-320(2) would apply as a result of the calculation of the available fraction in accordance with section 719-305 or 719-310—that item.

719-320 Limit on utilising losses other than the prior group losses

(1) This section has effect for the purposes of working out how much of the losses, other than prior group losses, in a *bundle the ongoing head company can *utilise for the income year in which the application event happens.

(2) For the purposes of subsection 707-310(3), the prior group losses are to be treated as if they had *not* been transferred under Subdivision 707-A, to the extent to which the ongoing head company can *utilise them for the income year because they are treated as being included in a *bundle whose available fraction was 1 from the start of the income year until the time of the application event.

(3) This section is a matter that is relevant for the purposes of paragraph 707-335(3)(f), if section 707-335 applies to the ongoing head company's *utilisation of the losses in the *bundle for the income year.

Note: That section applies to a company's utilisation for an income year of losses in a bundle if the losses are transferred under Subdivision 707-A after the start of the year or if the value of the available fraction for the bundle changes during the year while the company is treated as having made the losses because of that Subdivision.

(4) Section 719-305 has effect subject to this section.

719-325 Cancellation of all losses in a bundle

(1) The ongoing head company:

(a) may choose to cancel all the losses in the *bundle of prior group losses; and

(b) may choose to cancel all the losses in a *bundle of losses to which section 719-310 applies.

(2) If the ongoing head company chooses to cancel all the losses in a *bundle, subsections (3), (4), (5), (6) and (7) operate.

(3) The ongoing head company cannot *utilise for the income year in which the application event happened more of the losses than it would have been able to utilise under Subdivision 707-C assuming:

(a) if the losses are prior group losses:

(i) the losses were in a *bundle for the income year; and

(ii) the *available fraction for the bundle were 1 for the period from the start of the income year until the event happened; and

(b) in any case—the available fraction for the bundle including the losses were 0 from the time of the event until the end of the income year.

Note: Section 707-335 is relevant to working out how much of the losses could be utilised, because the value of the available fraction for the bundle changes during the period described in that section.

(4) The ongoing head company cannot:

(a) transfer the losses to another company under Division 170 for an income year ending after the application event; or

(b) transfer the losses to another company under Subdivision 707-A after the application event.

This subsection has effect despite subsection (3).

(5) Disregard the existence of the *bundle at and after the time of the application event for the purposes of working out the *available fraction for another *bundle of losses.

(6) The losses cannot be *utilised by any entity for an income year starting after the application event.

(7) The choice cannot be revoked.

Subdivision 719-J—MEC group cost setting rules: leaving cases

Guide to Subdivision 719-J

719-500 What this Subdivision is about

When an entity ceases to be a subsidiary member of a MEC group, the tax cost setting amount for the group's membership interests in the entity is worked out in accordance with Division 711 as modified by this Division.

Table of sections

719-505 Application and object of this Subdivision

Application

(1) This Subdivision applies if the old group mentioned in subsection 711-5(1) is a *MEC group.

Object

(2) The object of this Subdivision is to modify the rules in Division 711 so that they take account of the special characteristics of *MEC groups.

719-510 Modified operation of paragraphs 711-15(1)(b) and (c)

(1) This section applies if the leaving entity mentioned in subsection 711-15(1) is a *subsidiary member of the old group that is an *eligible tier-1 company.

(2) Paragraphs 711-15(1)(b) and (c) apply as if the membership interests mentioned in those paragraphs included *pooled interests in the *eligible tier-1 company.

Note: This subsection means that, in working out tax cost setting amounts for internal interests in the eligible tier-1 company, section 711-15 will allocate part of the old group's allocable cost amount for the eligible tier-1 company to the pooled interests in the company.

However, the tax cost of the pooled interests is not set according to section 711-15. Subdivision 719-K contains rules that set the cost of the pooled interests.

Subdivision 719-K—MEC group cost setting rules: pooling cases

Guide to Subdivision 719-K

719-550 What this Subdivision is about

This Subdivision contains cost setting rules for membership interests in eligible tier-1 companies that are members of a MEC group, where those interests are not held by members of the group.

Table of sections

[This is the end of the Guide.]

719-555 Application and object of this Subdivision

Application

(1) This Subdivision applies if:

(a) one or more entities hold *pooled interests (the ***reset interests***) in *eligible tier-1 companies that are members of a *MEC group, just before a particular time (the ***trigger time***); and

(b) at the trigger time, either or both of these things happen to one or more of those eligible tier-1 companies (the ***trigger companies***):

(i) the company ceases to be a member of the group;

(ii) a *CGT event happens in relation to one or more reset interests in the company; and

(c) the *market value of the reset interests as a whole (including the market value of synergies arising from the combination of those interests) just before the trigger time is more than nil.

Object

(2) The object of this Subdivision is to set the cost of all reset interests:

(a) first, by allocating to each reset interest held in a trigger company so much of the total cost of all reset interests held in members of the group that the *market value of the interest bears to the group's market value; and

(b) then, by allocating the remainder of that total cost to all reset interests held in other *eligible tier-1 companies, by dividing that remainder by the number of those interests.

719-560 Pooled interests

(1) A ***pooled interest*** in an *eligible tier-1 company that is a member of a *MEC group is a *membership interest in the eligible tier-1 company that is held by an entity that is *not* a member of the group.

Note: A membership interest in the head company of a MEC group can be a pooled interest.

(2) Despite subsection (1), a *membership interest is *not* a pooled interest if it is:

(a) a *share that is disregarded under subsection 719-30(2); or

(b) held by an entity only as a nominee of one or more other entities each of which is a member of the group.

719-565 Setting cost of reset interests

CGT provisions—cost base

(1) If Part 3.1 or 3.3 is to apply in relation to a reset interest, the Part applies as if the interest's *cost base were increased or reduced so that the cost base just before the trigger time equals the cost setting amount worked out under section 719-570.

CGT provisions—reduced cost base

(2) If Part 3.1 or 3.3 is to apply in relation to a reset interest, the Part applies as if the interest's *reduced cost base were increased or reduced so that the reduced cost base just before the trigger time equals the cost setting amount worked out under section 719-570.

Other provisions

(3) If a provision of this Act (other than Part 3.1 or 3.3) is to apply in relation to a reset interest, the provision applies as if the interest's cost just before the trigger time were equal to the cost setting amount worked out under section 719-570.

719-570 Cost setting amount

Reset interests held in trigger companies—cost setting amount for cost base etc.

(1) Work out the cost setting amount for the purposes of subsections 719-565(1) and (3) for a reset interest in a trigger company using the formula:

$$\frac{\text{Market value of the reset interest}}{\text{Market value of the group}} \times \text{Pooled cost amount}$$

where:

market value of the group is:

(a) if every *eligible tier-1 company that is a member of the group just before the trigger time is a trigger company—the sum of the *market value (just before the trigger time) of all reset interests in each of those companies; or

(b) otherwise—the amount mentioned in paragraph 719-555(1)(c).

market value of the reset interest is the market value (just before the trigger time) of all reset interests in that trigger company, in the same class as the interest, divided by the number of reset interests in that company in that class.

pooled cost amount is the sum of the *cost bases (just before the trigger time) of all reset interests.

Reset interests held in other eligible tier-1 companies—cost setting amount for cost base etc.

(2) Work out the cost setting amount for the purposes of subsections 719-565(1) and (3) for a reset interest that is *not* in a trigger company, using the formula:

$$\frac{\text{Pooled cost amount} - \text{Amount allocated to trigger company interests}}{\text{Number of non-trigger company interests}}$$

where:

amount allocated to trigger company interests is the sum of all cost setting amounts worked out under subsection (1) for the reset interests covered by that subsection.

number of non-trigger company interests is the number of reset interests, other than those covered by subsection (1).

pooled cost amount has the same meaning as in subsection (1).

Cost setting amount for reduced cost base

(3) Work out the cost setting amount for the purposes of subsection 719-565(2) for a reset interest by applying subsections (1) and (2) of this section in relation to the interest, as if every reference in those subsections to *cost base were a reference to *reduced cost base.

[The next Division is Division 721.]

9 Subsection 995-1(1) (definition of *available fraction*)

Omit "section 707-320", substitute "sections 707-320, 719-310 and 719-315".

10 Subsection 995-1(1)

Insert:

pooled interest in an *eligible tier-1 company that is a member of a *MEC group has the meaning given by section 719-560.

Schedule 9—Consolidation: application provision and transitional provisions about trading stock and internally-generated assets

Income Tax (Transitional Provisions) Act 1997

1 Section 700-1

Repeal the section, substitute:

700-1 Application of Part 3-90 of *Income Tax Assessment Act 1997*

Part 3-90 of the *Income Tax Assessment Act 1997*, as inserted by the *New Business Tax System (Consolidation) Act (No. 1) 2002* and amended by the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* and the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*, applies on and after 1 July 2002.

2 After Division 701

Insert:

Division 701A—Modified application of provisions of Income Tax Assessment Act 1997 for entities with continuing majority ownership from 27 June 2002 until joining a consolidated group

Table of sections

701A-1 Continuing majority-owned entity, designated group etc.

Continuing majority-owned entity and designated group

(1) If:

(a) an entity becomes a subsidiary member of a consolidated group at any time on or after 1 July 2002; and

(b) a person or persons continued to be the majority owners (see subsection (2)) of the entity from the start of 27 June 2002 until the entity became a subsidiary member of the group;

the entity is a ***continuing majority-owned entity*** and the group is the entity's ***designated group***.

Majority owners of an entity

(2) A person or persons are the ***majority owners*** of an entity if they beneficially own, directly or indirectly through one or more interposed entities, membership interests in the entity whose market value is more than 50% of the market value of all of the membership interests in the entity.

Interposed non-fixed trust to be treated as fixed trust

(3) For the purposes of subsection (2), if the interposed entity or any of the interposed entities is a trust that is not a fixed trust:

(a) it is treated as if it were a fixed trust; and

(b) all of its objects are treated as if they were beneficiaries of that trust with equal interests in it.

701A-5 Modified application of Part 3-90 of *Income Tax Assessment Act 1997* to trading stock of continuing majority-owned entity

(1) The operation of Part 3-90 of the *Income Tax Assessment Act 1997* is modified in accordance with this section in relation to each asset of a continuing majority-owned entity that is trading stock just before the entity becomes a subsidiary member of the entity's designated group.

Continuing majority-owned entity to revalue its trading stock under normal provisions

(2) For the entity core purposes:

(a) subsection 701-35(4) of the *Income Tax Assessment Act 1997* does not apply in relation to the asset; and

(b) instead, the value of the asset at the end of the income year that ends, or, if section 701-30 of that Act applies, of the income year that is taken by subsection (3) of that section to end, is the value determined in accordance with sections 70-45 to 70-70 of that Act.

For head company, trading stock to be retained cost base asset with tax cost setting amount equal to entity's year-end valuation

(3) For the head company core purposes when the continuing majority-owned entity becomes a subsidiary member of the designated group, the asset is a retained cost base asset whose tax cost setting amount is equal to the value applicable in accordance with paragraph (2)(b).

701A-10 Modified application of Part 3-90 of *Income Tax Assessment Act 1997* to certain internally generated assets of continuing majority-owned entity

(1) This section applies if:

(a) because subsection 701-1(1) (the single entity rule) of the *Income Tax Assessment Act 1997* applies, a depreciating asset becomes that of the head company of a continuing majority-owned entity's designated group when the entity becomes a subsidiary member of that group; and

(b) the continuing majority-owned entity's terminating value for the asset is less than the asset's tax cost setting amount; and

(c) the asset existed at the start of 27 June 2002; and

(d) more than half of the expenditure incurred in constructing or creating the asset was of a revenue nature and allowable as a deduction to the entity (whether or not the continuing majority-owned entity) that constructed or created the asset; and

(e) for every balancing adjustment event occurring for the asset before the continuing majority-owned entity became a

subsidiary member of the group, there was roll-over relief under section 40-340 of the *Income Tax Assessment Act 1997*.

Reduced depreciation deductions etc. for head company

(2) If this section applies, for the head company core purposes:

(a) while the asset is, because subsection 701-1(1) of that Act applies, that of the head company of the designated group, for the purpose of working out deductions for the asset's decline in value under Division 40 of the *Income Tax Assessment Act 1997*, its tax cost setting amount is taken to be equal to the continuing majority-owned entity's terminating value for the asset; and

(b) if a balancing adjustment event occurs for the asset, or the head company ceases to hold the asset because an entity ceases to be a subsidiary member of the group, and:

(i) the deductions for its decline in value up to that time worked out on the basis in paragraph (a);

are less than:

(ii) the deductions that would have been worked out using its actual tax cost setting amount;

then:

(iii) if a balancing adjustment event occurs for the asset—the shortfall is allowable as a deduction to the head company for the income year in which it ceases to hold the asset; or

(iv) if the head company ceases to hold the asset because an entity ceases to be a subsidiary member of the group—the group's allocable cost amount worked out under section 711-30 of the *Income Tax Assessment Act 1997* for the entity is increased by the shortfall.

Note: The asset's actual tax cost setting amount would be used for the purpose of working out any balancing adjustment for a balancing adjustment event or for working out the terminating value of the asset under Division 711 of the *Income Tax Assessment Act 1997*.

Reduced depreciation deductions etc. for acquirer from head company

(3) If:

(a) the asset is acquired by another entity (a ***new asset holder***) from the head company; and

(b) at the time of the acquisition:

(i) either party to the acquisition controls (for value shifting purposes) the other; or

(ii) a third entity controls (for value shifting purposes) the parties to the acquisition; and

(c) the following amount:

(i) the asset's adjustable value (the ***roll-over adjustable value***) just before the acquisition, worked out on the assumption that the head company had acquired the asset for an amount equal to the continuing majority-owned entity's terminating value for the asset;

is less than:

(ii) the asset's cost to the new asset holder;

then the consequences in subsection (4) occur.

(4) The consequences are as follows:

(a) while the asset is held by the new asset holder, for the purpose of working out deductions for the asset's decline in value under Division 40 of the *Income Tax Assessment Act 1997*, the acquisition by the new asset holder is taken to have been for an amount equal to the asset's roll-over adjustable value;

(b) if a balancing adjustment event occurs for the asset and:

(i) the deductions for its decline in value up to that time, worked out on the basis in paragraph (a);

are less than:

(ii) the deductions that would otherwise have been worked out;

then the shortfall is allowable as a deduction to the new asset holder for the income year in which it ceases to hold the asset.

Reduced depreciation deductions etc. for entity that ceases to be a subsidiary member

(5) If:

(a) the asset becomes that of an entity (a ***new asset holder***) other than the head company because subsection 701-1(1) of the *Income Tax Assessment Act 1997* ceases to apply when the entity ceases to be a subsidiary member of the designated group as a result of a third entity (the ***buyer of the new asset holder***) acquiring some or all of the membership interests in the new asset holder; and

(b) at the time of the acquisition:

(i) the buyer of the new asset holder controls (for value shifting purposes) the head company of the designated group, or vice versa; or

(ii) a third entity controls (for value shifting purposes) the head company of the designated group and the buyer of the new asset holder; and

(c) the following amount:

(i) the asset's adjustable value (the ***roll-over adjustable value***) just before the cessation, worked out on the assumption that the head company had acquired the asset for an amount equal to the continuing majority-owned entity's terminating value for the asset;

is less than:

(ii) the asset's cost to the new asset holder;

then the consequences in subsection (6) occur.

(6) The consequences are as follows:

(a) while the asset is held by the new asset holder, for the purpose of working out deductions for the asset's decline in value under Division 40 of the *Income Tax Assessment Act 1997*, the acquisition by the new asset holder is taken to have been for an amount equal to the asset's roll-over adjustable value; and

(b) if a balancing adjustment event occurs for the asset and:

(i) the deductions for its decline in value up to that time worked out on the basis in paragraph (a);

are less than:

(ii) the deductions that would otherwise have been worked out;

then the shortfall is allowable as a deduction to the new asset holder for the income year in which it ceases to hold the asset.

Reduced depreciation deductions etc. for later acquirer

(7) If:

(a) the asset is acquired by another entity (a ***new asset holder***) from an entity that is a new asset holder under subsection (3) or (5) or a previous application of this subsection; and

(b) an entity:

(i) was a party to the acquisition and, at the time of the acquisition, controlled (for value shifting purposes) the other party; or

(ii) was not a party to each acquisition but, at the time of the acquisition, controlled (for value shifting purposes) the parties to the acquisition; and

(c) that entity was also the entity whose control (for value shifting purposes) resulted in the control test being satisfied in respect of each previous acquisition or cessation involving a new asset holder; and

(d) the following amount:

(i) the asset's adjustable value (the ***roll-over adjustable value***) just before the acquisition, worked out on the assumption that every previous new asset holder had acquired the asset for the asset's roll-over adjustable value, worked out under subsection (3) or (5) or this subsection, just before it did so;

is less than:

(ii) the asset's cost to the new asset holder;

then the consequences in subsection (8) occur.

(8) The consequences are as follows:

(a) while the asset is held by the new asset holder, for the purpose of working out deductions for the asset's decline in value under Division 40 of the *Income Tax Assessment Act 1997*, the acquisition by the new asset holder is taken to have

been for an amount equal to the asset's roll-over adjustable value asset just before the acquisition; and

(b) if a balancing adjustment event occurs for the asset and:

(i) the deductions for its decline in value up to that time worked out on the basis in paragraph (a);

are less than:

(ii) the deductions that would otherwise have been worked out;

then the shortfall is allowable as a deduction to the new asset holder for the income year in which it ceases to hold the asset.

Schedule 10—Consolidation: transitional rules for MEC tax cost setting provisions

Income Tax (Transitional Provisions) Act 1997

1 Section 717-25 (link note)

Repeal the link note, substitute:

[The next Division is Division 719.]

2 At the end of Part 3-90

Add:

Division 719—MEC rules

Table of Subdivisions

Subdivision 719-C—Cost setting

Table of sections

719-160 Transitional cost setting rules on joining have effect with modifications

(1) Section 719-160 of the *Income Tax Assessment Act 1997* has effect in relation to the provisions of this Act mentioned in subsection (2) in the same way as that section has effect in relation to the provisions mentioned in subsection 719-160(3) of the *Income Tax Assessment Act 1997*.

(2) The provisions are Divisions 701 and 702 of this Act, other than:
  (a) section 701-5; and
  (b) section 701-40; and
  (c) section 701-45.

(3) However, that effect of section 719-160 of the *Income Tax Assessment Act 1997* is subject to modifications set out in this Division.

719-165 Modified effect of paragraph 701-45(1)(b)

(1) This section applies if the transitional group mentioned in paragraph 701-45(1)(b) of this Act is a MEC group.

(2) That paragraph applies as if the reference in that paragraph to the entity that became the head company were a reference to any entity that became a member of the group, and that was an eligible tier-1 company, at the time the transitional group came into existence.

Subdivision 719-F—Losses

Table of sections

719-305 Available fraction for bundle of losses not affected by concessional rules

To avoid doubt, sections 707-325 and 707-327 do not apply for the purposes of working out the available fraction for the bundle of losses that are taken under subsection 719-305(2) of the *Income Tax Assessment Act 1997* to be transferred under Subdivision 707-A of that Act.

[The next Division is Division 820.]

Schedule 11—Consolidation: consequential provisions for research and development

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

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

2 Subsection 6(1)

Insert:

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

3 Subsection 6(1)

Insert:

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

4 Subsection 6(1)

Insert:

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

5 Subsection 6(1)

Insert:

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

6 Subsection 6(1)

Insert:

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

7 After section 73B

Insert:

73BAA Effect of consolidation

The purpose of sections 73BAB, 73BAC, 73BAD, 73BAE and 73BAF is to ensure that the research and development concession interacts properly with the consolidation regime in Part 3-90 of the *Income Tax Assessment Act 1997*.

73BAB Head company treated as registered

Sections 73B to 73Z (inclusive) of this Act apply to the head company of a consolidated group or MEC group as if the head company:

(a) were an eligible company; and

(b) were registered under section 39J of the *Industry Research and Development Act 1986* in relation to particular activities in respect of a year of income;

during any period that a subsidiary member of the group is an eligible company and registered under section 39J of that Act in relation to those activities in respect of that year of income.

73BAC Expenditure history: joining entity

(1) For the purposes of sections 73P to 73Z (inclusive), where a company (the ***joining company***) becomes a member of a consolidated group or MEC group, those provisions have effect after the joining company became a member as if:

(a) any incremental expenditure (see section 73P) incurred by the joining company before it became a member had been incurred by the head company of the group; and

(b) any amounts the joining company has deducted or can deduct for that expenditure had been deducted by the head company.

(2) Subsection (1) has effect after any application of subsection 73R(3) or (4) (exceptions to R&D membership period rules).

Note: This provision overrides section 701-5 of the *Income Tax Assessment Act 1997* (the consolidation entry history rule) for the purposes of the incremental expenditure provisions.

73BAD Expenditure history: leaving entity

(1) For the purposes of sections 73P to 73Z (inclusive), where a company (the ***leaving company***) ceases to be a member of a consolidated group or MEC group, those provisions have effect after the leaving company ceased to be a member as if:

(a) any incremental expenditure (see section 73P) actually incurred by the leaving company while it was a member of the group had been incurred by it rather than by any other member of the group; and

(b) any amounts the head company of the group has deducted or can deduct for that expenditure had been deducted by the leaving company.

(2) Subsection (1) has effect before any application of subsection 73R(3) or (4) (exceptions to R&D membership period rules).

Note: This provision overrides section 701-40 of the *Income Tax Assessment Act 1997* (the consolidation exit history rule) for the purposes of the incremental expenditure provisions.

73BAE Recoupment where entity leaves group

(1) All or part of an amount that would, apart from this subsection, be allowable as a deduction to the head company of a consolidated group or MEC group under section 73B or 73BA for a year of income is not allowable as such a deduction if:

(a) the expenditure that would have given rise to the deduction was incurred by another company that was a subsidiary member of the group; and

(b) the other company ceased, during or after that year of income, to be a subsidiary member of the group; and

(c) the other company would have been denied a deduction for all or that part of the amount for that year of income because it received a recoupment or grant to which section 73C would apply if the other company had never been a subsidiary member of the group.

(2) The other company must, within 60 days after the end of the financial year in which it received or became entitled to receive the recoupment or grant, give the head company details in the approved form of the part of the initial clawback amount for the recoupment or grant (see section 73C) to be applied by the head company in determining the reduction in the amount referred to in subsection (1).

73BAF Preventing double deductions

(1) This section applies to the head company of a consolidated group or MEC group if, after the tax cost is set for a depreciating asset, the company can deduct an amount (the ***reduction amount***) for expenditure in relation to the asset under section 73B for a year of income.

(2) The company's deduction for the decline in value of the asset under Division 40 of the *Income Tax Assessment Act 1997*, and its notional Division 40 deduction under section 73BC of this Act, for the year of income are reduced (but not below nil) by the reduction amount.

(3) Any part of the reduction amount remaining after that reduction is applied to reduce the company's deductions for the decline in value of the asset under Division 40 of the *Income Tax Assessment Act 1997*, and its notional Division 40 deduction under section 73BC of this Act, for later years of income.

Income Tax Assessment Act 1997

8 Section 701-5 (note)

Omit "Note", substitute "Note 1".

9 At the end of section 701-5

Add:

Note 2: Section 73BAC of the *Income Tax Assessment Act 1936* overrides this rule for the purposes of the research and development incremental expenditure provisions.

10 At the end of subsection 701-40(1)

Add:

Note: Section 73BAD of the *Income Tax Assessment Act 1936* overrides this rule for the purposes of the research and development incremental expenditure provisions.

11 After paragraph 701-40(2)(c)

Insert:

(d) any registration under section 39J of the *Industry Research and Development Act 1986* for particular research and development activities;

Taxation Administration Act 1953

12 Section 286-1 of Schedule 1

Omit "to the Commissioner".

13 Section 286-25 of Schedule 1

Omit "to the Commissioner".

14 At the end of section 286-75 of Schedule 1

Add:

(3) You are also liable to an administrative penalty if:

(a) you are required under subsection 73BAE(2) of the *Income Tax Assessment Act 1936* to give written details of an initial clawback amount (see section 73C of that Act) to another company by a particular day; and

(b) you do not give the details to the other company by that day.

15 Subsection 286-80(2) of Schedule 1

Repeal the subsection, substitute:

(2) The ***base penalty amount*** is:

(a) for failing to lodge a return, notice or other document on time or in the *approved form—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it to the Commissioner (up to a maximum of 5 penalty units); or

(b) for failing to give written details as mentioned in subsection 286-75(3)—1 penalty unit for each period of 28 days or part

of a period of 28 days starting on the day when the details are due and ending when you give the details.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Example: An entity lodges a return 31 days late. The base penalty amount under subsection (2) is 2 penalty units.

Schedule 12—Consolidation: amendments relating to Division 170

Income Tax Assessment Act 1997

1 At the end of section 170-15

Add:

(3) Despite subsection (1), if the *tax loss is transferred because the conditions in section 170-32 are met, the *income company is taken to have incurred the tax loss for the income year for which the first prior transferor mentioned in that section incurred the tax loss.

(4) Despite subsection (1), if the *tax loss is transferred because the condition in subsection 170-42(4) is met, the *income company is taken to have incurred the tax loss for the income year for which that subsection assumes the income company incurred the tax loss.

2 Section 170-30 (heading)

Repeal the heading, substitute:

170-30 Companies must be in existence and members of the same wholly-owned group etc.

3 At the end of subsections 170-30(1) and (2)

Add:

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-32 and 170-33.

4 After section 170-30

Insert:

170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A

When the conditions in this section apply

(1) The conditions in this section apply instead of the conditions in subsections 170-30(1) and (2) if:

(a) the *income company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the *loss company incurred the *tax loss because of one or more transfers of the tax loss under Subdivision 707-A.

Conditions

(2) Each transferor (***prior transferor***) of the *tax loss under Subdivision 707-A must have been a company.

(3) It must have been possible to meet the conditions in subsections 170-30(1) and (2) in relation to the *loss company and the *income company assuming:

(a) the *loss year were so much of the income year in which the *tax loss was transferred to the loss company under Subdivision 707-A as occurred after the transfer; and

(b) so much (if any) of the *deduction year as occurred before the transfer were disregarded.

(4) The *income company and each prior transferor must both be *in existence during at least part of each of these periods:

(a) the period consisting of:

(i) if the prior transferor incurred the *tax loss apart from Subdivision 707-A—the *loss year; or

(ii) if the prior transferor incurred the tax loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);

(b) so much of the income year during which the tax loss was transferred under Subdivision 707-A from the prior transferor

to another company as occurs before the transfer (but after the start of the period described in paragraph (a));

(c) any intervening income year.

(5) The *income company must be a member of the same *wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were *in existence.

170-33 Alternative test of relations between the loss company and other companies

(1) The conditions in subsections 170-30(1) and (2) are taken to be met in relation to the *loss company and the *income company if:

(a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the income company is covered by item 1 or 2 of the table in subsection 170-30(4) (because the company is the *head company of a *consolidated group or *MEC group at the time described in that item); and

(c) the relevant circumstances in this section exist.

Circumstances

(2) One circumstance is that there is another company (the ***first link company***) in relation to which all these conditions are met:

(a) the first link company became a *subsidiary member of a *consolidated group or *MEC group after the start of the *loss year but before the time described in the item of the table in subsection 170-30(4) that covers the *income company;

(b) the *tax loss could have been transferred from the *loss company to the first link company under this Subdivision (apart from subsection 170-30(4) and this section) for a *deduction year consisting of the *trial year for the first link company becoming a subsidiary member of that group had:

(i) the first link company continued to be *in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and

(ii) the trial year not started before the start of the loss year; and

(iii) the first link company had enough assessable income for the trial year;

(c) the tax loss would have been incurred by the income company because of one or more transfers under Subdivision 707-A assuming the tax loss had been made by the first link company (apart from that Subdivision) for the loss year.

(3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the *income company, another circumstance is that the other company and the *loss company were *in existence and members of the same *wholly-owned group for the period:

(a) starting when the *tax loss would have been transferred under Subdivision 707-A *to* the other company as described in that paragraph; and

(b) ending when the tax loss would have been transferred under Subdivision 707-A *from* the other company as described in that paragraph.

(4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the *income company as well as the other company.

(5) Another circumstance is that the conditions in subsections 170-30(1) and (2) would have been met for the *loss company and the *income company assuming:

(a) the *loss year consisted of the part of the income year in which the *tax loss would have been transferred to the income company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and

(b) so much (if any) of the *deduction year as occurred before the time the transfer would have occurred were disregarded.

5 Subsection 170-35(3) (note)

Omit "Note:", substitute "Note 1:".

6 At the end of subsection 170-35(3)

Add:

Note 2: Division 707 affects the operation of Subdivision 165-A if the loss company incurred the tax loss because of a transfer under Subdivision 707-A.

7 Subsection 170-40(2) (note)

Omit "Note:", substitute "Note 1:".

8 At the end of subsection 170-40(2)

Add:

Note 2: The condition in subsection (2) may not apply in some cases. See section 170-42.

9 After section 170-40

Insert:

170-42 If the income company has become the head company of a consolidated group or MEC group

(1) The condition in subsection (2) of this section applies to the *income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the *loss company and the income company apart from section 170-33 and either:

(a) both these circumstances exist:

(i) after the start of the *loss year but before the relevant time described in subsection 170-30(4), the income company became the *head company of a *consolidated group or of a *MEC group that came into existence after the start of the loss year;

(ii) the loss year and *deduction year are not the same; or

(b) all these circumstances exist:

(i) the income company is, at the relevant time described in subsection 170-30(4), the head company of a MEC group;

(ii) before that time but after the end of the loss year, the MEC group was involved in an application event

described in section 719-300 (but not covered by subsection 719-300(4) or (5));

(iii) the income company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while head company of the group or of a consolidated group involved in the event;

(iv) the MEC group or consolidated group came into existence before the start of the *loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

(2) The *income company must have been able to deduct the *tax loss in the *deduction year assuming that it had incurred the tax loss for the *loss year.

(3) The condition in subsection (4) of this section applies to the *income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the *loss company and the income company because of section 170-33.

(4) The *income company must have been able to deduct the *tax loss in the *deduction year assuming that it had incurred the tax loss, for the income year in which the loss would have been transferred to it as described in paragraph 170-33(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

10 At the end of section 170-45

Add:

(4) Subsections (2) and (3) do not apply if the transfer occurs because either or both of the conditions in subsections 170-42(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Identify each *bundle of losses that, on the assumption in subsection 170-42(2) or (4) (as appropriate), would have included the *tax loss or *film loss (as appropriate).

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-42(2) and (4) are met.

Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-42(4) if the conditions in subsections 170-30(1) and (2) are met in relation to the loss company and the income company because of multiple applications of section 170-33 each involving a different first link company.

Step 2. For each *bundle identified, work out how much of the *tax loss or *film loss (as appropriate) the *income company would have been able to deduct in the *deduction year assuming that:

(a) the loss could have been deducted in that year only after the deduction in that year of any other losses of that *sort that would have been included in the bundle, other than losses (the ***transferable losses***) that could be transferred from the *loss company to the income company for that year; and

(b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been deducted only in the order in which the loss company incurred them.

Note 1: If the assumption in subsection 170-42(2) is relevant to the bundle, it would have included losses incurred by the income company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.

Note 2: If the assumption in paragraph 170-42(4) is relevant to the bundle, it would have included losses actually incurred by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the income company.

Step 3.	Total every result of step 2 for the *tax loss or *film loss (as appropriate).

11 At the end of section 170-55

Add:

(3) If:

(a) the *loss company has 2 or more *tax losses, or 2 or more *film losses, it can transfer for the *deduction year; and

(b) it incurred at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;

it can transfer under this Subdivision the losses it incurred because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it incurred apart from that Subdivision.

(4) For the purposes of subsection (3), treat a loss incurred by the company both apart from that Subdivision and because of a transfer under that Subdivision as a loss incurred because of a transfer under that Subdivision.

(5) Subsections (1) and (2) have effect subject to subsection (3).

12 Application of amendments of Subdivision 170-A

The amendments of Subdivision 170-A of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to deduction years ending after 1 July 2002.

13 At the end of section 170-115

Add:

(3) Despite subsection (1), if the *net capital loss is transferred because the conditions in section 170-132 are met, the gain company is taken to have made the net capital loss for the income year for which the first prior transferor mentioned in that section made the net capital loss.

(4) Despite subsection (1), if the *net capital loss is transferred because the condition in subsection 170-142(4) is met, the gain company is taken to have made the net capital loss for the income year for

which that subsection assumes the gain company made the net capital loss.

14 Section 170-130 (heading)

Repeal the heading, substitute:

170-130 Companies must be in existence and members of the same wholly-owned group etc.

15 At the end of subsections 170-130(1) and (2)

Add:

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-132 and 170-133.

16 After section 170-130

Insert:

170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A

When the conditions in this section apply

(1) The conditions in this section apply instead of the conditions in subsections 170-130(1) and (2) if:

(a) the gain company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the *loss company made the *net capital loss because of one or more transfers of the net capital loss under Subdivision 707-A.

Conditions

(2) Each transferor (***prior transferor***) of the *net capital loss under Subdivision 707-A must have been a company.

(3) It must have been possible to meet the conditions in subsections 170-130(1) and (2) in relation to the *loss company and the gain company assuming:

(a) the capital loss year were so much of the income year in which the *net capital loss was transferred to the loss

company under Subdivision 707-A as occurred after the transfer; and

(b) so much (if any) of the application year as occurred before the transfer were disregarded.

(4) The gain company and each prior transferor must both be *in existence during at least part of each of these periods:

(a) the period consisting of:

(i) if the prior transferor made the *net capital loss apart from Subdivision 707-A—the capital loss year; or

(ii) if the prior transferor made the net capital loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);

(b) so much of the income year during which the net capital loss was transferred under Subdivision 707-A from the prior transferor to another company as occurs before the transfer (but after the start of the period described in paragraph (a));

(c) any intervening income year.

(5) The gain company must be a member of the same *wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were *in existence.

170-133 Alternative test of relations between the loss company and other companies

(1) The conditions in subsections 170-130(1) and (2) are taken to be met in relation to the *loss company and the gain company if:

(a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the gain company is covered by item 1 or 2 of the table in subsection 170-130(4) (because the company is the *head company of a *consolidated group or *MEC group at the time described in that item); and

(c) the relevant circumstances in this section exist.

Circumstances

(2) One circumstance is that there is another company (the ***first link company***) in relation to which all these conditions are met:

(a) the first link company became a *subsidiary member of a *consolidated group or *MEC group after the start of the capital loss year but before the time described in the item of the table in subsection 170-130(4) that covers the gain company;

(b) the *net capital loss could have been transferred from the *loss company to the first link company under this Subdivision (apart from subsection 170-130(4) and this section) for an application year consisting of the *trial year for the first link company becoming a subsidiary member of that group had:

(i) the first link company continued to be *in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and

(ii) the trial year not started before the start of the capital loss year; and

(iii) the first link company had enough *capital gains for the trial year;

(c) the net capital loss would have been made by the gain company because of one or more transfers under Subdivision 707-A assuming the net capital loss had been made by the first link company (apart from that Subdivision) for the capital loss year.

(3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the gain company, another circumstance is that the other company and the *loss company were *in existence and members of the same *wholly-owned group for the period:

(a) starting when the *net capital loss would have been transferred under Subdivision 707-A *to* the other company as described in that paragraph; and

(b) ending when the net capital loss would have been transferred under Subdivision 707-A *from* the other company as described in that paragraph.

(4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the gain company as well as the other company.

(5) Another circumstance is that the conditions in subsection 170-130(1) and (2) would have been met for the *loss company and the gain company assuming:

(a) the capital loss year consisted of the part of the income year in which the *net capital loss would have been transferred to the gain company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and

(b) so much (if any) of the application year as occurred before the time the transfer would have occurred were disregarded.

17 Subsection 170-135(3) (note 2)

Repeal the note, substitute:

Note 2: Division 707 affects the operation of Subdivision 165-CA if the loss company made the net capital loss because of a transfer under Subdivision 707-A.

Note 3: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

18 At the end of subsection 170-140(2)

Add:

Note 3: The condition in subsection (2) may not apply in some cases. See section 170-142.

19 After section 170-140

Insert:

170-142 If the gain company has become the head company of a consolidated group or MEC group

(1) The condition in subsection (2) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the *loss company and the gain company apart from section 170-133 and either:

(a) both these circumstances exist:

(i) after the start of the capital loss year but before the relevant time described in subsection 170-130(4), the gain company became the *head company of a *consolidated group or of a *MEC group that came into existence after the start of the capital loss year;

(ii) the capital loss year and application year are not the same; or

(b) all these circumstances exist:

(i) the gain company is, at the relevant time described in subsection 170-130(4), the head company of a MEC group;

(ii) before that time but after the end of the capital loss year, the MEC group was involved in an application event described in section 719-300 (but not covered by subsection 719-300(4) or (5));

(iii) the gain company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while head company of the group or of a consolidated group involved in the event;

(iv) the MEC group or consolidated group came into existence before the start of the capital loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

(2) The gain company must have been able to apply the *net capital loss in working out its *net capital gain for the application year assuming that it had made the net capital loss for the capital loss year.

(3) The condition in subsection (4) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the *loss company and the gain company because of section 170-133.

(4) The gain company must have been able to apply the *net capital loss in working out its *net capital gain for the application year assuming that it had made the net capital loss, for the income year

in which the loss would have been transferred to it as described in paragraph 170-133(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

20 At the end of section 170-145

Add:

(7) Subsection (6) does not apply if the transfer occurs because either or both of the conditions in subsections 170-142(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Identify each *bundle of losses that, on the assumption in subsection 170-142(2) or (4) (as appropriate), would have included the *net capital loss.

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-142(2) and (4) are met.

Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-142(4) if the conditions in subsections 170-130(1) and (2) are met in relation to the loss company and the gain company because of multiple applications of section 170-133 each involving a different first link company.

Step 2. For each *bundle identified, work out how much of the *net capital loss the gain company would have been able to apply in working out its *net capital gain for the application year assuming that:

(a) the loss could have been applied in that year only after the application in that year of any other losses of that *sort that would have been included in the bundle, other than losses (the ***transferable losses***) that could be transferred from the *loss company to the gain company for that year; and

(b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been applied only in the order in which the loss company made them.

Note 1: If the assumption in subsection 170-142(2) is relevant to the bundle, it would have included losses made by the gain company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.

Note 2: If the assumption in paragraph 170-142(4) is relevant to the bundle, it would have included losses actually made by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the gain company.

Step 3. Total every result of step 2 for the *net capital loss.

21 At the end of section 170-155

Add:

(2) If:

(a) the *loss company has 2 or more *net capital losses it can transfer for the application year; and

(b) it made at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;

it can transfer under this Subdivision the losses it made because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it made apart from that Subdivision.

(3) For the purposes of subsection (2), treat a loss made by the company both apart from Subdivision 707-A and because of a transfer under that Subdivision as a loss made because of a transfer under that Subdivision.

(4) Subsection (1) has effect subject to subsection (2).

22 Application of amendments of Subdivision 170-B

The amendments of Subdivision 170-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to application years ending after 1 July 2002.

23 At the end of section 707-315

Add:

(5) If, had a loss been made by a company as assumed under a provision of Division 170, the loss would have been transferred under Subdivision 707-A, this Subdivision and other provisions that relate to or may affect the *available fractions for one or more *bundles of losses (including sections 707-140 and 719-325) operate as if the transfer had occurred.

Note: Section 707-140 provides for a choice to cancel a transfer under Subdivision 707-A. Section 719-325 provides for a choice to cancel all losses in certain bundles of losses. A choice under one of those sections may result in a bundle not coming into existence, or not being in existence after a certain time.

(6) To avoid doubt, a choice under section 707-145 or 719-325, as it operates because of subsection (5) of this section, relating to the loss does not affect or prevent:

(a) a transfer of the loss that would have occurred under Subdivision 707-A as described in another application of that subsection involving a different company; or

(b) *utilisation of the loss by the company that actually made the loss and is different from the company assumed under Division 170 to have made the loss.

Note: Therefore a choice under section 707-145 or 719-325, as operating because of subsection (5) of this section, will be able to cause only one bundle not to exist, and will not affect the existence of other bundles that are treated as existing because of other operations of that subsection.

Income Tax (Transitional Provisions) Act 1997

24 Before Subdivision 170-B

Insert:

Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies

Table of sections

170-55 Ordering rule for losses previously transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997*

170-45 Special rules affecting utilisation of losses in a bundle do not affect the amount of a tax loss that can be transferred

In working out an amount under subsection 170-45(4) of the *Income Tax Assessment Act 1997* (which may limit the amount of a tax loss that can be transferred under Subdivision 170-A of that Act), disregard these sections of this Act:

(a) section 707-325 (which lets the available fraction for a bundle of losses be greater than it would otherwise be);

(b) section 707-327 (which effectively lets the available fraction relevant to the utilisation of a loss be chosen in some cases);

(c) section 707-350 (which sets the limit on utilising certain losses in a bundle).

170-55 Ordering rule for losses previously transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997*

If 2 or more losses that a company can transfer for an income year under Subdivision 170-A of the *Income Tax Assessment Act 1997* were previously transferred to it under Subdivision 707-A of that Act, it must transfer first those losses (if any) covered by subsection 707-350(1).

25 Application of Subdivision 170-A of the *Income Tax (Transitional Provisions) Act 1997*

Subdivision 170-A of the *Income Tax (Transitional Provisions) Act 1997* applies to income years ending after 1 July 2002.

26 Subdivision 170-B (heading)

Repeal the heading, substitute:

Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies

27 At the end of Subdivision 170-B

Add:

170-145 Special rules affecting utilisation of losses in a bundle do not affect the amount of a net capital loss that can be transferred

In working out an amount under subsection 170-145(7) of the *Income Tax Assessment Act 1997* (which may limit the amount of a net capital loss that can be transferred under Subdivision 170-B of that Act), disregard these sections of this Act:

(a) section 707-325 (which lets the available fraction for a bundle of losses be greater than it would otherwise be);

(b) section 707-327 (which effectively lets the available fraction relevant to the utilisation of a loss be chosen in some cases);

(c) section 707-350 (which sets the limit on utilising certain losses in a bundle).

170-155 Ordering rule for losses previously transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997*

If 2 or more losses that a company can transfer for an income year under Subdivision 170-B of the *Income Tax Assessment Act 1997* were previously transferred to it under Subdivision 707-A of that Act, it must transfer first those losses (if any) covered by subsection 707-350(1).

28 Application of amendments of Subdivision 170-B of the *Income Tax (Transitional Provisions) Act 1997*

The amendments of Subdivision 170-B of the *Income Tax (Transitional Provisions) Act 1997* made by this Schedule apply to income years ending after 1 July 2002.

Schedule 13—Consolidation: thin capitalisation

Income Tax Assessment Act 1997

1 Section 820-10 (table item 3)

Repeal the item, substitute:

3	Subdivision 820-F	special rules to apply this Division to resident TC groups before 1 July 2003.
3A	Subdivision 820-FA	how this Division applies to a consolidated group or MEC group.
3B	Subdivision 820-FB	special rules for grouping foreign bank branches with a consolidated group, MEC group or single Australian resident company.

2 Before section 820-460

Insert in the operative provisions:

820-455 Removal of grouping under this Subdivision

(1) This section and sections 820-456 to 820-458 affect the making, by the *top entity of a *maximum TC group for an income year, of a choice under section 820-500 for the income year if:

(a) the choice would result in entities (the ***potential group members***) for which the income year ends on the same day being treated as a *resident TC group for the income year; and

(b) the income year includes, or starts after, the day (the ***cut-off day***) worked out under the table.

Note: If the top entity can and does make the choice, subsection 820-458(1) affects a foreign bank's ability to choose under paragraph 820-515(c) to include its Australian permanent establishments in the resident TC group.

Cut-off day for thin capitalisation grouping		
Item	**In this case:**	**The cut-off day is:**
1	The first day (the ***consolidation day***) on which at least one of the potential group members becomes a *member of a *consolidated group or *MEC group is on or before 1 July 2003	the consolidation day
2	The consolidation day is before 1 July 2004 and is the first day of the first income year starting after 30 June 2003 of the group's *head company (for a *consolidated group) or *provisional head company (for a *MEC group) on the consolidation day	the consolidation day
3	Any other case	1 July 2003

(2) The *top entity cannot make the choice if:

(a) the cut-off day is before 1 July 2003 and the income year starts on or after 1 July 2003; or

(b) the cut-off day is on or after 1 July 2003 and the income year starts on or after the cut-off day.

Note: This means that the top entity *can* make the choice in a case covered by item 2 of the table in subsection (1) if the income year ends immediately before the one described in that item. In these circumstances neither of sections 820-456 and 820-457 will apply.

820-456 Income year starts on or after cut-off day but before 1 July 2003

(1) This section applies if:

(a) the cut-off day is before 1 July 2003; and

(b) the income year starts on or after the cut-off day but before 1 July 2003; and

(c) the top entity makes the choice referred to in section 820-455.

(2) This Subdivision (except sections 820-455 to 820-458) applies to each of the potential group members on the following basis:

(a) the income year is treated as ending on 30 June 2003;

(b) the *resident TC group is treated as consisting only of each (if any) of the potential group members that, at no time

before 1 July 2003, was a *member of a *consolidated group or *MEC group.

(3) For each of the potential group members, for each of the following periods:

(a) the period beginning at the start of the income year and ending on 30 June 2003;

(b) the rest (if any) of the income year;

this Division (except sections 820-455 to 820-458) is to have either:

(c) a single application in relation to the whole of the period; or

(d) 2 or more applications, each in relation to a part of that period.

Note: Subsection (3) is similar to section 820-581, which sets out an example of how that section works.

820-457 Income year includes, but does not start on, cut-off day

(1) This section applies if:

(a) the income year includes, but does not start on, the cut-off day; and

(b) the top entity makes the choice referred to in section 820-455.

(2) This Subdivision (except sections 820-455 to 820-458) applies to each of the potential group members as if the income year ended immediately before the cut-off day.

(3) If the cut-off day is *before* 1 July 2003, this Subdivision (except sections 820-455 to 820-458) has an *additional* application to each of the potential group members on the following basis:

(a) the income year is treated as consisting of the period starting on the cut-off day and ending on 30 June 2003, or on the day when the income year would otherwise have ended, whichever is earlier;

(b) the *resident TC group is treated as consisting only of each (if any) of the potential group members that, at no time before or during that period, was a *member of a *consolidated group or *MEC group.

(4) For each of the potential group members, for each of the following periods:

(a) the period starting at the start of the income year and ending immediately before the cut-off day;

(b) if the cut-off day is *before* 1 July 2003:

(i) the period referred to in paragraph (3)(a);

(ii) the rest (if any) of the income year;

(c) if the cut-off day is 1 July 2003—the period starting on the cut-off day and ending at the end of the income year;

this Division (except sections 820-455 to 820-458) is to have either:

(d) a single application in relation to the whole of the period; or

(e) 2 or more applications, each in relation to a part of that period.

Note: If the cut-off day is the consolidation day, this section complements provisions ensuring that, for the potential group members, this Division has at least one separate application to the part of the income year before the consolidation day:

- in the case of subsidiary members of a consolidated group or MEC group, this result is achieved by paragraph 701-30(3)(a); and
- in the case of the head company of the consolidated group or MEC group, it is achieved by section 820-581.

Section 820-581 sets out an example of how that section works. The example discusses how that section interacts with this one, and illustrates the operation of provisions like subsection (4) of this section.

820-458 Choice by foreign bank to include its Australian permanent establishments in the resident TC group

(1) If:

(a) the *top entity makes the choice referred to in section 820-455; but

(b) subsection 820-455(2) would have prevented the choice if the potential group members had included an *Australian permanent establishment of a *foreign bank;

the foreign bank cannot make a choice under paragraph 820-515(c) that would result in the *resident TC group including that Australian permanent establishment.

Note: Subdivision 820-FB allows the head company of a consolidated group or MEC group, or a single Australian company that cannot form such a group, to choose to treat as part of itself certain Australian permanent establishments of a foreign bank.

Section 820-603 then treats an Australian permanent establishment covered by the choice as an entity, and as a member of a consolidated group or MEC group, for the purposes of this Division. This means that the Australian permanent establishment in effect becomes a member of a consolidated group or MEC group, which then triggers the operation of item 1 or 2 in the table in subsection 820-455(1).

(2) If:

(a) the *top entity makes the choice referred to in section 820-455; and

(b) a *foreign bank makes a choice under paragraph 820-515(c) (that does not contravene subsection (1) of this section);

sections 820-456 and 820-457 apply (and are taken always to have applied) as if the potential group members included each *Australian permanent establishment included in the *resident TC group because of the choice under paragraph 820-515(c).

Note: This subsection will only change the effect of this section in a situation of the kind described in the note to subsection (1) of this section.

3 After Subdivision 820-F

Insert:

Subdivision 820-FA—How the thin capitalisation rules apply to consolidated groups and MEC groups

Guide to Subdivision 820-FA

820-579 What this Subdivision is about

This Subdivision tells you:

- how to classify the head company of a consolidated group or MEC group (in terms of which Subdivision of this Division to apply to the head company); and
- how to apply this Division to the head company (including how the application is modified).

Table of sections

[This is the end of the Guide.]

Operative provisions

820-581 How this Division applies to head company for income year in which group comes into existence or ceases to exist

If a *consolidated group or *MEC group:

(a) comes into existence at a time during an income year that is not the start of the income year; or

(b) ceases to exist at a time during an income year that is not the end of the income year;

then, for each of the following periods during that income year:

(c) a period throughout which a company is the *head company of that group; or

(d) a period throughout which that company is the head company of a different consolidated group or MEC group; or

(e) a period throughout which that company is a *member of no consolidated group or MEC group;

this Division (except this section) is to have either:

(f) a single application in relation to the whole of the period; or

(g) 2 or more applications, each in relation to a part of that period.

Example: Austco Ltd is not a member of a consolidated group for the first 6 months of an income year, but then becomes the head company of a

consolidated group which continues in existence for the rest of the income year.

For those first 6 months Austco is an outward investor (general) under section 820-85. For the rest of the income year Austco is an outward investor (general) under subsection 820-583(2).

This section ensures that section 820-120 (about part year periods) applies to Austco instead of section 820-85, so that Subdivision 820-B has 2 separate applications to Austco: one for the first 6 months and the other for the rest of the income year. Under the second application, account is taken of the position of the subsidiary members that are taken to be part of Austco as head company of the consolidated group.

If some or all of the period of those first 6 months is before 1 July 2003, another consequence of this section is that Austco may become part of a resident TC group under Subdivision 820-F for so much of that period as is before 1 July 2003. See sections 820-455 to 820-458.

820-583 Classification of head company

Outward investing entity (non-ADI)

(1) The *head company of a *consolidated group or of a *MEC group is an ***outward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:

(a) an *outward investor (general) for that period (because of subsection (2)); or

(b) an *outward investor (financial) for that period (because of subsection (3)).

Outward investor (general)

(2) The *head company of a *consolidated group or of a *MEC group is an ***outward investor (general)*** for a period that is all or part of an income year if:

(a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and

(b) no *member of the group is a *financial entity or *ADI at any time during that period.

Outward investor (financial)

(3) The *head company of a *consolidated group or of a *MEC group is an ***outward investor (financial)*** for a period that is all or part of an income year if:

(a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and

(b) throughout that period, there is at least one *member of the group that is a *financial entity; and

(c) no *member of the group is an *ADI at any time during that period.

Inward investing entity (non-ADI)

(4) The *head company of a *consolidated group or of a *MEC group is an ***inward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:

(a) an *inward investment vehicle (general) for that period (because of subsection (5)); or

(b) an *inward investment vehicle (financial) for that period (because of subsection (6)).

Inward investment vehicle (general)

(5) The *head company of a *consolidated group or of a *MEC group is an ***inward investment vehicle (general)*** for a period that is all or part of an income year if:

(a) throughout that period, the head company is a *foreign controlled Australian entity; and

(b) no member of the group is a *financial entity or *ADI at any time during that period;

unless the head company is an *outward investing entity (non-ADI) for all or part of that period.

Inward investment vehicle (financial)

(6) The *head company of a *consolidated group or of a *MEC group is an ***inward investment vehicle (financial)*** for a period that is all or part of an income year if:

(a) throughout that period, the head company is a *foreign controlled Australian entity; and

(b) throughout that period, there is at least one *member of the group that is a *financial entity; and

(c) no member of the group is an *ADI at any time during that period;

unless the head company is an *outward investing entity (non-ADI) for all or part of that period.

Outward investing entity (ADI)

(7) The *head company of a *consolidated group or of a *MEC group is an ***outward investing entity (ADI)*** for a period that is all or part of an income year if, and only if:

(a) apart from Part 3-90 (about consolidation of groups) and this Subdivision, at least one *member of the group would be an *outward investing entity (ADI) for that period; or

(b) these conditions are met:

(i) at least one member of the group would, apart from that Part and this Subdivision, be an *outward investing entity (non-ADI) for that period; and

(ii) at least one member of the group is an *ADI throughout that period.

820-585 Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company

(1) This Division does not disallow any of a *debt deduction for an income year if:

(a) the debt deduction is of the *head company of a *consolidated group and the head company satisfies subsection (2) for that income year; or

(b) the debt deduction is an amount incurred by the head company of a consolidated group during a period that is part of that income year, and the head company satisfies subsection (2) for that period.

(2) The *head company satisfies this subsection for a period that is all or part of an income year if, throughout that period:

(a) the head company is both a *foreign controlled Australian company and an *ADI (and would also be an ADI apart from Part 3-90 (about consolidation of groups)); or

(b) the head company:

(i) is a *foreign controlled Australian company; and

(ii) beneficially owns all the *membership interests in a *member of the group that is both a *foreign controlled Australian entity and an *ADI throughout that period; and

(iii) would, apart from Part 3-90 (about consolidation of groups), have no other assets and no *debt capital;

unless at least one member of the group would, apart from that Part and this Subdivision, be an *outward investing entity (non-ADI) or *outward investing entity (ADI) for all or part of that period.

820-587 Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI

Subdivision 820-D applies to the *head company of a *MEC group as if it were an *outward investing entity (ADI) for a period that is all or part of an income year if:

(a) the head company is *not* an outward investing entity (ADI) for that period; and

(b) throughout that period, at least one *member of the group is both a *foreign controlled Australian entity and an *ADI; and

(c) throughout that period, there is at least one *eligible tier-1 company of the *top company for the group that:

(i) is a member of the group; and

(ii) is *not* an ADI; and

(iii) has no *wholly-owned subsidiary that is an ADI.

820-589 How Subdivision 820-D applies to consolidated group or MEC group

(1) This section has effect for the purposes of applying Subdivision 820-D to the *head company of a *consolidated group or of a *MEC group, in relation to a period (the ***test period***) that is all or part of an income year.

Note: Section 820-587 extends the application of Subdivision 820-D.

(2) The *head company's ***adjusted average equity capital*** for the test period is the average value, for the period, of the amount worked out under subsection (3).

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

(3) The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the table below for each entity that is a *member of the group on that day. The amounts are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts:

(a) prepared, in accordance with the *accounting standard on consolidated accounts, as at the end of that day; and

(b) covering the members of the group as at the end of that day.

Note: This subsection does not depend on whether such a set of consolidated accounts was prepared, or had to be prepared, for other purposes.

Equity capital of different kinds of entity

Item	For:	The amount is:
1	an entity that, throughout the test period: (a) is an *ADI; or (b) is a *wholly-owned subsidiary of an *ADI	the total value of all the entity's tier 1 capital (within the meaning of the *prudential standards) as at the end of that day; minus the value of the entity's *debt capital that is part of that tier 1 capital at the end of that day
2	a company that is not covered by item 1	the total value, as at the end of that day, of the company's *paid-up share capital, retained earnings, general reserves and asset revaluation reserves; minus the value of the company's *debt capital that is part of the company's paid-up share capital at the end of that day; plus the value of the company's debt capital at the end of that day that does not give rise to any *debt deductions of the company for the income year or any other income year

Equity capital of different kinds of entity		
Item	**For:**	**The amount is:**
3	a partnership or trust that is not covered by item 1	the total value, as at the end of that day, of the capital and reserves of the partnership or trust; minus the value of the *debt capital of the partnership or trust that is part of the capital of the partnership or trust at the end of that day; plus the value of the debt capital of the partnership or trust at the end of that day that does not give rise to any *debt deductions of the partnership or trust for the income year or any other income year

820-591 Effect on safe harbour capital amount if group member is foreign-controlled Australian ADI and on-lends section 128F amounts

(1) Subsection (2) has effect for the purposes of working out the *safe harbour capital amount of the *head company of a *consolidated group or of a *MEC group for a period that is all or part of an income year, if:

(a) throughout that period, a *member (the ***ADI subsidiary***) of the group is both a *wholly-owned subsidiary of a *foreign bank and an *ADI; and

(b) the ADI subsidiary has:

(i) issued *debentures covered by section 128F (which exempts interest on the debentures from withholding tax) of the *Income Tax Assessment Act 1936*; and

(ii) made proceeds of the debentures available to an *Australian permanent establishment of the foreign bank, as loans to the Australian permanent establishment, for use in its Australian business;

unless a choice by the head company under section 820-597 covers the Australian permanent establishment in relation to some or all of that period.

Note: The effect of such a choice is that the Australian permanent establishment is treated as part of the head company throughout the period covered by the choice. See subsection 820-603(3).

(2) The head company's *risk-weighted assets at a particular time during that period are reduced by the total amounts of proceeds of

the debentures that are at that time so made available by the ADI subsidiary.

(3) To avoid doubt, a choice by the *head company under section 820-597 does not prevent subsection (2) of this section from having effect unless the choice covers the Australian permanent establishment in relation to some or all of that period.

(4) This section applies only to the 2002-2003 income year and to each of the next 3 income years.

Subdivision 820-FB—Grouping foreign bank branches with a consolidated group, MEC group or single Australian resident company

Guide to Subdivision 820-FB

820-595 What this Subdivision is about

If the head company of a consolidated group or MEC group is a member of the same wholly-owned group as a foreign bank, the head company can choose to treat as part of itself the foreign bank's Australian branches.

If an Australian company that cannot consolidate is a member of the same wholly-owned group as a foreign bank, the company can choose to treat as part of itself the foreign bank's Australian branches.

This Subdivision sets out the consequences of the choice for the application of the rest of this Division.

Note: Also, if an Australian company that cannot consolidate is both a wholly-owned subsidiary of a foreign bank and an ADI, the company's risk-weighted assets may be reduced by the proceeds of debentures if those proceeds have been on-lent to an Australian permanent establishment of the foreign bank, and interest on the debentures is exempt from withholding tax because of section 128F of the *Income Tax Assessment Act 1936*. See section 820-617.

Table of sections

[This is the end of the Guide.]

Choice to group with foreign bank branches

820-597 Choice by consolidated group or MEC group

(1) The *head company of a *consolidated group or *MEC group may choose to have treated as part of itself, for the purposes of this Division, each *Australian permanent establishment through which a *foreign bank carried on its banking business in Australia from time to time during a period (the ***grouping period***) for which the conditions in subsection (2) are satisfied.

(2) The conditions are:

(a) the period began on or after 1 July 2002; and

(b) the period was all or part of an income year of the *head company; and

(c) the *consolidated group or *MEC group was in existence throughout the period; and

(d) throughout the period:

(i) the head company and the *foreign bank were members of the same *wholly-owned group; and

(ii) the foreign bank carried on its banking business in Australia through at least one *Australian permanent establishment.

(It does not matter whether or not the income year ends on the same day for the head company and the foreign bank.)

(3) The *head company cannot choose under subsection (1) a period that is part of a longer period for which the conditions in subsection (2) are satisfied.

820-599 Choice by single Australian resident company that is not part of a consolidatable group or potential MEC group

(1) A company (the ***single company***) may choose to have treated as part of itself, for the purposes of this Division, each *Australian permanent establishment through which a *foreign bank carried on its banking business in Australia from time to time during a period (also the ***grouping period***) for which the conditions in subsection (2) are satisfied.

(2) The conditions are:

(a) the period began on or after 1 July 2002; and

(b) the period was all or part of an income year of the single company; and

(c) throughout the period, the single company:

(i) was an *Australian entity; and

(ii) was *not* a *prescribed dual resident; and

(iii) was *not* a *member of a *consolidatable group; and

(iv) was *not* a member of a *potential MEC group; and

(d) throughout the period:

(i) the single company and the foreign bank were members of the same *wholly-owned group; and

(ii) the foreign bank carried on its banking business in Australia through at least one Australian permanent establishment.

(It does not matter whether or not the income year ends on the same day for the single company and the foreign bank.)

(3) The single company cannot choose under subsection (1) a period that is part of a longer period for which the conditions in subsection (2) are satisfied.

Effect of choice

820-601 Application

Sections 820-603 to 820-617 apply if a choice is made under section 820-597 or 820-599.

820-603 General

(1) The choice cannot be revoked in relation to the grouping period. It binds the *head company or the single company, as appropriate, and the *foreign bank.

(2) The rest of this section applies:

(a) to each *Australian permanent establishment through which the *foreign bank carried on its banking business in Australia at any time during the grouping period; and

(b) in relation to each time (the ***test time***) during the grouping period when the foreign bank carried on its banking business in Australia through that Australian permanent establishment.

(3) In the case of a choice under section 820-597, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time, the *Australian permanent establishment:

(a) had been part of the *head company; and

(b) had *not* been part of the *foreign bank; and

(c) were a *subsidiary member of the *consolidated group or *MEC group.

(4) In the case of a choice under section 820-599, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time:

(a) the *Australian permanent establishment had been part of the single company and had *not* been part of the *foreign bank; and

(b) the single company were a *consolidated group of which the single company was the *head company and the Australian permanent establishment was a *subsidiary member.

(5) In either case, without limiting subsection (3) or (4), this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if:

(a) the *Australian permanent establishment were an entity at that time; and

(b) each asset and liability of the *foreign bank at the test time that is attributable to the Australian permanent establishment were an asset or liability of the Australian permanent establishment at that time; and

(c) without limiting paragraph (b) of this subsection, each cost that:

(i) is a *debt deduction of the foreign bank incurred at the test time; and

(ii) is attributable to the Australian permanent establishment;

were a cost incurred by the Australian permanent establishment at that time;

For the effects of disallowing debt deductions, see section 820-605.

(6) However, the application of this Division because of this section is subject to the modifications set out in sections 820-607 to 820-617.

(7) For the purposes of this Division (as applying because of this Subdivision), this Act (except this Division) applies as if the matters referred to in subsections (3), (4) and (5) of this section were the case.

Note: For example, this means that a head company is treated for the purposes of this Division as if it had debt deductions based on the actual costs incurred by an Australian permanent establishment while it is treated as part of the head company because of this section.

820-605 Effect on foreign bank if certain debt deductions disallowed

If:

(a) apart from this Division, a *debt deduction would be a deduction of the *foreign bank for an income year; and

(b) this Division (as applying because of this Subdivision) disallows all or part of the deduction (treated as a deduction of the *head company or single company);

this section disallows the deduction of the foreign bank, or that part of it, as appropriate.

Note 1: This Division does not disallow a debt deduction that the foreign bank incurs during the grouping period and that consists of a cost that is:

- attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599; and
- paid or owed to the head company or single company.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

Because subsection 820-603(3) or (4) also treats the Australian permanent establishment as not being part of the foreign bank, the cost is not a debt deduction of the foreign bank, so it is not disallowed by this Division as applying to the foreign bank.

Note 2: This Division also does not disallow a debt deduction that the head company or single company incurs during the grouping period and that consists of a cost that is:

- paid or owed to the foreign bank; and
- is attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

820-607 Effect on test periods under this Division

If, apart from this section, this Division (except this Subdivision) would have a single application to the *head company or single company, or to the *foreign bank, in relation to a period (the ***test period***) that:

(a) is all or part of an income year of that entity; and

(b) overlaps the grouping period;

this Division (except this section) is to have separate applications to that entity as follows:

(c) a single application in relation to the period of overlap; and

(d) a single application in relation to the part (if any) of the test period that is before the period of overlap; and

(e) a single application in relation to the part (if any) of the test period that is after the period of overlap.

820-609 Effect on classification of head company or single company

Classification as outward investing entity (ADI)

(1) The *head company or single company is an ***outward investing entity (ADI)*** for a period that is all or part of the grouping period, except:

(a) in the case of a choice under section 820-597—a period for which subsection (2) of this section applies Subdivision 820-D to the head company as if it were an *outward investing entity (ADI); and

(b) in any case—a period for which the head company or single company is an *inward investing entity (ADI) because of subsection (3) of this section.

Foreign controlled groups treated as outward investing entity (ADI)

(2) Subdivision 820-D applies to the *head company as if it were an *outward investing entity (ADI) for a period (the ***test period***) that is all or part of the grouping period if, apart from this Subdivision:

(a) the head company would satisfy subsection 820-585(2) for the test period (triggering the exemption in section 820-585); or

(b) section 820-587 would apply Subdivision 820-D to the head company as if it were an *outward investing entity (ADI) for the test period.

Note: If paragraph (2)(a) is satisfied, the exemption in section 820-585 does not apply to the test period: see subsection (4) of this section.

Classification as inward investing entity (ADI)

(3) If, apart from this Subdivision, the *head company or single company would be an *inward investment vehicle (general), or an *inward investment vehicle (financial), for a period (the ***test***

period) that is all or part of the grouping period, the head company or single company is an ***inward investing entity (ADI)*** for the test period.

Section overrides other classification provisions

(4) This section has effect despite any other provision of this Division.

820-611 Values to be based on what would be in consolidated accounts for group

(1) For the purposes of this Division as applying because of this Subdivision, the value or amount of a particular matter as at a particular time during the grouping period is to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts:

(a) prepared, in accordance with the *accounting standard on consolidated accounts, as at that time; and

(b) covering the *consolidated group, *MEC group or single company, as appropriate, and each *Australian permanent establishment that section 820-603 treats as part of the *head company or single company at that time.

Note: This subsection does not depend on whether such a set of consolidated accounts was prepared, or had to be prepared, for other purposes.

(2) To avoid doubt, subsection (1) also applies to working out the value or amount, as at a particular time, of a matter mentioned in any of sections 820-613 to 820-617 (for example, an entity's tier 1 capital (within the meaning of the *prudential standards) or *paid-up share capital).

820-613 How Subdivision 820-D applies if head company or single company is treated as including foreign bank branches

(1) This section has effect for the purposes of applying Subdivision 820-D to the *head company or single company in relation to a period (the ***test period***) that is all or part of the grouping period.

Note: Subdivision 820-D can apply to the head company or single company because of subsection 820-609(1) or (2).

Adjusted average equity capital

(2) The ***adjusted average equity capital*** of the *head company or single company for the test period is the average value, for the period, of the amount worked out under subsection (3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

(3) The amount worked out under this subsection as at a particular day is the total of:

(a) in the case of a choice under section 820-597—the amounts worked out under the table in subsection 820-589(3) for that day for each entity that is a *member of the group on that day; and

(b) in the case of a choice under section 820-599—the amount worked out under the table in subsection 820-589(3) for that day for the single company; and

(c) for each *Australian permanent establishment covered by the choice—the *equity capital of the foreign bank, as at the end of that day, that:

(i) is attributable to that Australian permanent establishment; but

(ii) has not been allocated to the *OB activities of the foreign bank;

plus the total of the amounts that, as at the end of that day:

(iii) are made available by the foreign bank to the Australian permanent establishment as loans to the Australian permanent establishment; and

(iv) do not give rise to any *debt deductions of the foreign bank for the income year or any other income year.

Note: The amounts are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts. See section 820-611.

Risk-weighted assets

(4) For each *Australian permanent establishment that is treated covered by the choice, the *risk-weighted assets of the *head

company or single company include that part of the foreign bank's *risk-weighted assets that:

(a) is attributable to that Australian permanent establishment; but

(b) is not attributable to the *OB activities of the foreign bank.

820-615 How Subdivision 820-E applies if head company or single company is treated as including foreign bank branches

(1) This section has effect for the purposes of applying Subdivision 820-E to the *head company or single company in relation to a period (the ***test period***) that is all or part of the grouping period.

Note: Subdivision 820-E applies to the head company or single company because of subsection 820-609(3).

Average equity capital

(2) The ***average equity capital*** of the *head company or single company for the test period is the average value, for that period, of the amount worked out under subsection 820-613(3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

Safe harbour capital amount

(3) The ***safe harbour capital amount*** of the *head company or single company for the test period is worked out using the following method statement.

Method statement

Step 1. Work out the average value, for the test period, of the *head company's or single company's *risk-weighted assets.

Step 2. Multiply the result of step 1 by 4%. The result of this step is the ***safe harbour capital amount***.

Risk-weighted assets

(4) For each *Australian permanent establishment covered by the choice, the *risk-weighted assets of the *head company or single company include that part of the *risk-weighted assets of the *foreign bank that:

(a) is attributable to that Australian permanent establishment; but

(b) is not attributable to the *OB activities of the foreign bank.

820-617 Effect on safe harbour capital amount if single company is foreign-controlled Australian ADI and on-lends section 128F amounts

(1) In the case of a choice under section 820-599, this section has effect for the purposes of working out the *safe harbour capital amount of the single company for a period (the ***test period***) that is all or part of the grouping period, if:

(a) throughout the test period, the single company is both a *wholly-owned subsidiary of a *foreign bank and an *ADI; and

(b) the single company has:

(i) issued *debentures covered by section 128F (which exempts interest on the debentures from withholding tax) of the *Income Tax Assessment Act 1936*; and

(ii) made proceeds of the debentures available to an *Australian permanent establishment of the foreign bank, as loans to the Australian permanent establishment, for use in its Australian business;

unless that or another choice by the single company under section 820-A515 covers the Australian permanent establishment in relation to some or all of that period.

(2) The single company's *risk-weighted assets at a particular time during the test period are reduced by the total amounts of proceeds of the debentures that are at that time so made available by the single company.

(3) This section applies only to the 2002-2003 income year and to each of the next 3 income years.

4 Subsection 995-1(1) (definition of *adjusted average equity capital*)

Omit "and 820-562", substitute ", 820-562, 820-589 and 820-613".

5 Subsection 995-1(1) (definition of *average equity capital*)

Omit "and 820-575", substitute ", 820-575 and 820-615".

6 Subsection 995-1(1) (definition of *inward investing entity (ADI)*)

Omit "section 820-395", substitute "sections 820-395 and 820-609".

7 Subsection 995-1(1) (definition of *inward investing entity (non-ADI)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

8 Subsection 995-1(1) (definition of *inward investment vehicle (financial)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

9 Subsection 995-1(1) (definition of *inward investment vehicle (general)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

10 Subsection 995-1(1) (definition of *outward investing entity (ADI)*)

Omit "and 820-550", substitute ", 820-550, 820-583 and 820-609".

11 Subsection 995-1(1) (definition of *outward investing entity (non-ADI)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

12 Subsection 995-1(1) (definition of *outward investor (financial)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

13 Subsection 995-1(1) (definition of *outward investor (general)*)

Omit "and 820-550", substitute ", 820-550 and 820-583".

14 Subsection 995-1(1) (paragraph (b) of the definition of *safe harbour capital amount*)

Omit "section 820-405", substitute "section 820-405 or 820-615".

Income Tax (Transitional Provisions) Act 1997

15 Subsection 820-10(1)

Omit "subsection (2)", substitute "this section".

16 After subsection 820-10(1)

Insert:

(1A) Subdivisions 820-FA and 820-FB of that Act apply on and after 1 July 2002.

Schedule 14—Consolidation: consequential provisions for removal of grouping

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

1 Section 18

After "applies only to", insert "certain".

2 Subparagraphs 18(b)(i), (ii) and (iii)

Repeal the subparagraphs, substitute:

(i) subsections 126-50(1), (5), (6), (7), (8) and (9) of that Act; and

(ii) section 126-55 of that Act.

Income Tax Assessment Act 1936

3 Paragraph 73E(1)(a)

After "*1997*", insert ", as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*".

4 Paragraph 73EA(1)(a)

After "*1997*", insert ", as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*".

5 Paragraph 73EB(1)(a)

After "*1997*", insert ", as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*".

6 Paragraph 73F(2)(a)

After "*1997*", insert ", as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*".

7 Paragraph 73G(1)(a)

After "*1997*", insert ", as in force before the amendments made to that Subdivision by the *New Business Tax System (Consolidation) Act (No. 1) 2002*".

Income Tax Assessment Act 1997

8 Section 112-150 (table item 5)

After "between", insert "certain".

9 Subsection 114-10(5) (example)

After "wholly-owned group", insert "and a foreign resident".

10 Paragraph 115-285(3)(c)

Omit "a wholly-owned group", substitute "certain wholly-owned groups".

11 Subsection 121-20(1) (example 2)

After "wholly-owned group", insert "and a foreign resident".

12 Paragraph 124-795(2)(b)

After "original interest", insert "and the acquiring entity is a foreign resident".

13 Section 136-25 (table item 8)

Omit "a company group", substitute "certain company groups".

Taxation Administration Act 1953

14 Paragraphs 45-635(3)(c) and (d) of Schedule 1

Before "companies", insert "certain".

15 Paragraphs 45-635(7)(a) and (b) of Schedule 1

Before "companies", insert "certain".

Wool Services Privatisation Act 2000

16 Subsection 27(2) (note)

Before "transactions", insert "certain".

Schedule 15—Consolidation: foreign tax credits

Income Tax (Transitional Provisions) Act 1997

1 At the end of Division 717

Add:

717-30 Substituted accounting periods

Sections 717-15 and 717-20 have effect as if paragraphs 717-15(1)(b) and 717-20(1)(b) were omitted if the head company of the consolidated group has a substituted accounting period and the consolidated group referred to in those sections came into existence before 1 July 2004.

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002

2 At the end of item 2 of Schedule 10

Add:

Note: If you have a substituted accounting period, item 5 or 7 may apply instead of this item.

3 At the end of item 3 of Schedule 10

Add:

Note: If you become the head company of a consolidated group on or after 1 July 2002 and before 1 July 2003 on a day that is not the start of your income year, item 6 will apply instead of this item.

4 At the end of Schedule 10

Add:

5 Modification of basic rule

(1) This item applies to a taxpayer instead of item 2 if the taxpayer:

(a) has a substituted accounting period; and

(b) is not a member of a consolidated group or a MEC group.

(2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from 1 July 2003. That section applies from 1 July 2003 until the start of the taxpayer's next income year as if that period were an income year.

(3) Section 160AFE of the *Income Tax Assessment Act 1936* as in force just before the commencement of this Schedule (the ***old section 160AFE***) applies to the taxpayer from the start of the taxpayer's income year in which 1 July 2003 occurs until the end of 30 June 2003 as if that period were an income year.

6 Consolidation day on or after 1 July 2002 and before 1 July 2003

(1) This item applies to a taxpayer instead of item 3 if:

(a) the taxpayer becomes the head company of a consolidated group or MEC group on the day (also the ***consolidation day***) the group comes into existence; and

(b) the consolidation day is on or after 1 July 2002 and before 1 July 2003 and is not the start of an income year (whether or not the taxpayer has a substituted accounting period).

(2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from the consolidation day. That section applies from the consolidation day until the end of the taxpayer's income year in which that day occurs as if that period were an income year.

(3) If:

(a) the consolidation day is after 1 July 2002; and

(b) the taxpayer does not have a substituted accounting period;

the old section 160AFE applies to the taxpayer from 1 July 2002 until just before the consolidation day. If the taxpayer so chooses, it applies as if that period were an income year.

(4) If the taxpayer has a substituted accounting period, the old section 160AFE applies to the taxpayer from the start of the taxpayer's income year in which the consolidation day occurred until just before the consolidation day. If the taxpayer so chooses, it applies as if that period were an income year.

7 Consolidation day on or after 1 July 2003

(1) This item applies to a taxpayer instead of item 2 if:

(a) the taxpayer has a substituted accounting period; and

(b) the taxpayer becomes the head company of a consolidated group or MEC group on the day (also the ***consolidation day***) the group comes into existence; and

(c) the consolidation day is on or after 1 July 2003 and is not the start of the taxpayer's next income year.

(2) Section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule applies to the taxpayer from 1 July 2003. That section applies from 1 July 2003 until the start of the taxpayer's next income year as if that period were an income year.

(3) The old section 160AFE applies to the taxpayer from the start of the taxpayer's income year in which 1 July 2003 occurs until the end of 30 June 2003. If the taxpayer so chooses, it applies as if that period were an income year.

8 Applying old section 160AFE to part years

(1) Subitem (2) has effect for the purposes of applying the old section 160AFE:

(a) to a taxpayer as mentioned in item 5, 6 or 7; and

(b) for a period that is shorter than an income year.

(2) The requirement in paragraph (1D)(b) of that section that the income company be a group company in relation to the credit company in relation to the current year of income has effect as if it were a requirement that the income company be a group company in relation to the credit company:

(a) continuously for a period of at least 12 months ending on the day before the day on which section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule starts to apply to the taxpayer; or

(b) from the time when the income company and the credit company were both in existence, if that period is shorter.

9 Applying old section 160AFE to non-membership periods

(1) Subitem (2) has effect for the purposes of applying the old section 160AFE to a taxpayer that:

(a) becomes a subsidiary member of a consolidated group or MEC group; and

(b) has a period referred to in section 701-30 as a non-membership period.

(2) The requirement in paragraph (1D)(b) of the old section 160AFE that the income company be a group company in relation to the credit company in relation to the current year of income has effect as if it were a requirement that the income company be a group company in relation to the credit company:

(a) continuously for a period of at least 12 months ending on the last day of the non-membership period; or

(b) from the time when the income company and the credit company were both in existence, if that period is shorter.

10 Parts of income years not earlier income years

Any period that is shorter than an income year and that is treated as if it were an income year for the purposes of item 5, 6 or 7 of this Schedule is taken not to be an earlier income year for the purposes of section 160AFE of the *Income Tax Assessment Act 1936* as amended by this Schedule.

Schedule 16—Application of sections 46 and 46A of the Income Tax Assessment Act 1936 after 30 June 2002

Income Tax Assessment Act 1936

1 After section 45ZB

Insert:

46AA Sections 46 and 46A do not apply to the franked part of dividends paid after 30 June 2002

(1) Sections 46 and 46A do not apply to the franked part of a dividend paid to a taxpayer after 30 June 2002.

(2) The ***franked part*** of a dividend paid after 30 June 2002 is that part of the dividend that is equal to the amount worked out using the following formula:

$$\text{Franking credit on the dividend} \times \left(\frac{1 - \text{Corporate tax rate}}{\text{Corporate tax rate}} \right)$$

where:

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

franking credit on the dividend means the amount of the franking credit on the dividend, worked out under Subdivision 202-D of the *Income Tax Assessment Act 1997*.

46AB Application of sections 46 and 46A to the unfranked part of dividends

(1) Sections 46 and 46A do not apply to the unfranked part of a dividend paid to a taxpayer after 30 June 2003.

(2) This section does not apply in relation to a taxpayer to which section 46AC applies.

46AC Different application for members of certain groups

(1) This section applies to a taxpayer if:

(a) the taxpayer becomes a member of a consolidated group or MEC group on the day (the ***consolidation day***) the group comes into existence; and

(b) the consolidation day either is before 1 July 2003 or is both:

(i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and

(ii) before 1 July 2004; and

(c) the taxpayer was not a member of a consolidated group or MEC group before the consolidation day.

(2) Sections 46 and 46A do not apply to the unfranked part of a dividend paid to the taxpayer on or after the consolidation day.

(3) In this section:

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

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

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

provisional head company has the same meaning as in the *Income Tax Assessment Act 1997*.

46AD The *unfranked part* of the dividend

For the purposes of sections 46AB and 46AC, the ***unfranked part*** of a dividend is that part of the dividend that remains after deducting the franked part of the dividend (worked out under subsection 46AA(2)) from the amount of the dividend.

46AE Who is a qualified person for the purposes of subsections 46(2B) and 46A(5B) after 30 June 2002

(1) This section applies to dividends paid after 30 June 2002.

(2) For the purposes of subsections 46(2B) and 46A(5B), a shareholder is taken to be a qualified person in relation to a dividend for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*, if the person would have been a qualified person in relation to the dividend under that Division if that Division applied to the dividend.

2 Section 46F

Repeal the section, substitute:

46F Rebate not allowable for certain dividends

(1) In this section:

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

group company has the same meaning as in section 160AFE of this Act.

unfranked part of a dividend (including a dividend that is unfrankable under the *Income Tax Assessment Act 1997*), means that part of the dividend that is equal to the amount worked out using the following formula:

$$\text{Amount of the dividend} - \text{Franking credit on the dividend} \times \left(\frac{1 - \text{Corporate tax rate}}{\text{Corporate tax rate}} \right)$$

where:

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

franking credit on the dividend means the amount of the franking credit on the dividend, worked out under Subdivision 202-D of the *Income Tax Assessment Act 1997*.

(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 entity, or by an exempting entity and item 6 or 7 of the table in section 208-130 of the *Income Tax Assessment Act 1997* applied 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 Subdivision 204-D of the *Income Tax Assessment Act 1997*, or under paragraph 177EA(5)(b) of this Act; or

(b) if a dividend was made to the shareholder by an exempting entity and item 6 or 7 of the table in section 208-130 of the *Income Tax Assessment Act 1997* does not apply to the dividend—any part of the dividend.

(3) Subject to subsection (4), subsection (2) does not apply if:

(a) the shareholder is a group company in relation to the company paying the dividend in relation to the year of income in which the dividend is paid; or

(b) were the tests in section 160AFE for working out relationships between companies to apply to a particular time rather than in relation to a year of income—the shareholder would have been a group company in relation to the company paying the dividend at all times during the period of 12 months ending on the day on which the dividend was paid.

(4) Subsection (3) does not affect the application of subsection (2) to the extent that subsection (2) deals with the payment of the unfranked part of a dividend (whether or not under subparagraph (a)(i) of that subsection):

(a) to a shareholder that is a prescribed dual resident at the time the dividend is paid; or

(b) by a company that is a prescribed dual resident at the time the dividend is paid.

3 Application of item 2

The amendment of the *Income Tax Assessment Act 1936* made by item 2 of this Schedule applies to dividends paid after 30 June 2002.

Schedule 17—Changes to the imputation system

Income Tax Assessment Act 1997

1 Paragraph 202-45(f)

Repeal the paragraph, substitute:

(f) an amount that is taken to be an unfrankable distribution under section 215-10 or 215-15;

2 Section 203-20

Repeal the section, substitute:

203-20 Application of the benchmark rule

(1) The *benchmark rule does not apply to a company in a *franking period if either:

(a) the company satisfies each of the following criteria:

(i) at all times during the franking period, the company is a *listed public company;

(ii) the company cannot make a *distribution on one *membership interest during the franking period without making a distribution under the same resolution on all other membership interests;

(iii) the company cannot *frank a distribution made on one membership interest during the franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage; or

(b) the entity is a *100% subsidiary of a company that satisfies the criteria set out in paragraph (a).

(2) The following are examples of cases in which a company satisfies the criteria set out in paragraph (1)(a):

(a) the company is a *listed public company with a single *class of *membership interest at all times during the relevant *franking period;

(b) the company is a listed public company that, under its constituent documents, must not:

(i) make a *distribution on one membership interest during the relevant franking period without making a distribution under the same resolution on all other membership interests; or

(ii) *frank a distribution made on one membership interest during the relevant franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage;

(c) the company is a listed public company with more than one class of membership interest, but the rights in relation to distributions and the franking of distributions are the same for each class of membership interest.

This is not an exhaustive list.

(3) For the purposes of subsection (1), ignore *membership interests that do not carry a right to receive *distributions (other than distributions on the winding up of the company).

3 Before section 215-1

Insert:

Subdivision 215-A—Application of the imputation system to non-share equity interests

4 After section 215-1

Insert:

Subdivision 215-B—Non-share dividends that are unfrankable to some extent

Guide to Subdivision 215-B

215-5 What this Subdivision is about

While non-share dividends are, as a general rule, frankable, all or part of some non-share dividends are taken to be unfrankable by virtue of these rules.

Table of sections

215-10 Certain non-share dividends by ADIs unfrankable

(1) A *non-share dividend paid by an ADI (an authorised deposit-taking institution) for the purposes of the *Banking Act 1959* is ***unfrankable*** if:

(a) the ADI is an *Australian resident; and

(b) the non-share dividend is paid in respect of a *non-share equity interest that:

(i) by itself; or

(ii) in combination with one or more schemes that are *related schemes to the scheme under which the interest arises;

forms part of the ADI's Tier 1 capital either on a solo or consolidated basis (within the meaning of the prudential standards); and

(c) the non-share equity interest is issued at or through a permanent establishment of the ADI in a broad-exemption listed country (within the meaning of Part X of the *Income Tax Assessment Act 1936*); and

(d) the funds from the issue of the non-share equity interest are raised and applied solely for one or more purposes permitted

under subsection (2) in relation to the non-share equity interest.

(2) The permitted purposes in relation to the *non-share equity interest (the ***relevant interest***) are the following:

(a) the purpose of the business of the ADI carried on at or through the permanent establishment other than the transfer of funds directly or indirectly to:

(i) the Australian head office of the permanent establishment; or

(ii) any connected entity of the ADI that is an *Australian resident; or

(iii) a permanent establishment of the ADI, or of a connected entity of the ADI, located in Australia;

(b) the purpose of redeeming:

(i) a *debt interest; or

(ii) a non-share equity interest;

that is issued, before the relevant interest is issued, at or through the permanent establishment and is held by a connected entity of the ADI that is an Australian resident;

(c) the purpose of returning funds to:

(i) the Australian head office of the permanent establishment; or

(ii) a permanent establishment of the ADI or of a connected entity of the ADI, located in Australia;

if the funds are contributed, before the relevant interest is issued, for use in the business of the ADI carried on at or through the permanent establishment.

215-15 Non-share dividends are unfrankable if profits are unavailable

(1) If:

(a) a *corporate tax entity pays a *non-share dividend; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity is nil, or less than nil;

the non-share dividend is ***unfrankable***.

(2) If:

(a) a *corporate tax entity pays a *non-share dividend that is not one of a number of non-share dividends paid at the same time; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil, are less than the amount of the non-share dividend;

the entity is taken to have made a ***frankable distribution*** equal to the amount of the available frankable profits. The remainder of the dividend is taken to be an ***unfrankable*** distribution.

(3) If:

(a) a *corporate tax entity pays a *non-share dividend that is one of a number paid at the same time; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil are less than the sum of the amounts of the non-share dividends;

the entity is taken to have made a ***frankable distribution*** equal to the amount worked out using the formula:

$$\frac{\text{Amount of the } *\text{non-share dividend}}{\text{Sum of the amounts of all the non-share dividends}} \times *\text{Available frankable profits}$$

The remainder of the dividend is taken to be an ***unfrankable*** distribution.

215-20 Working out the available frankable profits

(1) Use the following formula to work out the amount of a *corporate tax entity's ***available frankable profits*** at a particular time:

$$\text{Maximum frankable amount} - \left[\text{Committed share dividends} + \text{Undebited non-share dividends}\right]$$

where:

committed share dividends means the sum of:

(a) the amounts of any *distributions that are not *non-share dividends and are paid by the entity at that time; and

(b) if the entity has announced that it will pay distributions that are not non-share dividends at a later time, or is committed or has resolved (formally or informally) to paying such

distributions at a later time—the amounts of those distributions.

maximum frankable amount means the maximum amount of *frankable *distributions (other than *non-share dividends) that the *corporate tax entity could pay at that time having regard to its available profits at that time.

undebited non-share dividends means the sum of the amounts of the franked parts of the *non-share dividends (worked out under subsection (2)) that:

(a) were not debited to available profits; and

(b) were paid within the preceding 2 income years or were paid under the same scheme under which the entity pays the non-share dividend.

(2) The amount of the ***franked part*** of a *non-share dividend is worked out using the following formula:

$$\text{*Franking credit on the dividend} \times \left(\frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}} \right)$$

215-25 Anticipating available frankable profits

(1) A *corporate tax entity that pays a *non-share dividend may anticipate *available frankable profits if:

(a) the entity:

(i) has announced the payment of; or

(ii) is committed or has resolved (formally or informally) to pay;

*distributions other than non-share dividends (the ***committed distributions***) after payment of the non-share dividend; and

(b) but for this subsection, section 215-15 would apply to the non-share dividend; and

(c) the entity's available frankable profits would be greater than nil at the relevant time if the committed distributions were ignored; and

(d) it is reasonable to expect that available profits will arise after payment of the non-share dividend and before payment of the committed distributions.

The ***available frankable profits*** immediately before the entity pays the non-share dividend are then the amount estimated by the entity, having regard to the expected profits referred to in paragraph (c).

(2) The amount estimated under subsection (1) must not exceed:

Actual available frankable profits + Adjusted expected profits

where:

actual available frankable profits is the *available frankable profits the entity would have immediately before paying the *non-share dividend apart from subsection (1).

adjusted expected profits is the lesser of:

(a) the available profits that it is reasonable to expect will arise after payment of the *non-share dividend and before payment of the committed distributions; and

(b) the difference between:

(i) in a case where the single non-share dividend is the only one paid at a particular time—the amount of the non-share dividend that would, apart from subsection (1), be *frankable under section 215-15 and the amount of the non-share dividend that would, apart from subsection (1), be frankable under that section if the committed distributions were ignored; and

(ii) in a case where the non-share dividend is one of a number of non-share dividends made at the same time—the sum of the amounts of the non-share dividends that would, apart from subsection (1), be frankable under section 215-15 and the sum of the amounts of the non-share dividends that would, apart from subsection (1), be frankable under that section if the committed distributions were ignored.

(3) A *franking debit arises for the entity if:

(a) the entity anticipates*available frankable profits under subsection (1); and

(b) the available frankable profits of the entity are less than nil:

(i) when the last of the committed distributions is made; or

(ii) immediately before the end of the income year following the income year in which the *non-share dividend is paid;

whichever is earlier.

(4) The *franking debit is equal to the lesser of:

(a) the amount by which the *available frankable profits is below nil; and

(b) the amount of the franked part of the *non-share dividend (worked out using subsection 215-20(2)) or, if more than one non-share dividend is made at the relevant time, the sum of the amounts of the franked parts of those non-share dividends.

(5) In working out the entity's *available frankable profits for the purposes of subsection (3) or (4), disregard:

(a) any *distributions that:

(i) the entity announces, or becomes committed to or resolves (formally or informally) to pay after the payment of the *non-share dividend; and

(ii) have not been paid; and

(b) any estimate made by the entity under subsection (1) after the non-share dividend is paid.

5 Subsection 995-1(1)

Insert:

available frankable profits has the meaning give by section 215-20 and affected by subsection 215-25(1).

6 Application

(1) The amendments of the *Income Tax Assessment Act 1997* made by items 1, 4 and 5 of this Schedule apply to non-share dividends paid after 30 June 2002.

(2) The amendment of the *Income Tax Assessment Act 1997* made by item 2 of this Schedule applies to franking periods that begin after 30 June 2002.

Schedule 18—Imputation system transitionals

Income Tax (Transitional Provisions) Act 1997

1 After Division 201

Insert:

Division 203—Benchmark rule

203-1 Franking periods straddling 1 July 2002

Where, but for this section, 1 July 2002 would fall within a franking period for a corporate tax entity, but would not be the first day of the franking period, the franking period:

(a) is taken to begin at the start of 1 July 2002; and

(b) is taken to end when it would otherwise have ended.

2 Section 205-1

Omit "(the ***new account***)".

3 Paragraph 205-1(b)

Repeal the paragraph, substitute:

(b) then:

(i) in the case of a company whose 2001-02 franking year ends on 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936*—the company's franking account balances are converted under section 205-10 to a tax paid basis; and

(ii) in the case of a company whose 2001-02 franking year ends before 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936*—the company's franking account balances are converted under section 205-15 to a tax paid basis.

4 Section 205-10 (heading)

Repeal the heading, substitute:

205-10 Converting the franking account balance to a tax paid basis—companies whose 2001-02 franking year ends on 30 June 2002

5 Subsection 205-10(1)

Omit "that have a franking year that ends at the end of 30 June 2002", substitute "whose 2001-02 franking year ends on 30 June 2002".

6 Subsection 205-10(2)

After "franking surplus", insert "of a particular class".

7 At the end of Division 205

Add:

205-15 Converting the franking account balance to a tax paid basis—companies whose 2001-02 franking year ends before 30 June 2002

(1) This section applies to companies whose 2001-02 franking year ends before 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936* (the ***1936 Act***).

(2) If, but for this subsection, the company would have a franking surplus of a particular class under Part IIIAA of the 1936 Act at the end of 30 June 2002 (an ***original surplus***):

(a) a franking debit equal to the surplus is taken to arise for the company under Part IIIAA of the 1936 Act at the end of 30 June 2002; and

(b) a franking credit arises on 1 July 2002 in the franking account established under section 205-10 of the *Income Tax Assessment Act 1997* (the ***1997 Act***) for the company.

The amount of the franking credit is worked out under subsection (3).

(3) The franking credit generated under paragraph (2)(b) from an original surplus of a class specified in column 2 of the following table is worked out using the formula in column 3 of the table for that class.

Conversion of 1936 Act franking surplus into 1997 Act franking credit		
Item	**Original surplus**	**Franking credit generated under paragraph (2)(b)**
1	class A	Amount of the original class A surplus $\times \frac{39}{61}$
2	class B	Amount of the original class B surplus $\times \frac{33}{67}$
3	class C	Amount of the original class C surplus $\times \frac{30}{70}$

(4) If, but for this subsection, the company would have a franking deficit of a particular class under Part IIIAA of the 1936 Act at the end of 30 June 2002 (an ***original deficit***):

(a) a franking credit equal to the deficit is taken to arise for the company under Part IIIAA of the 1936 Act at the end of 30 June 2002; and

(b) a franking debit arises on 1 July 2002 in the franking account established under section 205-10 of the 1997 Act for the company.

The amount of the franking debit is worked out under subsection (5).

(5) The franking debit generated under paragraph (4)(b) from an original deficit of a class specified in column 2 of the following table is worked out using the formula in column 3 of the table for that class.

Conversion of 1936 Act franking deficit into 1997 Act franking debit		
Item	**Original deficit**	**Franking debit generated under paragraph (4)(b)**
1	class A	Amount of the original class A deficit $\times \frac{39}{61}$
2	class B	Amount of the original class B deficit $\times \frac{33}{67}$
3	class C	Amount of the original class C deficit $\times \frac{30}{70}$

205-20 A late balancing company may elect to have its FDT liability determined on 30 June

(1) This section applies after 30 June 2002.

(2) A corporate tax entity's liability to pay franking deficit tax is determined under sections 205-25 and 205-30 of this Act (the ***transitional provisions***), and not under sections 205-45 and 205-50 of the *Income Tax Assessment Act 1997* (the ***ongoing provisions***), if:

(a) the entity was in existence at the end of 30 June 2002; and

(b) the entity's 2001-02 income year ends after 30 June 2002; and

(c) the entity makes a valid election to have its liability to pay franking deficit tax determined under the transitional provisions.

(3) The entity makes a valid election to have its liability to pay franking deficit tax determined under the transitional provisions if:

(a) the election is in writing; and

(b) the election is made on the day on which liability for franking deficit tax would be determined under those provisions, or earlier than that day but in the income year in which that day occurs; and

(c) the entity's liability to pay franking deficit tax has not previously been determined under the ongoing provisions.

205-25 Franking deficit tax

Object

(1) While recognising that an entity may anticipate franking credits when franking distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its franking account at certain times and levying tax if the account is in deficit.

Franking deficit at end of 30 June

(2) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if its

franking account is in deficit at the end of 30 June in the year 2003 or a later year.

Corporate tax entity ceases to be a franking entity

(3) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if:

(a) it ceases to be a franking entity after 30 June 2002; and

(b) immediately before it ceases to be a franking entity, its franking account is in deficit.

Note: The tax is imposed in the *New Business Tax System (Franking Deficit Tax) Act 2002* and the amount of the tax is set out in that Act.

205-30 Deferring franking deficit

Object

(1) The object of this section is to ensure that an entity does not avoid franking deficit tax by deferring the time at which a franking debit occurs in its franking account.

End of year deficit deferred

(2) If:

(a) a corporate tax entity receives a refund of income tax within 3 months after 30 June in the year 2003 or a later year; and

(b) the refund is attributable to a period of 12 months ending at the end of 30 June in that year; and

(c) the franking account of the entity would have been in deficit, or in deficit to a greater extent, at the end of 30 June in that year if the refund had been received immediately before that time;

the refund is taken to have been paid to the entity immediately before that time.

Deficit on ceasing to be a franking entity deferred

(3) If an entity ceases to be a franking entity during a period of 12 months ending on 30 June in the year 2003 or a later year, a refund of income tax is taken to have been paid to it immediately before it ceased to be a franking entity, for the purposes of subsection 205-25(3), if:

(a) the refund is attributable to a period within that 12 months during which the entity was a franking entity; and

(b) the refund is paid within 3 months after the entity ceases to be a franking entity; and

(c) the franking account of the entity would have been in deficit, or in deficit to a greater extent, immediately before it ceased to be a franking entity, if the refund had been received before it ceased to be a franking entity.

205-35 No franking deficit tax if franking account in deficit at the close of the 2001-02 income year of a late balancing entity

If:

(a) an entity's 2001-02 income year ends after 30 June 2002; and

(b) its franking account is in deficit at the end of that income year;

the entity is not liable to pay franking deficit tax under subsection 205-45(2) of the *Income Tax Assessment Act 1997* because the account is in deficit at that time.

Notes to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*

Note 1

The *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* as shown in this compilation comprises Act No. 117, 2002 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002	117, 2002	2 Dec 2002	*See* s. 2(1)	
Tax Laws Amendment (2010 Measures No. 2) Act 2010	75, 2010	28 June 2010	Schedule 6 (item 14): 29 June 2010	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 4.....	rep. No. 75, 2010